ITEM 3

TEST CLAIM

FINAL STAFF ANALYSIS

AND PROPOSED STATEMENT OF DECISION

Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720
Statutes 2003, Chapter 4
Juvenile Offender Treatment Program Court Proceedings

04-TC-02

County of Los Angeles, Claimant

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Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003.

Statutes 1961, chapter 1616.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

December 21, 2004

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Test Claim
Juvenile Offender Treatment Program Court Proceedings
Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720
Added or Amended by Chapter 4, Statutes of 2003 [SB 459]

We submit the subject test claim.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

John Naimo FOR
J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916)323-3562
CSM 1 (12/89)

TEST CLAIM FORM

For Official Use Only
RECEIVED DEC 22 2004 COMMISSION ON STATE MANDATES
Claim No. 04-TC-02

Local Agency or School District Submitting Claim

Los Angeles County

Contact Person	**Telephone No.**
Leonard Kaye	(213) 974-8564

Address
500 West Temple Street, Room 603
Los Angeles, CA 90012

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of " costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article, XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page a

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	**Telephone No.**
J. Tyler McCauley Auditor-Controller	(213) 974-8301

Signature of Authorized Representative	**Date**
John Naimo FOR J. TYLER McCAULEY	12/21/04

County of Los Angeles Test Claim
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Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720
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County of Los Angeles Test Claim
Juvenile Offender Treatment Program Court Proceedings
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Added or Amended by Chapter 4, Statutes of 2003 [SB 459]

The Los Angeles County Public Defender's Office is responsible for implementing county public defender services for juvenile court proceedings pursuant to Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720, as added or amended by Chapter 4, Statutes of 2003 [SB 459]. SB 459 [1] was operative on January 1, 2004 and constitutes the test claim legislation.

Section 1720 Review

Chapter 4, Statutes of 2003 [SB 459] amended Welfare and Institutions Code Section 1720, regarding "review of cases of wards", to require that:

> "(a) The case of each ward shall be reviewed by the Department of the Youth Authority within 45 days of arrival at the department, and at other times as is necessary to meet the powers or duties of the board.
>
> (b) The department shall periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These reviews shall be made as frequently as the department considers desirable and shall be made with respect to each ward at intervals not exceeding one year.
>
> (c) The ward shall be entitled to notice if his or her annual review is delayed beyond one year after the previous annual review hearing. The ward shall be informed of the reason for the delay and of the date the review hearing is to be held.
>
> (d) Failure of the department to review the case of a ward within 15 months of a previous review shall not of itself entitle the ward to discharge from the control of the Youth Authority but shall entitle him or her to petition the superior court of the county from which he or she was committed for an order of discharge, and the court shall discharge him or her unless the court is satisfied as to the need for further control.

1 A copy of SB 459 is attached.

(e) Reviews conducted by the department pursuant to this section shall be written and shall include, but not be limited to, the following: verification of the treatment or program goals and orders for the ward to ensure the ward is receiving treatment and programming that is narrowly tailored to address the correctional treatment needs of the ward and is being provided in a timely manner that is designed to meet the parole consideration date set for the ward; an assessment of the ward's adjustment and responsiveness to treatment, programming, and custody; a review of the ward's disciplinary history and response to disciplinary sanctions; an updated individualized treatment plan for the ward that makes adjustments based on the review required by this subdivision; an estimated timeframe for the ward's commencement and completion of the treatment programs or services; and a review of any additional information relevant to the ward's progress.

(f) The department shall provide copies of the reviews prepared pursuant to this section to the court and the [county] probation department of the committing county."

Under prior law, Section 1720 of the Welfare and Institutions Code provided only that:

"(a) The case of each ward shall be heard by the board immediately after the case study of the ward has been completed and at such other times as is necessary to exercise the powers or duties of the board.

(b) The board shall periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These reviews shall be made as frequently as the board considers desirable and shall be made with respect to each ward at intervals not exceeding one year.

(c) The ward shall be entitled to notice if his or her annual review hearing is delayed beyond one year after the previous annual review hearing. The ward shall be informed of the reason for the delay and of the date the review hearing is to be held.

(d) Failure of the board to review the case of a ward within 15 months of a previous review shall not of itself entitle the ward to

discharge from the control of the Youth Authority but shall entitle him or her to petition the superior court of the county from which he or she was committed for an order of discharge, and the court shall discharge him or her unless the court is satisfied as to the need for further control."

As noted in the attached declaration of Lita M. Jacoste, Acting Division Chief of the Los Angeles Public Defender's office, the California Youth Authority [CYA] treatment reports submitted to county public defender offices by the courts in accordance with Section 1720(f) as amended by Chapter 4, Statutes of 2003 [SB 459] require county public defenders to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the orders of the court, the needs of the client and statutory provisions including Section 779 as amended by Chapter 4, Statutes of 2003 [SB459].

Section 779 as amended by Chapter 4, Statutes of 2003 [SB459] states, in pertinent part, that:

"The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefore shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section, this chapter does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. <u>This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734</u>." [Emphasis added.]

Section 734 provides that:

> "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."

Under prior law, the court had no authority to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority was unable to, or failed to, provide treatment consistent with Section 734. Further, under prior law, including the holding in Owen E. (1979) 23 Cal.3d 398 [attached hereto], Section 779 does not constitute authority for a juvenile court to set aside an order committing a ward to the California Youth Authority merely because the court's view of rehabilitative progress and continuing treatment needs of the ward differ from CYA determinations of such matters.

Also, Chapter 4, Statutes of 2003 [SB 459] added an entirely new Section 1731.8 to require, in pertinent part, that:

> "Notwithstanding any other provision of law, within 60 days of the commitment of a ward to the Department of the Youth Authority, the department shall set an initial parole consideration date for the ward and shall notify the probation department and the committing juvenile court of that date."

In addition, Chapter 4, Statutes of 2003 [SB 459] amended Welfare and Institutions Code Section 1719 regarding "powers and duties of [Youth Authority] Board", to require that:

> "(a) The following powers and duties shall be exercised and performed by the * * * Youth Authority Board as such, or may be delegated to a panel, member, or case hearing representative as provided in Section 1721: * * *discharges of commitment, orders to parole and conditions thereof, revocation or suspension of parole, * * * and disciplinary appeals.

(b) Any ward may appeal an adjustment to his or her parole consideration date to a panel comprised of at least two board members.

(c) The following powers and duties shall be exercised and performed by the Department of the Youth Authority: return of persons to the court of commitment for redisposition by the court, determination of offense category, setting of parole consideration dates, conducting annual reviews, treatment program orders, institution placements, furlough placements, return of nonresident persons to the jurisdiction of the state of legal residence, disciplinary decisionmaking, and referrals pursuant to Section 1800.

(d) The Department of the Youth Authority shall promulgate policies and regulations implementing a departmentwide system of graduated sanctions for addressing ward disciplinary matters. The disciplinary decisionmaking system shall be employed as the disciplinary system in department institutions, and shall provide a framework for handling disciplinary matters in a manner that is consistent, timely, proportionate, and ensures the due process rights of wards. The department shall develop and implement a system of graduated sanctions which distinguishes between minor, intermediate, and serious misconduct. The department may extend a ward's parole consideration date, subject to appeal pursuant to subdivision (b), from one to not more than 12 months, inclusive, for a sustained serious misconduct violation if all other sanctioning options have been considered and determined to be unsuitable in light of the ward's previous case history and the circumstances of the misconduct. In any case in which a parole consideration date has been extended, the disposition report shall clearly state the reasons for the extension. The length of any parole consideration date extension shall be based on the seriousness of the misconduct, the ward's prior disciplinary history, the ward's progress toward treatment objectives, the ward's earned program credits, and any extenuating or mitigating circumstances. The department shall promulgate regulations to implement a table of sanctions to be used in determining parole consideration date extensions. The department also may promulgate regulations to establish a process for granting wards who have successfully responded to disciplinary sanctions a

reduction of up to 50 percent of any time acquired for disciplinary matters."

Under prior law, Section 1719 of the Welfare and institutions Code provided only that:

> "The following powers and duties shall be exercised and performed by the Youthful Offender Parole Board as such, or may be delegated to a panel, member, or case hearing representative as provided in Section 1721: return of persons to the court of commitment for redisposition by the court, discharge of commitment, orders to parole and conditions thereof, revocation or suspension of parole, recommendation for treatment program, determination of the date of next appearance, return of nonresident persons to the jurisdiction of the state of legal residence."

Since the Youth Authority's Administrative Committee, (YAAC), orders the youth's treatment and programming, it is inextricably bound with his or her success or failure at CYA. Since failure would be addressed by a §779 motion, public defenders are under an obligation to coordinate with the YAAC and participate in their meetings to the extent allowed. Under the law prior to SB459, the court was powerless to challenge CYA's parole denials and the court was precluded from "substituting its judgment for that of CYA." (See In re Owen E, supra, 23 Cal.3d 398 at 405 - attached hereto.)

Accordingly, SB459 now mandates a statutory scheme in which the court does substitute its judgment for that of CYA, tantamount to the granting of parole; thus, the Public Defender has a new duty to monitor parole procedures and assist its clients in their attempts to gain parole.

State Funding Disclaimers are Not Applicable

There are seven disclaimers specified in Government Code (GC) Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in GC Section 17514. These seven disclaimers do not apply to the instant test claim, as shown, in seriatim, for pertinent sections of GC Section 17556.

> (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or

school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

(b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(c) is not applicable as the statute or executive order did not implement a federal law or regulation.

(d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."

(d) is not applicable as there is no authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

(e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net

costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate."

(e) There are no offsetting savings that are provided in the subject law. In addition, there are no additional revenues that are specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

(f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs mandated by the state as claimed herein.

New Duties

As noted in the attached declaration of Lita M. Jacoste, Acting Division Chief of the Los Angeles Public Defender's office, the public defender has new duties that are reasonably necessary in implementing new statutory pursuant to Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720 as added or amended by Chapter 4, Statutes of 2003 [SB 459], which include:

1. Review case and court files, mental health, school, medical, psychological and psychiatric records and familiarize themselves with treatment and service needs of the youth;

2. Review court documents to assure court has followed the mandates of SB 459;

3. Prepare and argue motions in cases where court has not followed the mandates of SB 459 in its dispositional orders;

4. Contact, visit and interview PD clients sentenced to the California Youth Authority [CYA];

5. Monitor the setting of parole consideration dates to assure they comply with statutory mandates;

6. Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court;

7. Review CYA files, including education, special education; mental health, behavioral, gang and any other specialized files (all kept in separate locations);

8. Monitor the provision of treatment and other services;

9. Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan [IEP], treatment plan, and similar meetings.;

10. File motions in the sentencing court pursuant to Welfare and Institutions Code Section 779 where the client's needs are not being adequately addressed by CYA.

11. Coordinate with the Youth Authority in order to assist our clients in preparing for parole hearings, and represent our clients at parole hearings in appropriate cases.

The County has been, or will be, incurring costs for attorneys, support personnel, investigators, experts, and associated services and supplies, necessary to perform SB 459 duties claimed herein as noted in the attached declaration of Lita M. Jacoste, Acting Division Chief of the Los Angeles Public Defender's office.

County's Costs are Reimbursable "Costs Mandated by the State"

Los Angeles County's costs that have been, or will be, incurred in providing SB 459 services are reimbursable "costs mandated by the State" as defined in Government Code Section 17514, as recited below, and, are well in excess of

$1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

Specifically, the County's State mandated duties in implementing provisions of Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720, as added or amended by Chapter 4, Statutes of 2003 [SB 459], require the County to provide new State-mandated services and thus incur costs which are reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The County has unavoidably incurred 'costs mandated by the State', in implementing county public defender services for juvenile court proceedings pursuant to Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720, as added or amended by Chapter 4, Statutes of 2003 [SB 459], operative on January 1, 2004, [the test claim legislation], which are reimbursable "costs mandated by the State" as there is no bar or disclaimer to such a finding, as previously discussed, and because such costs satisfy three requirements, found in Government Code Section 17514:

1. There are "increased costs which a local agency is required to incur after July 1, 1980"; and

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975"; and

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of above requirements for finding "costs mandated by the State" are met herein.

First, local government began incurring costs for the subject program as a result of Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720, as added or

amended by Chapter 4, Statutes of 2003 [SB 459], operative on January 1, 2004, [the test claim legislation] --- a statute enacted on or after January 1, 1975.

Second, as noted in the attached declaration of Lita M. Jacoste, Acting Division Chief of the Los Angeles Public Defender's office, the County has incurred costs pursuant to SB 459 well after July 1, 1980. So the second requirement, that the increased costs claimed herein be incurred after July 1, 1980, is met. Also, the amount of such increased costs well exceeds the statutory minimum of $1,000 a year.

The third requirement is also met as new mandatory duties, not required under prior law, are claimed herein. Such new duties, as previously discussed, include implementing county public defender services for juvenile court proceedings pursuant to Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720, as added or amended by Chapter 4, Statutes of 2003 [SB 459].

Therefore, all three requirements, for the costs claimed herein to be the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution", are met. Accordingly, reimbursement of the County's "costs mandated by the State", as claimed herein, is required.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY
AUDITOR-CONTROLLER

County of Los Angeles Test Claim
Juvenile Offender Treatment Program Court Proceedings
Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720
Added or Amended by Chapter 4, Statutes of 2003 [SB 459]

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, and for preparing filings pursuant to Commission's reconsideration of its prior decisions, all for the complete and timely recovery of costs mandated by the State. Specifically, I have met and conferred with Lita M. Jacoste of the Los Angeles County Public Defenders Office in preparing the subject test claim.

Specifically, I declare that I have examined State mandated duties and resulting costs imposed upon counties pursuant to implementing the subject test claim legislation [captioned above] and find that such costs as set forth in the subject test claim, supporting documents and declarations, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

12/21/04; Los Angeles, CA
Date and Place

Signature

LAW OFFICES
LOS ANGELES COUNTY PUBLIC DEFENDER
SPECIAL SERVICES DIVISION
JUVENILE SERVICES
11701 ALAMEDA STREET, SUITE 3171
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MICHAEL P. JUDGE
PUBLIC DEFENDER

County of Los Angeles Test Claim
Juvenile Offender Treatment Program Court Proceedings
Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720
Added or Amended by Chapter 4, Statutes of 2003 [SB 459]

Declaration of Lita M. Jacoste

Lita M. Jacoste makes the following declaration and statement under oath:

I, Lita M. Jacoste, Acting Division Chief in the Los Angeles County Public Defender's Office, am responsible for implementing county public defender services for juvenile court proceedings pursuant to Welfare and Institutions Code Sections 779, 1731.8, 1719,1720, as added or amended by Chapter 4, Statutes of 2003 [SB 459], operative on January 1, 2004.

I declare that Chapter 4, Statutes of 2003 [SB 459] amended Welfare and Institutions Code Section 1720, regarding "review of cases of wards", to require that:

> (a) The case of each ward shall be reviewed by the Department of the Youth Authority within 45 days of arrival at the department, and at other times as is necessary to meet the powers or duties of the board.
>
> (b) The department shall periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These reviews shall be made as frequently as the department considers desirable and shall be made with respect to each ward at intervals not exceeding one year.
>
> (c) The ward shall be entitled to notice if his or her annual review is delayed beyond one year after the previous annual review hearing. The ward shall be informed of the reason for the delay and of the date the review hearing is to be held.

(d) Failure of the department to review the case of a ward within 15 months of a previous review shall not of itself entitle the ward to discharge from the control of the Youth Authority but shall entitle him or her to petition the superior court of the county from which he or she was committed for an order of discharge, and the court shall discharge him or her unless the court is satisfied as to the need for further control.

(e) Reviews conducted by the department pursuant to this section shall be written and shall include, but not be limited to, the following: verification of the treatment or program goals and orders for the ward to ensure the ward is receiving treatment and programming that is narrowly tailored to address the correctional treatment needs of the ward and is being provided in a timely manner that is designed to meet the parole consideration date set for the ward; an assessment of the ward's adjustment and responsiveness to treatment, programming, and custody; a review of the ward's disciplinary history and response to disciplinary sanctions; an updated individualized treatment plan for the ward that makes adjustments based on the review required by this subdivision; an estimated timeframe for the ward's commencement and completion of the treatment programs or services; and a review of any additional information relevant to the ward's progress.

(f) The department shall provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county."

I declare that under prior law, Section 1720 of the Welfare and Institutions Code provided only that:

"(a) The case of each ward shall be heard by the board immediately after the case study of the ward has been completed and at such other times as is necessary to exercise the powers or duties of the board.

(b) The board shall periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These reviews shall be made as frequently as the board considers desirable and shall be made with respect to each ward at intervals not exceeding one year.

(c) The ward shall be entitled to notice if his or her annual review hearing is delayed beyond one year after the previous annual review hearing. The ward shall be informed of the reason for the delay and of the date the review hearing is to be held.

(d) Failure of the board to review the case of a ward within 15 months of a previous review shall not of itself entitle the ward to discharge from the control of the Youth Authority but shall entitle him or her to petition the superior court of the county from which he or she was committed for an order of discharge, and the court shall discharge him or her unless the court is satisfied as to the need for further control."

I declare that it is my information and belief that CYA treatment reports submitted to county public defender offices by the courts in accordance with Section 1720(f) as amended by Chapter 4, Statutes of 2003 [SB 459] require county public defenders to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the orders of the court, the needs of the client and statutory provisions including Section 779 as amended by Chapter 4, Statutes of 2003 [SB459].

I declare that Section 779 as amended by Chapter 4, Statutes of 2003 [SB459] states, in pertinent part, that:

"The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefore shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section, this chapter does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. <u>This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734</u>." [Emphasis added.]

I declare that Section 734 states that:

"No ward of the juvenile court shall be committed to the Youth Authority

> unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."

I declare that it is my information and belief that under prior law, the court had no authority to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority was unable to, or failing to, provide treatment consistent with Section 734.

I declare that it is my information and belief that under prior law, including the holding in Owen E. (1979) 23 Cal.3d 398 [attached hereto], Section 779 does not constitute authority for a juvenile court to set aside an order committing a ward to the California Youth Authority merely because the court's view of rehabilitative progress and continuing treatment needs of the ward differ from CYA determinations of such matters.

I declare that Chapter 4, Statutes of 2003 [SB 459] added an entirely new Section 1731.8 to require, in pertinent part, that:

> "Notwithstanding any other provision of law, within 60 days of the commitment of a ward to the Department of the Youth Authority, the department shall set an initial parole consideration date for the ward and shall notify the probation department and the committing juvenile court of that date."

I declare that Chapter 4, Statutes of 2003 [SB 459] amended Welfare and Institutions Code Section 1719 regarding "powers and duties of [Youth Authority] Board", to require that:

(a) The following powers and duties shall be exercised and performed by the * * * Youth Authority Board as such, or may be delegated to a panel, member, or case hearing representative as provided in Section 1721: * * *discharges of commitment, orders to parole and conditions thereof, revocation or suspension of parole, * * * and disciplinary appeals.

(b) Any ward may appeal an adjustment to his or her parole consideration date to a panel comprised of at least two board members.

(c) The following powers and duties shall be exercised and performed by the Department of the Youth Authority: return of persons to the court of commitment for redisposition by the court, determination of offense category, setting of parole consideration dates, conducting annual reviews, treatment program orders, institution placements, furlough placements, return of nonresident persons to the jurisdiction of the state of legal residence, disciplinary decisionmaking, and referrals pursuant to Section 1800.

(d) The Department of the Youth Authority shall promulgate policies and regulations implementing a departmentwide system of graduated sanctions for addressing ward disciplinary matters. The disciplinary decisionmaking system shall be employed as the disciplinary system in department institutions, and shall provide a framework for handling disciplinary matters in a manner that is consistent, timely, proportionate, and ensures the due process rights of wards. The department shall develop and implement a system of graduated sanctions which distinguishes between minor, intermediate, and serious misconduct. The department may extend a ward's parole consideration date, subject to appeal pursuant to subdivision (b), from one to not more than 12 months, inclusive, for a sustained serious misconduct violation if all other sanctioning options have been considered and determined to be unsuitable in light of the ward's previous case history and the circumstances of the misconduct. In any case in which a parole consideration date has been extended, the disposition report shall clearly state the reasons for the extension. The length of any parole consideration date extension shall be based on the seriousness of the misconduct, the ward's prior disciplinary history, the ward's progress toward treatment objectives, the ward's earned program credits, and any extenuating or mitigating circumstances. The department shall promulgate regulations to implement a table of sanctions to be used in determining parole consideration date extensions. The department also may promulgate regulations to establish a process for granting wards who have successfully responded to disciplinary sanctions a reduction of up to 50 percent of any time acquired for disciplinary matters.

I declare that under prior law, Section 1719 of the Welfare and institutions Code provided only that:

"The following powers and duties shall be exercised and performed by the Youthful Offender Parole Board as such, or may be delegated to a panel, member, or case hearing representative as provided in Section 1721: return of persons to the court of commitment for redisposition by the court, discharge of commitment, orders to parole and conditions thereof, revocation or suspension of parole, recommendation for treatment program, determination of the date of next appearance, return of nonresident persons to the jurisdiction of the state of legal residence."

I declare that it is my information and belief that since the Youth Authority's Administrative Committee, (YAAC), orders the youth's treatment and programming, it is inextricably bound with his or her success or failure at CYA. Since failure would be addressed by a §779 motion, public defenders are under an obligation to coordinate with the YAAC and participate in their meetings to the extent allowed. Under the law prior to SB459, the court was powerless to challenge CYA's parole denials and the court was precluded from "substituting its judgment for that of CYA." (See In re Owen E, supra, 23 Cal.3d 398 at 405.) It is my information and belief that SB459 now mandates a statutory scheme in which the court does substitute its judgment for that of

CYA, tantamount to the granting of parole; thus, the Public Defender has a duty to monitor parole procedures and assist its clients in their attempts to gain parole.

I declare that it is my information and belief that public defender duties that are reasonably necessary in implementing new statutory pursuant to Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720 as added or amended by Chapter 4, Statutes of 2003 [SB 459], include:

1. Review case and court files, mental health, school, medical, psychological and psychiatric records and familiarize themselves with treatment and service needs of the youth;

2. Review court documents to assure court has followed the mandates of SB 459;

3. Prepare and argue motions in cases where court has not followed the mandates of SB 459 in its dispositional orders;

4. Contact, visit and interview PD clients sentenced to the California Youth Authority [CYA];

5. Monitor the setting of parole consideration dates to assure they comply with statutory mandates;

6. Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court;

7. Review CYA files, including education, special education; mental health, behavioral, gang and any other specialized files (all kept in separate locations);

8. Monitor the provision of treatment and other services;

9. Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan [IEP], treatment plan, and similar meetings.;

10. File motions in the sentencing court pursuant to Welfare and Institutions Code Section 779 where the client's needs are not being adequately addressed by CYA.

11. Coordinate with the Youth Authority in order to assist our clients in preparing for parole hearings, and represent our clients at parole hearings in appropriate cases.

I declare that it is my information or belief that the County has been, or will be, incurring costs for attorneys, support personnel, investigators, experts, and associated services and supplies, necessary to perform SB 459 duties claimed herein.

I declare that it is my information and belief that Los Angeles County's costs that have been, or will be, incurred in providing SB 459 services are reimbursable "costs

mandated by the State" as defined in Government Code Section 17514, as recited below, and, are well in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

Specifically, I declare that it is my information and belief that the County's State mandated duties in implementing provisions of Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720, as added or amended by Chapter 4, Statutes of 2003 [SB 459], require the County to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

Dec. 17, 2004 at Los Angeles, Calif

Date and Place

Signature

Supreme Court of California, In Bank.

In re **OWEN E.**, A Person Coming Under the **Juvenile** Court Law.
OWEN E., Plaintiff and Respondent,
v.
Pearl S. WEST, as Director, etc., Defendant and Appellant.

Cr. 20219.

Feb. 22, 1979.
Hearing Denied March 29, 1979.

Director of California Youth Authority appealed from an order of the Superior Court, Santa Barbara County, Arden T. Jensen, J., vacating an order of commitment of **ward** to Authority's custody. The Supreme Court, Clark, J., held that Authority acted well within the law and discretion vested in it by Legislature in denying **ward's** application for parole.

Reversed.

Bird, C. J., dissented and filed opinion in which Tobriner and Newman, JJ., concurred.

Opinion, Cal.App., 140 Cal.Rptr. 305, vacated.

West Headnotes

[1] **Infants** 281
211k281 Most Cited Cases
(Formerly 211k16.12)
California Youth Authority acted well within law and discretion vested in it by Legislature in denying **ward's** application for parole.

[2] **Infants** 230.1
211k230.1 Most Cited Cases
(Formerly 211k230, 211k16.12)
Juvenile court may not act to vacate a proper commitment to California Youth Authority unless it appears that Authority failed to comply with law or abused its discretion in dealing with **ward** in its custody. West's Ann.Welfare & Inst.Code, § 779.

***400 ***204 **720** Evelle J. Younger, Atty. Gen., Jack R. Winkler, Chief Asst. Atty. Gen., S. Clark Moore, Asst. Atty. Gen., Frederick R. Millar, Jr., Beverly K. Falk and Alexander W. Kirkpatrick, Deputy Attys. Gen., for defendant and appellant.

Olsen & Sorrentino, Christopher M. Gilman and Gary K. Olsen, Los Angeles, for plaintiff and respondent.

CLARK, Justice.

Director of California Youth Authority (CYA) appeals from **juvenile** court order vacating order of commitment of **Owen E.** to CYA custody. Director contends the **juvenile** court erred in redetermining a **ward's** rehabilitative needs, CYA having properly determined the **ward's** application for parole be denied in his best interests. We agree with the director and reverse the order.

Understanding of the posture of the cause before us is essential to our resolution of the issues. Owen was properly committed to a CYA facility in August 1974. [FN1] For 18 months he participated in an educational program, making normal progress towards rehabilitation. In Fall 1976 CYA denied Owen's application for parole because in its view he had not yet accepted responsibility for his actions resulting in his commitment and did not fully appreciate his obligations to society. Shortly thereafter and without pursuing an administrative appeal from the denial, Owen's mother petitioned the **juvenile** court to vacate the 1974 commitment. (s 778.) [FN2] The **juvenile** court, considering *****205 **721** the same matters deemed by ***401** CYA to necessitate a continuation of Owen's participation in its program, concluded his rehabilitative needs would best be satisfied if he were released from custody. It set aside its original order of commitment and placed Owen on probation in the custody of his mother and ordered continuing therapy in an outpatient program.

FN1. In August 1974 Owen, then 17 years of age, intentionally shot and killed his father after an argument at the family home. Owen first denied then several days later admitted the killing. Following hearing and stipulation to the facts he was declared a **ward** of the **juvenile** court. (Welf. & Inst.Code, s 602.) He was committed to CYA in March 1975.

Unless otherwise specified, all following statutory references are to sections of the

Welfare and Institutions Code.

FN2. Section 778 provides: "Any parent or other person having an interest in a child who is a **ward** or dependent child of the **juvenile** court or the child himself through a properly appointed guardian may, upon grounds of change of circumstances or new evidence, petition the court in the same action in which the child was found to be a **ward** or dependent child of the **juvenile** court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition . . . shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change or order or termination of jurisdiction.
"If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to such persons and by such means as prescribed by Sections 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes."

This is not a case wherein Owen challenges the propriety of the order finding him a **ward** of the court or of the order of commitment in the first instance. Nor is any claim made that because of the availability of new facts or information the order of commitment should be reconsidered as having been improvidently made. Nor does Owen seek relief on any ground for which the writ of habeas corpus might lie. He does not complain that the length of his confinement is disproportionate to the gravity of his misconduct or to his rehabilitative needs. He does not complain that conditions of his confinement are so onerous as to deny him any protected right in fact, both Owen and CYA agree Owen has adapted well to its program.

Owen's sole complaint is simply that CYA has abused its discretion in denying him immediate relief from commitment. He seeks in effect to establish the **juvenile** court's superior authority to reconsider and overrule a discretionary determination made by CYA pursuant to authority vested in CYA by the Legislature. [FN3]

FN3. We note that during the pendency of these proceedings the **juvenile** court order appealed from has been stayed but CYA, in recognition of Owen's continuing progress toward rehabilitation, has released him on parole.

FACTUAL BASIS FOR GRANTING PAROLE OR VACATING COMMITMENT

At the **juvenile** court hearing on the motion to vacate his commitment, Owen claimed CYA could no longer serve his rehabilitative needs. [FN4] Owen testified he was entered in a college program at a CYA facility and had completed 39 units, [FN5] but had been denied permission to attend ***402** off-grounds college courses. He further testified he wished to pursue a professional baseball career, but baseball (hardball) facilities were not available at the facility. [FN6]

FN4. Owen's petition was supported by the testimony of a private psychiatrist, who stated there was only a "remote" likelihood of a repetition of Owen's behavior and that Owen could be reached through therapy as an outpatient for his continuing therapeutic needs. The witness also stated Owen had benefited by his commitment to CYA; however, he gave equivocal testimony concerning Owen's continuing benefit under CYA's program.

FN5. Owen had achieved a 3.02 grade point average on a maximum 4.0 scale.

FN6. It appears that the denial of off-grounds course participation and the unavailability of baseball facilities precipitated application for parole and, upon denial of such application, the filing of the instant petition.

A psychiatrist, a clinical psychologist intern, a social worker and parole agent, and a program administrator, all CYA staff members who had worked with Owen, testified he had continuing rehabilitative needs best served by the CYA program. They testified to CYA concern for Owen's lack of insight into the criminal nature of his conduct, his failure to acknowledge his role as a wrongdoer, and a tendency to excuse or justify his conduct. In their views Owen's continued confinement to an environment which required him to recognize and conform to standards approved by society would be beneficial to him and would foster *****206 **722**

further rehabilitation. On the other hand, an early release as on parole would tend to give support to his attitude of having committed an excusable or justifiable act.

There was also testimony that, after the possibility arose Owen would be transferred to another facility when found to have possession of marijuana during the pendency of the instant petition, he stated the school program had been of benefit to him and he wished to remain there.

APPLICABLE LAW

Owen contends the **juvenile** court is vested with final authority to determine his rehabilitative needs. He asserts the **juvenile** court's authority to vacate his commitment to CYA derives from section 779. [FN7] That portion of section 779 limiting the court's authority to "change, ***403** modify, or set aside" an order of commitment by requiring that it give "due consideration to the effect" of such an order "on the discipline and parole system of the Youth Authority," is critical to our resolutions herein.

> FN7. Section 779 provides in pertinent part: "The court committing a **ward** to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside such order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the **ward** may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of **wards** of the **juvenile** court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority."

Director claims the **juvenile** court may preempt CYA only when the court can identify a clear abuse of discretion. Owen, on the other hand, maintains the **juvenile** court judge, before exercising authority conferred by section 779, need only take CYA determinations into account, and that it had a right to "second guess" CYA. When reminded that section 779 required it to consider the effect of its order on CYA parole and discipline, the court in this case commented "I assure you that I have considered that and I have given it some thought, because I don't think that I should close my mind to the possibilities of my action, I think at the beginning of this hearing I should be aware of what possibilities might occur, what the effect of a court's order might be. (P) Now, certainly I would agree that a Court should not step in in case after case with the Youth Authority unless there is a serious reason for it."

It is manifest that when the **juvenile** court grants relief pursuant to sections 778 and 779, and places a **ward** on probation, it necessarily makes a judgment which CYA is charged with making, based on the same evidence. Such action by the court is tantamount to the granting of parole, again on the basis of the same matters considered by CYA. When as here such court action is taken in response to CYA's refusal to grant parole, it is inescapable the court has substituted its judgment for that of CYA.

The Legislature has not clearly defined the circumstances under which a **juvenile** court may intervene in a matter concerning the rehabilitative needs of a **ward** it has committed to CYA. The only express direction is contained in section 779 that the court "shall give due consideration to the effect (of setting aside an order of commitment) upon the discipline and parole system of" CYA, and that the authority to set aside an order of commitment "shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of" CYA. (See fn. 7, Ante.) CYA thus argues section 779 authorizes a **juvenile** court to intervene only when to do does not interfere with CYA's proper administration of paroles and discharges.

Although dealing with revocation rather than granting of parole, support for CYA's position is found in ***207**723*404In re Ronald E. (1977) 19 Cal.3d 315, 137 Cal.Rptr. 781, 562 P.2d 684. In that case a **juvenile**, already a **ward** of the court committed to CYA, engaged in other criminal activity while on parole. After making initial findings on charges under supplemental petitions (s 707), but without issuing a dispositional order, the **juvenile**

court referred the matter to CYA "for final disposition." CYA then relied on **juvenile** court findings in considering the question of parole revocations. We held the **juvenile** court proceedings were inappropriate to initiate revocation of CYA parole. "Examination of the statutes governing Youth Authority parole and revocation procedure indicates that the **juvenile** court should play no part in the parole revocation process. The Youth Authority Act provides that the board has the power to grant and revoke parole. (s 1711.3.) . . . (P) No role is specified for the **juvenile** court with respect to revocation of parole. The reason is clear: the Youth Authority Act contemplates that the board or its representative is to conduct the parole revocation hearing, and then itself determine whether a parole violation in fact occurred and take appropriate action with respect to revocation or continuation of parole. The **juvenile** court is not authorized to act essentially in the role of a Youth Authority parole revocation hearing officer, as it did in this case." (Id., at p. 327, 137 Cal.Rptr. at p. 789, 562 P.2d at p. 692.) [FN8]

> FN8. We further held in Ronald E. that CYA could not rely "for any purpose" including purposes of parole revocation on **juvenile** court determinations not resulting in appealable orders.

While Ronald E. deals only with parole revocation, our courts have also held the **juvenile** court is without jurisdiction to release a **ward** on parole from CYA. (Breed v. Superior Court (1976) 63 Cal.App.3d 773, 778, 134 Cal.Rptr. 228.) In so holding the court particularly relied on that provision of section 779 precluding a **juvenile** court from interfering with the CYA's "system of parole and discharge now or hereafter established by law, or by rule of" CYA. (Id., at pp. 787-788, 134 Cal.Rptr., at p. 237.) The court also stated the "Legislature has properly delegated to the Youth Authority the discretion to determine whether its facilities will be or are of benefit to the **ward**." (Id., at pp. 784-785, 134 Cal.Rptr., at p. 236.) Breed is consistent with our expression in In re Authur N. (1976) 16 Cal.3d 226, 127 Cal.Rptr. 641, 545 P.2d 1345 that commitment to CYA "removes the **ward** from the direct supervision of the **juvenile** court" and that it was the function of CYA to determine the proper length of its jurisdiction over a **ward**. (Id., at pp. 237-238, 127 Cal.Rptr., at p. 649, 545 P.2d, at p. 1353.)

In the related field of jurisdiction to determine the rehabilitative needs of persons convicted of crimes, we have concluded the Adult Authority had the exclusive power to determine questions of rehabilitation. "If . . . the court were empowered . . . to recall the sentence and grant probation if the court found that the defendant had become rehabilitated after his ***405** incarceration, there manifestly would be two bodies (one judicial and one administrative) determining the matter of rehabilitation, and it is unreasonable to believe that the Legislature intended such a result." (Holder v. Superior Court (1970) 1 Cal.3d 779, 782, 83 Cal.Rptr. 353, 355, 463 P.2d 705, 707; see also Alanis v. Superior Court (1970) 1 Cal.3d 784, 786-787, 83 Cal.Rptr. 355, 463 P.2d 707.) While different statutes even different codes regulate the division of responsibility between the concerned administrative agency and court, it appears to be as unreasonable to assume the Legislature intended that both the **juvenile** court and CYA are to regulate **juvenile** rehabilitation as it is to assume that both the superior court and Adult Authority are to regulate criminal rehabilitation.

In view of the foregoing it appears section 779 does not constitute authority for a **juvenile** court to set aside an order committing a **ward** to CYA merely because the court's view of the rehabilitative progress and continuing needs of the **ward** differ from CYA determinations on such matters arrived at in accordance with law. The critical question is thus whether CYA acted within the discretion conferred upon it in *****208 **724** rejecting Owen's application for parole. If so, there is no basis for judicial intervention by the **juvenile** court.

CONCLUSION

Owen's petition is supported by little more than a showing that after 18 months of confinement he had made good progress toward parole or outright release, that he had legitimate ambitions which he claimed could best be achieved if not confined, and a lone expert opinion that rehabilitation could best be accomplished in some other environment. But even that expert recognized Owen's need for continued psychiatric treatment and acknowledged release might have a detrimental effect upon the therapeutic benefit derived from working toward a regular grant of parole. He also gave conflicting testimony as to whether Owen would continue to benefit by treatment in CYA facilities.

Witnesses for CYA raised serious questions whether Owen had assumed a proper degree of responsibility for his grievous misconduct. They were unanimously of the opinion his early release would tend to be viewed by Owen as approval of such misconduct,

thereby damaging rehabilitative efforts. They were also of the view that while Owen had made a good adjustment during his 18 months of commitment, he would continue to benefit by other adjustments, particularly through recognition of the anti-social nature of his offense.

***406** [1] It fairly appears the record in the instant case discloses a debatable question whether Owen's rehabilitative needs could best be served by his continued commitment to CYA. CYA acted well within law and discretion vested in it by the Legislature in denying Owen's application for parole in 1976. [FN9] In enacting section 779 in context with the Youth Authority Act the Legislature did not intend to authorize the **juvenile** court to substitute its judgment for that of CYA in such circumstances. The fact the question of release is debatable does not invoke judicial intervention such circumstance tends instead to give conclusive effect to CYA's determination.

FN9. Although testimony at the hearing focused on Owen's rehabilitative needs, a second factor which CYA must consider in its decision to release or retain a **ward** in custody is the safety of the public. (ss 1700, 1765; see In re Martinez (1970) 1 Cal.3d 641, 650, 83 Cal.Rptr. 382, 463 P.2d 734.) Here Owen stipulated to having fired a rifle bullet from a bedroom window into his father's head at a distance of 35 feet. CYA's program was designed not only for Owen's needs, but also to insure the public's safety upon his release, and Owen's failure to accept responsibility for his criminal conduct was a factor which was a legitimate concern to CYA.

[2] Giving meaning to the intendment of section 779 together with policies set forth in the balance of the Youth Authority Act, we hold a **juvenile** court may not act to vacate a proper commitment to CYA unless it appears CYA has failed to comply with law or has abused its discretion in dealing with a **ward** in its custody. Section 779 does not authorize judicial intervention into the routine parole function of CYA, as was done in this case.

The order appealed from is reversed.

MOSK, RICHARDSON and MANUEL, JJ., concur.

BIRD, Chief Justice, dissenting.

I must respectfully dissent.

The majority today strip **juvenile** courts of their statutory power to vacate Youth Authority commitments when, in the court's judgment, such action would be in a **ward's** best interests. In so holding, the majority override the legislative mandate of Welfare and Institutions Code sections 775, 778 and 779. Adherence to these statutes requires this court to affirm the **juvenile** court's order.

The Legislature has vested in **juvenile** courts broad powers to amend dispositional orders. Welfare and Institutions Code section 775, ignored by the majority, provides that "(a)ny order made by the (**juvenile**) court in ***407** the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, As the judge deems *****209 **725** meet and proper . . . ." [FN1] (Italics added.) Further, section 778 allows the **ward**, a parent, or an interested party to petition the **juvenile** court to amend or set aside a previous order on the grounds of "new evidence" or "change of circumstance." [FN2] That same statute provides that the court shall hold a hearing on the petition if it appears that the proposed change may promote the **ward's** "best interests." Finally, section 779 specifically empowers the **juvenile** court to "change, modify, or set aside" a previous order committing a minor to the Youth Authority. [FN3] (See In re Arthur N. (1976) 16 Cal.3d 226, 238, fn. 15, 127 Cal.Rptr. 641, 545 P.2d 1345.) These three sections authorize a **juvenile** court to vacate a Youth Authority commitment whenever changed circumstances convince the court that a different disposition would be in a **ward's** best interest.

FN1. From the italicized language, it is evident that the Legislature intended to give **juvenile** court judges wide discretion to amend or vacate their previous orders, including dispositional orders.
All statutory references are to the Welfare and Institutions Code.

FN2. Section 778:
"Any parent or other person having an interest in a child who is a **ward** of the **juvenile** court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a **ward** of the **juvenile** court for a hearing to

change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction.
"If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to such persons and by such means as prescribed by Sections 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes."

FN3. Section 779 provides in pertinent part: "The court committing a **ward** to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside such order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the **ward** may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of **wards** of the **juvenile** court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority."

The majority reject this clear grant of authority by focusing on two cautionary statements in section 779. The first requires **juvenile** court ***408** judges who amend or vacate a commitment order to "give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority . . . ." However, the absence of prohibitory language in the sentence underscores the fact that the Legislature did not intend to prevent **juvenile** courts from setting aside commitment orders. Rather, the Legislature merely sought to have the court deliberate upon the effect of vacating a commitment, to insure that the court does not hastily or unnecessarily interfere with parole determinations. [FN4]

FN4. In this case, the judge expressly considered the effect of his order. He acknowledged that "a court should not step in in case after case with the Youth Authority unless there is a serious reason for it." He concluded that under the proper circumstances, vacating an earlier commitment would not intrude on the Youth Authority's parole system or treatment plan.

The majority also focus on the fourth sentence of section 779. There, after having given **juvenile** courts the power to set aside Youth Authority commitments, the Legislature states: "Except as in this section provided, nothing in this chapter shall be deemed to interfere with the (Youth Authority's) system of parole and discharge ****726 ***210** . . . ." (Italics added.) It is curious that in describing this provision, the majority omit reference to the italicized introductory clause. [FN5] (Maj. opn., Ante, p. 206 of 154 Cal.Rptr., p. ---- of --- P.2d.) That clause plainly signifies a legislative recognition that by authorizing **juvenile** courts to set aside commitment orders, the Legislature was creating an exception to the Youth Authority's exclusive discretion in parole matters. If the Legislature had not intended to allow the exercise of judicial discretion in this area, it would not have written the introductory clause. In omitting that clause from their analysis, the majority are less than faithful to the plain language and meaning of the statute.

FN5. It is also curious that the majority overlook section 1704, which provides that "(n)othing in (the Youth Authority Act) shall be deemed to interfere with or limit the jurisdiction of the **juvenile** court." Under this provision, the Legislature's grant of discretion in parole matters to the Youth Authority (ss 1711.3, 1765, 1766) cannot be deemed to interfere with or limit the **juvenile** court's continuing jurisdiction over **wards** committed to the Youth Authority (s

607). Yet this is precisely what the majority do in holding that the **juvenile** court's jurisdiction to set aside a commitment order is limited to situations where the Youth Authority has abused its discretion.

To reach their result, the majority also take great liberty with the case law. The majority quote In re Arthur N., supra, 16 Cal.3d at pages 237-238, 127 Cal.Rptr. 641, 545 P.2d 1345, for the proposition that commitment to the Youth Authority "removes the **ward** from the direct supervision of the **juvenile** court." (Maj. opn., Ante, p. 207 of 154 Cal.Rptr., p. ---- of --- P.2d.) However, the majority ignore the footnote qualifying that statement: "The court may, however, set aside the commitment on notice and hearing and return the minor to the former wardship status. (s 779.)" (16 Cal.3d at p. 238, fn. 15, 127 Cal.Rptr. at p. 649, 545 P.2d at p. 1353.)

***409** Further, the majority's summary description of Breed v. Superior Court (1976) 63 Cal.App.3d 773, 134 Cal.Rptr. 228, on which they heavily rely, is misleading. (Maj. opn., Ante, p. 207 of 154 Cal.Rptr., p. ---- of --- P.2d.) In Breed, the Youth Authority returned a difficult **ward** to the **juvenile** court. After the court declined to set aside the original order committing the **ward** to the Youth Authority, the Youth Authority refused to accept his return. The **juvenile** court then released the **ward** from his interim custody until the Youth Authority agreed to accept his return.

On these facts, the Court of Appeal held that the **juvenile** court's temporary release of the minor was "a technical error" since section 779 prohibits **juvenile** courts from interfering with the Youth Authority's system of discharge Except where the court changes, modifies or sets aside the original order of commitment. (Id., at pp. 781, 788.) The **ward's** release in Breed did not result from a change, modification, or setting aside of the original commitment. Indeed, the judge expressly declined to do so. (Id., at pp. 782, 785, 134 Cal.Rptr. 228.) Thus, Breed differs critically from this case and in no way limits the power of **juvenile** courts to discharge **wards** from the Youth Authority under the first sentence of section 779. [FN6]

FN6. The majority also quote out of context Breed's statement that "(t)he Legislature has properly delegated to the Youth Authority the discretion to determine whether its facilities will be or are of benefit to the **ward**." (Id., at p. 785, 134 Cal.Rptr. 228; maj. opn., Ante, p. 207 of 154 Cal.Rptr., p. ---- of --- P.2d.) The majority omit the statutory authority Breed cites for this proposition: sections 736 and 780. These statutes respectively describe (1) the kinds of persons whom the Youth Authority shall accept (s 736), and (2) the kinds of persons whom the Youth Authority may return to the committing court (s 780). Neither provision is involved in this case. Neither provision in any way limits section 779's grant of authority to **juvenile** courts to set aside an original order committing a minor to the Youth Authority.

Again, in citing In re Ronald E. (1977) 19 Cal.3d 315, 137 Cal.Rptr. 781, 562 P.2d 684, the majority rely on a case which is inapposite. Ronald E. holds that in the absence of authorizing legislation, parole revocation proceedings may not be initiated in **juvenile** court. (Id., at p. 326, 137 Cal.Rptr. 781, 562 P.2d 684.) This holding is entirely consistent with the **juvenile** courts' power to set *****211 **727** aside Youth Authority commitments since section 779 expressly authorizes such action.

Finally, the majority seek support in Holder v. Superior Court (1970) 1 Cal.3d 779, 83 Cal.Rptr. 353, 463 P.2d 705 and Alanis v. Superior Court (1970) 1 Cal.3d 784, 83 Cal.Rptr. 355, 463 P.2d 707. Holder and Alanis are readily distinguished from the present case since they both involve interpretation of the adult sentencing law as opposed to the **Juvenile** Court Law. The adult law includes no provisions comparable to sections 775, 778 and 779. The courts' broad powers to change **Juvenile** dispositionsunder ***410** these sections are in keeping with the special concern of the **Juvenile** Court Law with the welfare and rehabilitation of young people under its jurisdiction. (s 202; see, e. g., T. N. G. v. Superior Court (1971) 4 Cal.3d 767, 775, 94 Cal.Rptr. 813, 484 P.2d 981.)

Clearly, the case law does not support the majority's conclusion that the Legislature did not mean what it plainly stated in sections 775, 778 and 779. These statutes give **juvenile** courts the authority to set aside Youth Authority commitments to promote a **ward's** best interests. Nothing in these statutes purports to limit this power to situations where the Youth Authority "has failed to comply with law or has abused its discretion." (Maj. opn., Ante, p. 208 of 154 Cal.Rptr., p. ---- of --- P.2d.) To the contrary, the Court is accorded great discretion in determining whether the circumstances justify a change in

disposition or total termination of the court's jurisdiction. [FN7] (See fn. 1, Ante ; In re W. R. W. (1971) 17 Cal.App.3d 1029, 1037, 95 Cal.Rptr. 354.) "(I)n the absence of a clear showing of abuse of discretion, an appellate court is not free to interfere with the trial court's order." (In re Corey (1964) 230 Cal.App.2d 813, 831-832, 41 Cal.Rptr. 379, 391.)

> FN7. Indeed, the court has a Duty to terminate its jurisdiction when it becomes convinced on the evidence that the **ward** no longer requires the court's supervision. (See, e. g., In re Francecisco (1971) 16 Cal.App.3d 310, 314, 94 Cal.Rptr. 186.)

In the present case, a review of the evidence establishes that the **juvenile** court did not abuse its broad discretion in finding "a very great change of circumstances" and in setting aside Owen's Youth Authority commitment. The annual review made by Owen's immediate supervisors at the Youth Authority indicated that Owen had made "superior progress" in achieving the goals set in his rehabilitation program, and that his schoolwork was "outstanding." The report also stated that Owen "possessed leadership qualities," avoided negative influences, and was a "self-starter." The report concluded that "he should have no problem whatsoever maintaining any job he should happen to have." Owen's evaluators recommended his release.

In addition, a psychiatrist testifying on Owen's behalf stated that Owen had arrived at a philosophical understanding of his role in his father's death and that the chance of a recurrence of such violence was remote. The Youth Authority's experts agreed that the killing was an isolated incident and that Owen was not a hazard to the community.

Further, the evidence was uncontradicted that Owen had the potential ability to play professional baseball. However, the Youth Authority facilities where he was confined were inadequate to develop this talent.

***411** On this record, it is clear that substantial evidence supported the trial judge's determination in this case. The evidence showed that Owen had made significant progress in the Youth Authority, that he was not a threat to the safety of the public, and that his educational and professional opportunities would be enhanced by his release. Experts for both Owen and the Youth Authority testified that denial of release could impede his progress. The trial court's decision to set aside the Youth Authority commitment and to order outpatient psychiatric care for Owen was well within its discretion.

The trial court's order should be affirmed.

TOBRINER and NEWMAN, JJ., concur.

Hearing denied; BIRD, C. J., and TOBRINER, J., dissenting.

23 Cal.3d 398, 592 P.2d 720, 154 Cal.Rptr. 204

END OF DOCUMENT

SB 459 Senate Bill - CHAPTEREDBILL NUMBER: SB 459 CHAPTERED
BILL TEXT

CHAPTER 4
FILED WITH SECRETARY OF STATE APRIL 8, 2003
APPROVED BY GOVERNOR APRIL 7, 2003
PASSED THE SENATE APRIL 7, 2003
PASSED THE ASSEMBLY APRIL 7, 2003
AMENDED IN ASSEMBLY APRIL 3, 2003
AMENDED IN SENATE MARCH 17, 2003
AMENDED IN SENATE MARCH 12, 2003
AMENDED IN SENATE MARCH 10, 2003

INTRODUCED BY Senator Burton

FEBRUARY 20, 2003

An act to amend Sections 731, 779, 780, 1000.7, 1009, 1176, 1177, 1178, 1179, 1703, 1712, 1714, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1725, 1726, 1732.8, 1737, 1737.1, 1752.82, 1754, 1757, 1760, 1765, 1766, 1766.1, 1767.1, 1767.3, 1767.4, 1767.5, 1768.10, 1772, 1778, 1780, 1781, 1800, 1802, and 1830 of, to add Sections 1731.8 and 1800.5 to, and to repeal Sections 1724 and 1727 of, the Welfare and Institutions Code, relating to juvenile offenders, making an appropriation therefor, to take effect immediately, as an appropriation for the usual and current expenses of the state.

LEGISLATIVE COUNSEL'S DIGEST

SB 459, Burton. ~~Youthful~~ Offender Parole Board.

(1) Existing law sets forth the powers and duties of the Youthful Offender Parole Board, including the power to consider and make decisions regarding eligibility for parole for wards who have been committed to the Department of the Youth Authority.

This bill would abolish the Youthful Offender Parole Board and instead create the Youth Authority Board within the Department of the Youth Authority. The bill would consolidate the duties of the Youthful Offender Parole Board in the Department of the Youth Authority and the Youth Authority Board, as specified, and make related and conforming changes. The bill would set forth the membership of the Youth Authority Board and would require those members to receive specified training. The bill would require the Youth Authority Board to exercise specified powers and duties, including discharges of commitment, orders to parole and conditions thereof, revocation or suspension of parole, and disciplinary appeals. The bill would require the Department of the Youth Authority to exercise specified powers and duties, including determining offense categories, setting parole consideration dates, making decisions regarding disciplinary actions, and returning persons to the court of commitment for redisposition by the court. The bill would also require the department to notify the probation department and the court of the parole consideration dates. The bill would also require the Department of the Youth Authority to provide the court and the probation department with a treatment plan for the ward, and an estimated timeframe within which the treatment

recommended by the court will be provided, as specified. The bill would require the department to conduct an annual review of the case of each ward and to provide copies of the review to the court and the probation department. The bill would also provide that a minor may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court, as specified. These provisions described above would become operative on January 1, 2004.

(2) The bill would express the intent of the Legislature that the Youth Authority Board be housed within the Department of the Youth Authority. The bill would require the Department of General Services to evaluate options regarding current leases and to determine when a move is appropriate.

(3) The bill would appropriate the sum of $1,550,000 from the General Fund to the Youthful Offender Parole Board to supplement funding provided in the Budget Act of 2002.

(4) The bill would declare that it is to take effect immediately as a statute providing an appropriation for the usual and current expenses of the state.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 731 of the Welfare and Institutions Code is amended to read:

731. (a) If a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730 and, in addition, may order the ward to make restitution, to pay a fine up to the amount of two hundred fifty dollars ($250) for deposit in the county treasury if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs or the court may commit the ward to a sheltered-care facility or may order that the ward and his or her family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of that minor or may commit the minor to the Department of the Youth Authority.

(b) A minor committed to the Department of 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. A minor committed to the Department of the Youth Authority also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section. This section does not limit the power of the Youth Authority Board to retain the minor on parole status for the period permitted by Section 1769.

SEC. 2. Section 779 of the Welfare and Institutions Code is amended to read:

779. The court committing a ward to the Youth Authority may

thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section, this chapter does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734.

However, before any inmate of a correctional school may be transferred to a state hospital, he or she shall first be returned to a court of competent jurisdiction and, after hearing, may be committed to a state hospital for the insane in accordance with law.

SEC. 3. Section 780 of the Welfare and Institutions Code is amended to read:

780. If any person who has been committed to the Youth Authority appears to be an improper person to be received by or retained in any institution or facility under the jurisdiction of the Department of the Youth Authority or to be so incorrigible or so incapable of reformation under the discipline of any institution or facility under the jurisdiction of the department as to render his or her retention detrimental to the interests of the department, the department may order the return of that person to the committing court. However, the return of any person to the committing court does not relieve the department of any of its duties or responsibilities under the original commitment, and that commitment continues in full force and effect until it is vacated, modified, or set aside by order of the court.

If any person is returned to the committing court, his or her transportation shall be made, and the compensation therefor paid, as provided for the order of commitment.

SEC. 4. Section 1000.7 of the Welfare and Institutions Code is amended to read:

1000.7. As used in this chapter, "Youth Authority" "authority" and "the authority" mean and refer to the Department of the Youth Authority and "board" means and refers to the Youth Authority Board.

SEC. 5. Section 1009 of the Welfare and Institutions Code is amended to read:

1009. The Department of the Youth Authority may order the return of nonresident persons committed to the department or confined in institutions or facilities subject to the jurisdiction of the department to the states in which they have legal residence. Whenever any public officer, other than an officer or employee of the

department, receives from any private source any moneys to defray the cost of that transportation, he or she shall immediately transmit the moneys to the department. All moneys, together with any moneys received directly by the department from private sources for transportation of nonresidents, shall be deposited by the department in the State Treasury, in augmentation of the current appropriation for the support of the department.

SEC. 6. Section 1176 of the Welfare and Institutions Code is amended to read:

1176. When, in the opinion of the Youth Authority Board, any person committed to or confined in any such school deserves parole according to regulations established for the purpose, and it will be to his or her advantage to be paroled, the board may grant parole under conditions it deems best. A reputable home or place of employment shall be provided for each person so paroled.

SEC. 7. Section 1177 of the Welfare and Institutions Code is amended to read:

1177. When any person so paroled has proved his or her ability for honorable self-support, the Youth Authority Board shall give him or her honorable discharge. Any person on parole who violates the conditions of his or her parole may be returned to the Youth Authority.

SEC. 8. Section 1178 of the Welfare and Institutions Code is amended to read:

1178. The Youth Authority Board may grant honorable discharge to any person committed to or confined in any such school. The reason for that discharge shall be entered in the records.

SEC. 9. Section 1179 of the Welfare and Institutions Code is amended to read:

1179. (a) All persons honorably discharged from control of the Youth Authority Board shall thereafter be released from all penalties or disabilities resulting from the offenses for which they were committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law. However, that a person shall not be eligible for appointment as a peace officer employed by any public agency if his or her appointment would otherwise be prohibited by Section 1029 of the Government Code.

(b) Notwithstanding the provisions of subdivision (a), that person may be appointed and employed as a peace officer by the Department of the Youth Authority if (1) at least five years have passed since his or her honorable discharge, and the person has had no misdemeanor or felony convictions except for traffic misdemeanors since he or she was honorably discharged by the board, or (2) the person was employed as a peace officer by the department on or before January 1, 1983. No person who is under the jurisdiction of the department shall be admitted to an examination for a peace officer position with the department unless and until the person has been honorably discharged from the jurisdiction of the department by the Youth Authority Board.

(c) Upon the final discharge or dismissal of any such person, the Department of the Youth Authority shall immediately certify the discharge or dismissal in writing, and shall transmit the certificate to the court by which the person was committed. The court shall thereupon dismiss the accusation and the action pending against that person.

SEC. 10. Section 1703 of the Welfare and Institutions Code is

amended to read:

1703. As used in this chapter

(a) "Public offenses" means public offenses as that term is defined in the Penal Code;

(b) "Court" includes any official authorized to impose sentence for a public offense;

(c) "Youth Authority", "Authority", "authority" or "department" means the Department of the Youth Authority;

(d) "Board" or "board" means the Youth Authority Board.

(e) The masculine pronoun includes the feminine.

SEC. 11. Section 1712 of the Welfare and Institutions Code is amended to read:

1712. (a) All powers, duties, and functions pertaining to the care and treatment of wards provided by any provision of law and not specifically and expressly assigned to the Youth Authority Board shall be exercised and performed by the director. The director shall be the appointing authority for all civil service positions of employment in the department. The director may delegate the powers and duties vested in him or her by law, in accordance with Section 7.

(b) The director is authorized to make and enforce all rules appropriate to the proper accomplishment of the functions of the Department of the Youth Authority. The rules shall be promulgated and filed pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

(c) The Department of the Youth Authority shall maintain, publish, and make available to the general public, a compendium of rules and regulations promulgated by the department pursuant to this section.

(d) The following exceptions to the procedures specified in this section shall apply to the Department of the Youth Authority:

(1) The department may specify an effective date that is any time more than 30 days after the rule or regulation is filed with the Secretary of State; provided that no less than 20 days prior to that effective date, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them.

(2) The department may rely upon a summary of the information compiled by a hearing officer; provided that the summary and the testimony taken regarding the proposed action shall be retained as part of the public record for at least one year after the adoption, amendment, or repeal.

SEC. 12. Section 1714 of the Welfare and Institutions Code is amended to read:

1714. The Director of the Youth Authority may transfer persons confined in one institution or facility of the Department of the Youth Authority to another.

SEC. 13. Section 1716 of the Welfare and Institutions Code is amended to read:

1716. (a) There is in the Department of the Youth Authority a Youth Authority Board, which shall be composed of six members, one of whom shall be the Director of the Youth Authority who shall serve as the ex officio nonvoting chair of the board. Other than the chair, who is subject to appointment pursuant to Section 1711, the members shall be appointed by the Governor, with the advice and consent of the Senate, for a term of four years, and shall devote their entire

time to its work.

(b) The individuals who were members of the Youthful Offender Parole Board immediately prior to the effective date of this section shall continue in their respective terms of office as members of the Youth Authority Board as provided in this section. The positions held by one of the members whose term ends on March 15, 2007, and by one of the members whose term ends on March 15, 2006, shall be eliminated on the effective date of this section, reducing the composition of the board to five members, not including the position held by the Director of the Youth Authority. All other members shall continue to serve out their respective terms. Their successors shall hold office for terms of four years. The members shall be eligible for reappointment and shall hold office until the appointment and qualification of their successors, with the term of each new appointee to commence on the expiration date of the term of his or her predecessor.

(c) All appointments to a vacancy occurring by reason of any cause other than the expiration of a term shall be for the unexpired term.

(d) If the Senate, in lieu of failing to confirm, finds that it cannot consider all or any of the appointments to the Youth Authority Board adequately because the amount of legislative business and the probable duration of the session does not permit, it may adopt a single house resolution by a majority vote of all members elected to the Senate to that effect and requesting the resubmission of the unconfirmed appointment or appointments at a succeeding session of the Legislature, whether regular or extraordinary, convening on or after a date fixed in the resolution. This resolution shall be filed immediately after its adoption in the office of the Secretary of State and the appointee or appointees affected shall serve subject to later confirmation or rejection by the Senate.

SEC. 14. Section 1717 of the Welfare and Institutions Code is amended to read:

1717. (a) Persons appointed to the Youth Authority Board shall have a broad background in and ability for appraisal of youthful law offenders and delinquents, the circumstances of delinquency for which those persons are committed, and the evaluation of the individual's progress toward reformation. Insofar as practicable, members shall be selected who have a varied and sympathetic interest in youth correction work including persons widely experienced in the fields of corrections, sociology, law, law enforcement, mental health, and education.

(b) The selection of persons and their appointment by the Governor and confirmation by the Senate shall reflect as nearly as possible a cross section of the racial, sexual, economic, and geographic features of the state.

(c) The Director of the Youth Authority shall serve as the ex officio nonvoting chair of the board. The chair shall be the administrative head of the board and shall exercise all duties and functions necessary to ensure that the responsibilities of the board are successfully discharged.

(d) Within 60 days of appointment and annually thereafter, persons appointed to the Youth Authority Board shall undergo a minimum of 40 hours of training in the following areas: treatment and training programs provided to wards at Youth Authority institutions, including, but not limited to, educational, vocational, mental health, medical, substance abuse, psychotherapeutic counseling, and

sex offender treatment programs; a review of current national research on effective interventions with juvenile offenders and how they compare to department program and treatment services; parole services; board member duties and responsibilities; and a review of factors influencing ward lengths of stay and ward recidivism rates and their relationship to one another.

SEC. 15. Section 1718 of the Welfare and Institutions Code is amended to read:

1718. (a) The members of the board shall receive an annual salary as provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code and their actual necessary traveling expenses to the same extent as is provided for other state offices.

(b) The Governor may remove any member of the board for misconduct, incompetency or neglect of duty after a full hearing by the Board of Corrections.

SEC. 16. Section 1719 of the Welfare and Institutions Code is amended to read:

1719. (a) The following powers and duties shall be exercised and performed by the Youth Authority Board as such, or may be delegated to a panel, member, or case hearing representative as provided in Section 1721: discharges of commitment, orders to parole and conditions thereof, revocation or suspension of parole, and disciplinary appeals.

(b) Any ward may appeal an adjustment to his or her parole consideration date to a panel comprised of at least two board members.

(c) The following powers and duties shall be exercised and performed by the Department of the Youth Authority: return of persons to the court of commitment for redisposition by the court, determination of offense category, setting of parole consideration dates, conducting annual reviews, treatment program orders, institution placements, furlough placements, return of nonresident persons to the jurisdiction of the state of legal residence, disciplinary decisionmaking, and referrals pursuant to Section 1800.

(d) The Department of the Youth Authority shall promulgate policies and regulations implementing a departmentwide system of graduated sanctions for addressing ward disciplinary matters. The disciplinary decisionmaking system shall be employed as the disciplinary system in department institutions, and shall provide a framework for handling disciplinary matters in a manner that is consistent, timely, proportionate, and ensures the due process rights of wards. The department shall develop and implement a system of graduated sanctions which distinguishes between minor, intermediate, and serious misconduct. The department may extend a ward's parole consideration date, subject to appeal pursuant to subdivision (b), from one to not more than 12 months, inclusive, for a sustained serious misconduct violation if all other sanctioning options have been considered and determined to be unsuitable in light of the ward's previous case history and the circumstances of the misconduct. In any case in which a parole consideration date has been extended, the disposition report shall clearly state the reasons for the extension.

The length of any parole consideration date extension shall be based on the seriousness of the misconduct, the ward's prior disciplinary history, the ward's progress toward treatment objectives, the ward's earned program credits, and any extenuating or

mitigating circumstances. The department shall promulgate regulations to implement a table of sanctions to be used in determining parole consideration date extensions. The department also may promulgate regulations to establish a process for granting wards who have successfully responded to disciplinary sanctions a reduction of up to 50 percent of any time acquired for disciplinary matters.

SEC. 17. Section 1720 of the Welfare and Institutions Code is amended to read:

1720. (a) The case of each ward shall be reviewed by the Department of the Youth Authority within 45 days of arrival at the department, and at other times as is necessary to meet the powers or duties of the board.

(b) The department shall periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These reviews shall be made as frequently as the department considers desirable and shall be made with respect to each ward at intervals not exceeding one year.

(c) The ward shall be entitled to notice if his or her annual review is delayed beyond one year after the previous annual review hearing. The ward shall be informed of the reason for the delay and of the date the review hearing is to be held.

(d) Failure of the department to review the case of a ward within 15 months of a previous review shall not of itself entitle the ward to discharge from the control of the Youth Authority but shall entitle him or her to petition the superior court of the county from which he or she was committed for an order of discharge, and the court shall discharge him or her unless the court is satisfied as to the need for further control.

(e) Reviews conducted by the department pursuant to this section shall be written and shall include, but not be limited to, the following: verification of the treatment or program goals and orders for the ward to ensure the ward is receiving treatment and programming that is narrowly tailored to address the correctional treatment needs of the ward and is being provided in a timely manner that is designed to meet the parole consideration date set for the ward; an assessment of the ward's adjustment and responsiveness to treatment, programming, and custody; a review of the ward's disciplinary history and response to disciplinary sanctions; an updated individualized treatment plan for the ward that makes adjustments based on the review required by this subdivision; an estimated timeframe for the ward's commencement and completion of the treatment programs or services; and a review of any additional information relevant to the ward's progress.

(f) The department shall provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county.

SEC. 18. Section 1721 of the Welfare and Institutions Code is amended to read:

1721. (a) The Youth Authority Board shall adopt policies governing the performance of its functions by the full board, or, pursuant to delegation, by panels, or referees. Whenever the board performs its functions meeting en banc in either public or executive sessions to decide matters of policy, four members shall be present and no action shall be valid unless it is concurred in by a majority vote of those present.

(b) Case hearing representatives from the Department of the Youth Authority may be employed to participate with the board in the hearing of cases and authority may be delegated to those persons as provided in this section.

(c) The board may delegate its authority to hear, consider, and act upon cases to members or case hearing representatives, sitting either on a panel or as a referee. A panel may consist of two or more members, a member and a case hearing representative, or two case hearing representatives. Two members of a panel shall constitute a quorum, and no action of the panel shall be valid unless concurred in by a majority vote of those present.

(d) When delegating its authority, the board may condition finality of the decision of the panel or referee to whom authority is delegated on concurrence of a member or members of the board. In determining whether, in any case, it shall delegate its authority and the extent of such delegation, the board shall take into account the degree of complexity of the issues presented by the case.

(e) The board shall adopt rules under which a person under the jurisdiction of the Youth Authority or other persons, as specified in those rules, may appeal any decision of a case hearing representative. Any decision resulting in the extension of a parole consideration date shall entitle a ward to appeal the decision to a panel of at least two board members. The board shall consider and act upon the appeal in accordance with those rules.

SEC. 19. Section 1722 of the Welfare and Institutions Code is amended to read:

1722. (a) Any rules and regulations, including any resolutions and policy statements, promulgated by the Youth Authority Board, shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

(b) The board shall maintain, publish, and make available to the general public, a compendium of its rules and regulations, including any resolutions and policy statements, promulgated pursuant to this section.

(c) The following exception to the procedures specified in this section shall apply to the board: The chairperson may specify an effective date that is any time more than 30 days after the rule or regulation is filed with the Secretary of State; provided that no less than 20 days prior to that effective date, copies of the rule or regulation shall be posted in conspicuous places throughout each institution and shall be mailed to all persons or organizations who request them.

SEC. 20. Section 1723 of the Welfare and Institutions Code is amended to read:

1723. (a) Except as provided in Section 1721, every order granting and revoking parole and issuing final discharges to any person under the jurisdiction of the Youth Authority shall be made by the Youth Authority Board or its designee, as authorized by this article.

(b) All other powers conferred to the Youth Authority Board may be exercised through subordinates or delegated to the Department of the Youth Authority under rules established by the board. Any person subjected to an order of those subordinates or of the department pursuant to that delegation may petition the board for review. The board may review those orders under appropriate rules and

regulations.

(c) All board designees shall be subject to the training required pursuant to subdivision (d) of Section 1717.

SEC. 21. Section 1724 of the Welfare and Institutions Code is repealed.

SEC. 22. Section 1725 of the Welfare and Institutions Code is amended to read:

1725. The Youth Authority Board shall succeed to and shall exercise and perform all powers and duties granted to, exercised by, and imposed upon the Youthful Offender Parole Board, as authorized by this article. The Youthful Offender Parole Board is abolished.

SEC. 23. Section 1726 of the Welfare and Institutions Code is amended to read:

1726. (a) Employees of the Department of the Youth Authority who are needed to support the functions of the Youth Authority Board shall be selected and appointed pursuant to the State Civil Service Act.

(b) All officers and employees of the Youthful Offender Parole Board who on January 1, 2004, are serving in the state civil service, other than as temporary employees, as part of the direct staff of the Youthful Offender Parole Board shall be transferred to the Department of the Youth Authority and subject to retention pursuant to Section 19050.9 of the Government Code.

SEC. 24. Section 1727 of the Welfare and Institutions Code is repealed.

SEC. 25. Section 1731.8 is added to the Welfare and Institutions Code, to read:

1731.8. Notwithstanding any other provision of law, within 60 days of the commitment of a ward to the Department of the Youth Authority, the department shall set an initial parole consideration date for the ward and shall notify the probation department and the committing juvenile court of that date. The department shall use the category offense guidelines contained in Sections 4951 to 4957, inclusive, of, and the deviation guidelines contained in subdivision (i) of Section 4945 of, Title 15 of the California Code of Regulations, that were in effect on January 1, 2003, in setting an initial parole consideration date.

SEC. 26. Section 1732.8 of the Welfare and Institutions Code is amended to read:

1732.8. (a) Notwithstanding any other law and subject to the provisions of this section, the Director of the Youth Authority may transfer to and cause to be confined within the custody of the Director of Corrections any person 18 years of age or older who is subject to the custody, control, and discipline of the Department of the Youth Authority and who is scheduled to be returned, or has been returned, to the Department of the Youth Authority from the Department of Corrections after serving a sentence imposed pursuant to Section 1170 of the Penal Code for a felony that was committed while he or she was in the custody of the Department of the Youth Authority.

(b) No person shall be transferred pursuant to this section until and unless the person voluntarily, intelligently, and knowingly executes a written consent to the transfer, which shall be irrevocable.

(c) Prior to being returned to the Youth Authority, a person in the custody of the Department of Corrections who is scheduled to be

returned to the Department of the Youth Authority shall meet personally with a Youth Authority parole agent or other appropriate Department of the Youth Authority staff member. The parole agent or staff member shall explain, using language clearly understandable to the person, all of the following matters:

(1) What will be expected from the person when he or she returns to a Youth Authority institution in terms of cooperative daily living conduct and participation in applicable counseling, academic, vocational, work experience, or specialized programming.

(2) The conditions of parole applicable to the person, and how those conditions will be monitored and enforced while the person is in the custody of the Youth Authority.

(3) The person's right under this section to voluntarily and irrevocably consent to continue to be housed in an institution under the jurisdiction of the Department of Corrections instead of being returned to the Youth Authority.

(d) A person who has been returned to the Youth Authority after serving a sentence described in subdivision (a) may be transferred to the custody of the Department of Corrections if the person consents to the transfer after having been provided with the explanations described in subdivision (c).

(e) If a Youth Authority person consents to being housed in an institution under the jurisdiction of the Department of Corrections pursuant to this section, he or she shall be subject to the general rules and regulations of the Department of Corrections. The Youth Authority Board shall continue to determine the person's eligibility for parole at the same intervals, in the same manner, and under the same standards and criteria that would be applicable if the person were confined in the Department of the Youth Authority. However, the board shall not order or recommend any treatment, education, or other programming that is unavailable in the institution where the person is housed, and shall not deny parole to a person housed in the institution based solely on the person's failure to participate in programs unavailable to the person.

(f) Any person housed in an institution under the jurisdiction of the Department of Corrections pursuant to this section who has not attained a high school diploma or its equivalent shall participate in educational or vocational programs, to the extent the appropriate programs are available.

(g) Upon notification by the Director of Corrections that the person should be no longer be housed in an institution under its jurisdiction, the Department of the Youth Authority shall immediately send for, take, and receive the person back into an institution under its jurisdiction.

SEC. 27. Section 1737 of the Welfare and Institutions Code is amended to read:

1737. When a person has been committed to the custody of the authority, if it is deemed warranted by a diagnostic study and recommendation approved by the director, the judge who ordered the commitment or, if the judge is not available, the presiding judge of the court, within 120 days of the date of commitment on his or her own motion, or the court, at any time thereafter upon recommendation of the director, may recall the commitment previously ordered and resentence the person as if he or she had not previously been sentenced. The time served while in custody of the authority shall be credited toward the term of any person resentenced pursuant to this section.

As used in this section, "time served while in custody of the authority" means the period of time during which the person was physically confined in a state institution by order of the Department of the Youth Authority or the Youth Authority Board.

SEC. 28. Section 1737.1 of the Welfare and Institutions Code is amended to read:

1737.1. Whenever any person who has been convicted of a public offense in adult court and committed to and accepted by the Department of the Youth Authority appears to be an improper person to be retained by the department, or to be so incorrigible or so incapable of reformation under the discipline of the department as to render his or her detention detrimental to the interests of the department and the other persons committed thereto, the department may order the return of that person to the committing court. The court may then commit the person to a state prison or sentence him or her to a county jail as provided by law for punishment of the offense of which he or she was convicted. The maximum term of imprisonment for a person committed to a state prison under this section shall be a period equal to the maximum term prescribed by law for the offense of which he or she was convicted less the period during which he or she was under the control of the department. This section shall not apply to commitments from juvenile court.

As used in this section "period during which he or she was under the control of the department" means the period of time during which he or she was physically confined in a state institution by order of the department or the Youth Authority Board.

SEC. 29. Section 1752.82 of the Welfare and Institutions Code is amended to read:

1752.82. (a) Whenever an adult or minor is committed to or housed in a Youth Authority facility and he or she owes restitution to a victim or a restitution fine imposed pursuant to Section 13967, as operative on or before September 28, 1994, of the Government Code, or Section 1202.4 of the Penal Code, or Section 1203.04, as operative on or before August 2, 1994, of the Penal Code, or pursuant to Section 729.6, as operative on or before August 2, 1995, Section 730.6 or 731.1, as operative on or before August 2, 1995, the director may deduct a reasonable amount not to exceed 50 percent from the wages of that adult or minor and the amount so deducted, exclusive of the costs of administering this section, which shall be retained by the director, shall be transferred to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury in the case of a restitution fine, or, in the case of a restitution order, and upon the request of the victim, shall be paid directly to the victim. Any amount so deducted shall be credited against the amount owing on the fine or to the victim. The committing court shall be provided a record of any payments.

(b) A victim who has requested that restitution payments be paid directly to him or her pursuant to subdivision (a) shall provide a current address to the Youth Authority to enable the Youth Authority to send restitution payments collected on the victim's behalf to the victim.

(c) In the case of a restitution order, whenever the victim has died, cannot be located, or has not requested the restitution payment, the director may deduct a reasonable amount not to exceed 50 percent of the wages of that adult or minor and the amount so deducted, exclusive of the costs of administering this section, which

shall be retained by the director, shall be transferred to the California Victim Compensation and Government Claims Board, pursuant to subdivision (d), after one year has elapsed from the time the ward is discharged by the Youth Authority Board. Any amount so deducted shall be credited against the amount owing to the victim. The funds so transferred shall be deposited in the Restitution Fund.

(d) If the Youth Authority has collected restitution payments on behalf of a victim, the victim shall request those payments no later than one year after the ward has been discharged by the Youth Authority Board. Any victim who fails to request those payments within that time period shall have relinquished all rights to the payments, unless he or she can show reasonable cause for failure to request those payments within that time period.

(e) The director shall transfer to the California Victim Compensation and Government Claims Board all restitution payments collected prior to the effective date of this section on behalf of victims who have died, cannot be located, or have not requested restitution payments. The California Victim Compensation and Government Claims Board shall deposit these amounts in the Restitution Fund.

(f) For purposes of this section, "victim" includes a victim's immediate surviving family member, on whose behalf restitution has been ordered.

SEC. 30. Section 1754 of the Welfare and Institutions Code is amended to read:

1754. Nothing in this chapter shall be taken to give the Youth Authority Board or the director control over existing facilities, institutions or agencies; or to require them to serve the board or the director inconsistently with their functions, or with the authority of their officers, or with the laws and regulations governing their activities; or to give the board or the director power to make use of any private institution or agency without its consent; or to pay a private institution or agency for services which a public institution or agency is willing and able to perform.

SEC. 31. Section 1757 of the Welfare and Institutions Code is amended to read:

1757. The director may inspect all public institutions and agencies whose facilities he or she is authorized to utilize and all private institutions and agencies whose facilities he or she is using. Every institution or agency, whether public or private, is required to afford the director reasonable opportunity to examine or consult with persons committed to the Youth Authority who are for the time being in the custody of the institution or agency.

SEC. 32. Section 1760 of the Welfare and Institutions Code is amended to read:

1760. The director is hereby authorized when necessary and when funds are available for these purposes to establish and operate any of the following:

(a) Places for the detention, prior to examination and study, of all persons committed to the Youth Authority.

(b) Places for examination and study of persons committed to the Youth Authority.

(c) Places of confinement, educational institutions, hospitals and other correctional or segregative facilities, institutions and agencies, for the proper execution of the duties of the Youth Authority.

(d) Agencies and facilities for the supervision, training, and

control of persons who have not been placed in confinement or who have been released from confinement by the Youth Authority Board upon conditions, and for aiding those persons to find employment and assistance.

(e) Agencies and facilities designed to aid persons who have been discharged by the Youth Authority Board in finding employment and in leading a law-abiding existence.

SEC. 33. Section 1765 of the Welfare and Institutions Code is amended to read:

1765. (a) Except as otherwise provided in this chapter, the Department of the Youth Authority and the Youth Authority Board shall keep under continued study a person in their control and shall retain him or her, subject to the limitations of this chapter, under supervision and control so long as in their judgment that control is necessary for the protection of the public.

(b) The board shall discharge that person as soon as in its opinion there is reasonable probability that he or she can be given full liberty without danger to the public.

SEC. 34. Section 1766 of the Welfare and Institutions Code is amended to read:

1766. (a) When a person has been committed to the Department of the Youth Authority, the Youth Authority Board may, according to standardized review and appeal procedures established by the board in policy and regulation and subject to the powers and duties enumerated in subdivision (a) of Section 1719:

(1) Permit the ward his or her liberty under supervision and upon conditions it believes are best designed for the protection of the public.

(2) Order his or her confinement under conditions it believes best designed for the protection of the public pursuant to the purposes set forth in Section 1700, except that a person committed to the Youth Authority pursuant to Sections 731 or 1731.5 may not be held in physical confinement for a total period of time in excess of the maximum periods of time set forth in Section 731. Nothing in this subdivision limits the power of the board to retain the minor or the young adult on parole status for the period permitted by Sections 1769, 1770, and 1771.

(3) Order reconfinement or renewed release under supervision as often as conditions indicate to be desirable.

(4) Revoke or modify any parole or disciplinary appeal order.

(5) Modify an order of discharge if conditions indicate that such modification is desirable and when that modification is to the benefit of the person committed to the authority.

(6) Discharge him or her from its control when it is satisfied that discharge is consistent with the protection of the public.

(b) Within 60 days of intake, the department shall provide the court and the probation department, with a treatment plan for the ward.

(c) A ward shall be entitled to an appearance hearing before a review panel of Youth Authority Board members for any action that would result in the extension of a parole consideration date pursuant to subdivision (e) of Section 1721.

(d) The department shall promulgate policies and regulations to implement this section.

(e) Commencing on July 1, 2004, and annually thereafter, for the preceding fiscal year, the department shall collect and make available to the public the following information:

(1) The total number of ward case reviews conducted by the department and the Youth Authority Board, categorized by guideline category.

(2) The number of parole consideration dates for each category set at guideline, above guideline, and below guideline.

(3) The number of ward case reviews resulting in a change to a parole consideration date, including the category assigned to the ward, the amount of time added to or subtracted from the parole consideration date, and the specific reason for the change.

(4) The percentage of wards who have had a parole consideration date changed to a later date, the percentage of wards who have had a parole consideration date changed to an earlier date, and the average annual time added or subtracted per case.

(5) The number and percentage of wards who, while confined or on parole, are charged with a new misdemeanor or felony criminal offense.

(6) Any additional data or information identified by the department as relevant.

(f) As used in subdivision (e), the term "ward case review" means any review of a ward that changes, maintains, or appreciably affects the programs, treatment, or placement of a ward.

SEC. 35. Section 1766.1 of the Welfare and Institutions Code is amended to read:

1766.1. When permitting an adult or minor committed to the Department of the Youth Authority his or her liberty pursuant to subdivision (a) of Section 1766, the Youth Authority Board shall impose as a condition thereof that the adult or minor pay in full any restitution fine or restitution order imposed pursuant to Section 13967, as operative on or before September 28, 1994, of the Government Code, or Section 1202.4 of the Penal Code, or Section 1203.4, as operative on or before August 2, 1994, of the Penal Code, or Section 730.6 or 731.1, as operative on or before August 2, 1995. Payment shall be in installments set in an amount consistent with the adult's or minor's ability to pay.

SEC. 36. Section 1767.1 of the Welfare and Institutions Code is amended to read:

1767.1. At least 30 days before the Youth Authority Board meets to review or consider the parole of any person who has been committed to the control of the Department of the Youth Authority for the commission of any offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, or for the commission of an offense in violation of paragraph (2) of subdivision (a) of Section 262 or paragraph (3) of subdivision (a) of Section 261 of the Penal Code, the board shall send written notice of the hearing to each of the following persons: the judge of the court that committed the person to the authority, the attorney for the person, the district attorney of the county from which the person was committed, the law enforcement agency that investigated the case, and the victim pursuant to Section 1767. The board shall also send a progress report regarding the ward to the judge of the court that committed the person at the same time it sends the written notice to the judge.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the decision for the board's consideration. Nothing in this subdivision shall be construed to permit any person so notified to attend the hearing. With respect to the parole of any person over the age of 18 years,

the presiding officer of the board shall state findings and supporting reasons for the decision of the board. The findings and reasons shall be reduced to writing, and shall be made available for inspection by members of the public no later than 30 days from the date of the decision.

SEC. 37. Section 1767.3 of the Welfare and Institutions Code is amended to read:

1767.3. (a) The Youth Authority Board may suspend, cancel, or revoke any parole and may order returned to custody of the department any person committed to it who is on parole.

(b) The written order of the director is a sufficient warrant for any peace officer to return to the custody of the department any person committed to it who is on parole or who has been permitted his or her liberty on condition.

(c) The written order of the Director of the Youth Authority is a sufficient warrant for any peace officer to return to the custody of the department, pending further proceedings before the Youth Authority Board or the Board of Prison Terms, any person committed to, or in the custody of, the department who is on parole or who has been permitted his or her liberty on condition, or for any peace officer to return to the custody of the department any person who has escaped from the custody of the department or from any institution or facility in which he or she has been placed by the department.

(d) All peace officers shall execute the orders in like manner as a felony warrant.

SEC. 38. Section 1767.4 of the Welfare and Institutions Code is amended to read:

1767.4. Whenever any person paroled by the Youth Authority Board is returned to the department upon the order of the director by a peace officer or probation officer, the officer shall be paid the same fees and expenses as are allowed those officers by law for the transportation of persons to institutions or facilities under the jurisdiction of the department.

SEC. 39. Section 1767.5 of the Welfare and Institutions Code is amended to read:

1767.5. The authority may pay any private home for the care of any person committed to the authority and paroled by the Youth Authority Board to the custody of the private home (including both persons committed to the authority under this chapter and persons committed to it by the juvenile court) at a rate to be approved by the Department of Finance. Payments for the care of paroled persons may be made from funds available to the authority for that purpose, or for the support of the institution or facility under the jurisdiction of the authority from which the person has been paroled.

SEC. 40. Section 1768.10 of the Welfare and Institutions Code is amended to read:

1768.10. Notwithstanding any other law, the Youth Authority Board may require a person under its jurisdiction or control to submit to an examination or test for tuberculosis when the board reasonably suspects that the parolee has, has had, or has been exposed to, tuberculosis in an infectious stage. For purposes of this section, an "examination or test for tuberculosis" means testing and followup examinations or treatment according to the Centers for Disease Control and the American Thoracic Society recommendations in effect at the time of the initial examination.

SEC. 41. Section 1772 of the Welfare and Institutions Code is

amended to read:

1772. (a) Subject to subdivision (b), every person honorably discharged from control by the Youth Authority Board who has not, during the period of control by the authority, been placed by the authority in a state prison shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, and every person discharged may petition the court which committed him or her, and the court may upon that petition set aside the verdict of guilty and dismiss the accusation or information against the petitioner who shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which he or she was committed, including, but not limited to, any disqualification for any employment or occupational license, or both, created by any other provision of law.

(b) Notwithstanding subdivision (a):

(1) A person described by subdivision (a) shall not be eligible for appointment as a peace officer employed by any public agency if his or her appointment would otherwise be prohibited by Section 1029 of the Government Code. However, that person may be appointed and employed as a peace officer by the Department of the Youth Authority if (A) at least five years have passed since his or her honorable discharge, and the person has had no misdemeanor or felony convictions except for traffic misdemeanors since he or she was honorably discharged by the Youth Authority Board, or (B) the person was employed as a peace officer by the Department of the Youth Authority on or before January 1, 1983. No person who is under the jurisdiction of the Department of the Youth Authority shall be admitted to an examination for a peace officer position with the department unless and until the person has been honorably discharged from the jurisdiction of the Youth Authority Board.

(2) A person described by subdivision (a) is subject to Sections 12021 and 12021.1 of the Penal Code.

(3) The conviction of a person described by subdivision (a) for an offense listed in subdivision (b) of Section 707 is admissible in a subsequent criminal, juvenile, or civil proceeding if otherwise admissible, if all the following are true:

(A) The person was 16 years of age or older at the time he or she committed the offense.

(B) The person was found unfit to be dealt with under the juvenile court law pursuant to Section 707 because he or she was alleged to have committed an offense listed in subdivision (b) of Section 707.

(C) The person was tried as an adult and convicted of an offense listed in subdivision (b) of Section 707.

(D) The person was committed to the Department of the Youth Authority for the offense referred to in subparagraph (C).

(4) The conviction of a person described by subdivision (a) may be used to enhance the punishment for a subsequent offense.

(5) The conviction of a person who is 18 years of age or older at the time he or she committed the offense is admissible in a subsequent civil, criminal, or juvenile proceeding, if otherwise admissible pursuant to law.

(c) Every person discharged from control by the Youth Authority Board shall be informed of the provisions of this section in writing at the time of discharge.

(d) "Honorably discharged" as used in this section means and includes every person whose discharge is based upon a good record on

parole.

SEC. 42. Section 1778 of the Welfare and Institutions Code is amended to read:

1778. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a parole hearing or other adjudication concerning rights of a person committed to the control of the Youth Authority conducted by the Department of the Youth Authority or the Youth Authority Board.

SEC. 43. Section 1780 of the Welfare and Institutions Code is amended to read:

1780. If the date of discharge occurs before the expiration of a period of control equal to the maximum term prescribed by law for the offense of which he or she was convicted, and if the Department of the Youth Authority believes that unrestrained freedom for that person would be dangerous to the public, the Department of the Youth Authority shall petition the court by which the commitment was made.

The petition shall be accompanied by a written statement of the facts upon which the department bases its opinion that discharge from its control at the time stated would be dangerous to the public, but a petition may not be dismissed merely because of its form or an asserted insufficiency of its allegations; every order shall be reviewed upon its merits.

SEC. 44. Section 1781 of the Welfare and Institutions Code is amended to read:

1781. Upon the filing of a petition under this article, the court shall notify the person whose liberty is involved, and if he or she is a minor, his or her parent or guardian if practicable, of the application and shall afford him or her an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence. When he or she is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.

In the case of any person who is the subject of such a petition and who is under the control of the Youth Authority for the commission of any offense of rape in violation of paragraph (1) or (2) of subdivision (a) of Section 262 or subdivision (2) or subdivision (3) of Section 261 of the Penal Code, or murder, the Department of the Youth Authority shall send written notice of the petition and of any hearing set for the petition to each of the following persons: the attorney for the person who is the subject of the petition, the district attorney of the county from which the person was committed, and the law enforcement agency that investigated the case. The department shall also send written notice to the victim of the rape or the next of kin of the person murdered if he or she requests notice from the department and keeps it apprised of his or her current mailing address. Notice shall be sent at least 30 days before the hearing.

SEC. 45. Section 1800 of the Welfare and Institutions Code is amended to read:

1800. Whenever the Department of the Youth Authority determines that the discharge of a person from the control of the department at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable, would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, the department, through its director, shall request the prosecuting

attorney to petition the committing court for an order directing that the person remain subject to the control of the authority beyond that time. The petition shall be filed at least 90 days before the time of discharge otherwise required. The petition shall be accompanied by a written statement of the facts upon which the department bases its opinion that discharge from control of the department at the time stated would be physically dangerous to the public, but the petition may not be dismissed and an order may not be denied merely because of technical defects in the application.

The prosecuting attorney shall promptly notify the Department of the Youth Authority of a decision not to file a petition.

SEC. 46. Section 1800.5 is added to the Welfare and Institutions Code, to read:

1800.5. Notwithstanding any other provision of law, the Youth Authority Board may request the Director of the Youth Authority to review any case where the department has not made a request to the prosecuting attorney pursuant to Section 1800 and the board finds that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality. Upon the board's request, a mental health professional designated by the director shall review the case and thereafter may affirm the finding or order additional assessment of the ward. If, after review, the mental health designee affirms the initial finding, concludes that a subsequent assessment does not demonstrate that a ward is subject to extended detention pursuant to Section 1800, or fails to respond to a request from the board within the timeframe mandated by this section, the board thereafter may request the prosecuting attorney to petition the committing court for an order directing that the person remain subject to the control of the authority pursuant to Section 1800 if the board continues to find that the ward would be physically dangerous to the public because of the ward's mental or physical deficiency, disorder, or abnormality. The board's request to the prosecuting attorney shall be accompanied by a copy of the ward's file and any documentation upon which the board bases its opinion, and shall include any documentation of the department's review and recommendations made pursuant to this section. Any request for review pursuant to this section shall be submitted to the director not less than 120 days before the date of final discharge, and the review shall be completed and transmitted to the board not more than 15 days after the request has been received.

SEC. 47. Section 1802 of the Welfare and Institutions Code is amended to read:

1802. When an order for continued detention is made as provided in Section 1801, the control of the authority over the person shall continue, subject to the provisions of this chapter, but, unless the person is previously discharged as provided in Section 1766, the authority shall, within two years after the date of that order in the case of persons committed by the juvenile court, or within two years after the date of that order in the case of persons committed after conviction in criminal proceedings, file a new application for continued detention in accordance with the provisions of Section 1800 if continued detention is deemed necessary. These applications may be repeated at intervals as often as in the opinion of the authority may be necessary for the protection of the public, except that the department shall have the power, in order to protect other persons in the custody of the department to transfer the custody of any person

over 21 years of age to the Director of Corrections for placement in the appropriate institution.

Each person shall be discharged from the control of the authority at the termination of the period stated in this section unless the authority has filed a new application and the court has made a new order for continued detention as provided above in this section.

SEC. 48. Section 1830 of the Welfare and Institutions Code is amended to read:

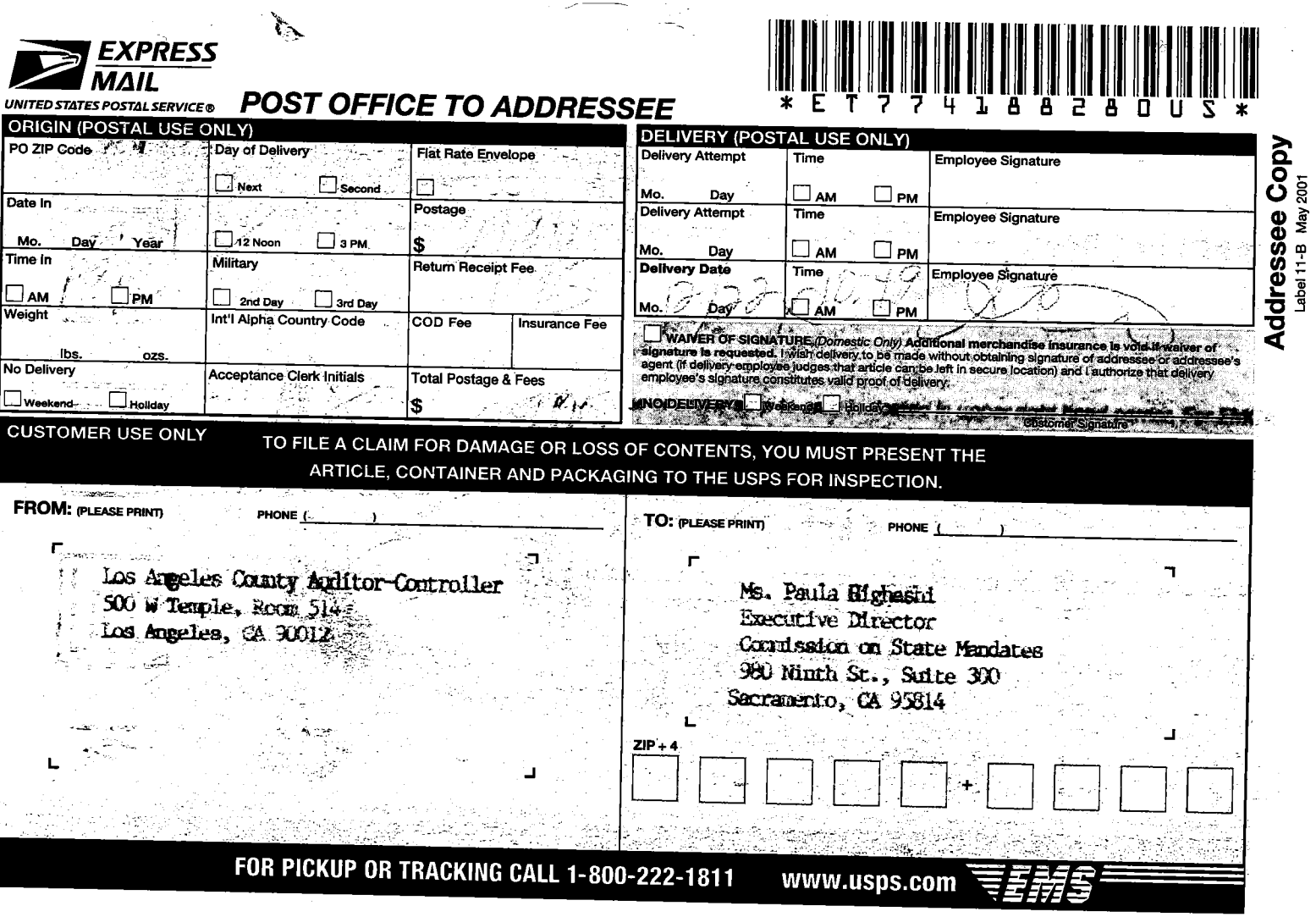
1830. The Director of the Youth Authority may participate in a local work furlough program established pursuant to subdivision (a) of Section 1208 of the Penal Code, or conduct or discontinue a work furlough rehabilitation program, in accordance with the provisions of this article, for appropriate classes of wards at one or more Youth Authority institutions. He or she may designate any officer or employee of the department to be the Youth Authority work furlough administrator and may assign personnel to assist the administrator.

SEC. 49. It is the intent of the Legislature that the Youth Authority Board be housed within the Department of the Youth Authority. The Department of General Services shall evaluate the options regarding current leases and determine when a move is appropriate.

SEC. 50. The sum of one million five hundred and fifty thousand dollars ($1,550,000) is hereby appropriated from the General Fund to the Youthful Offender Parole Board to supplement funding provided in Item 5450-001-0001 of the Budget Act of 2002.

SEC. 51. This act makes an appropriation for the usual current expenses of the state within the meaning of Article IV of the Constitution and shall go into immediate effect.

SEC. 52. Sections 1 to 49, inclusive, of this act shall become operative on January 1, 2004.



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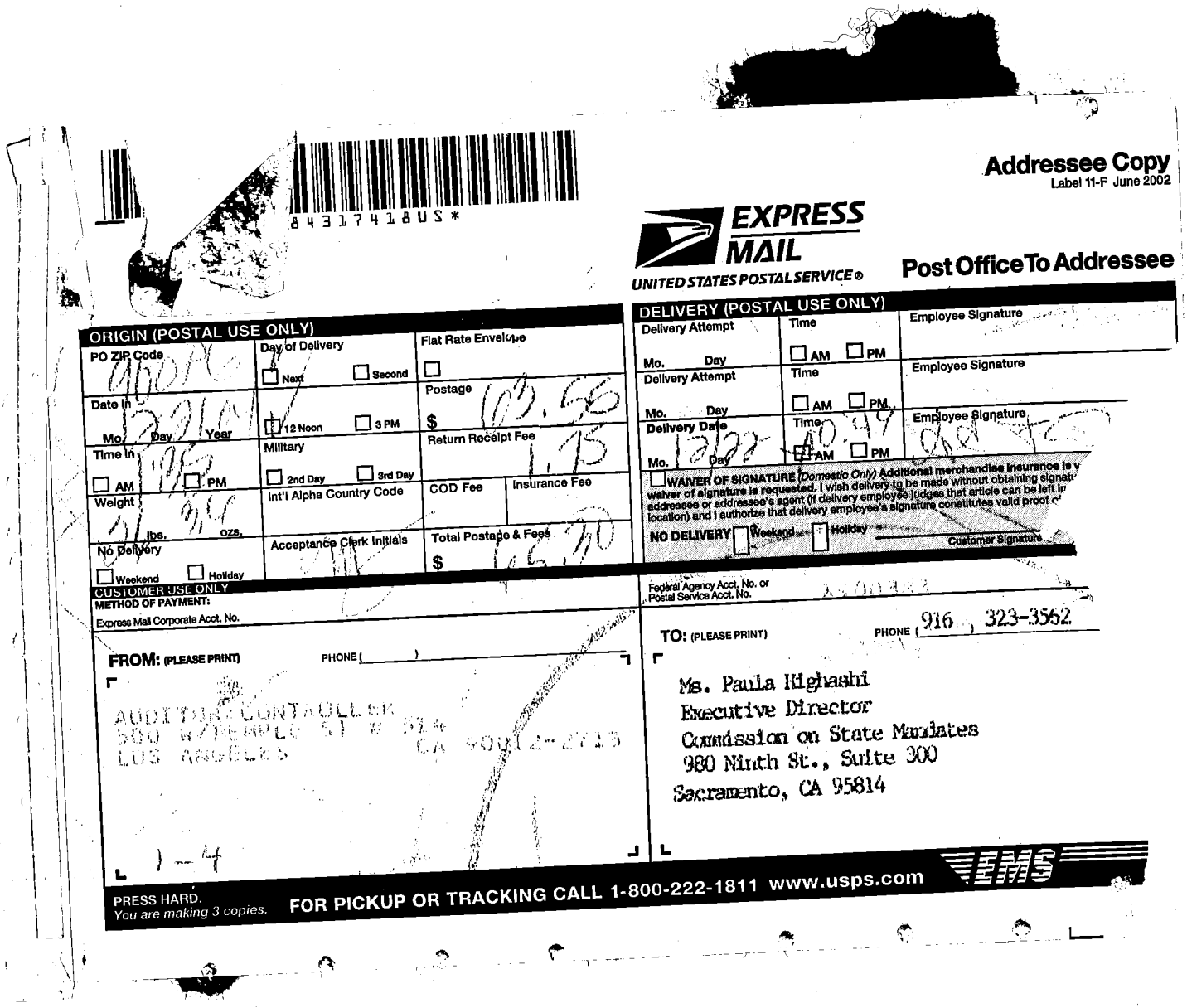

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ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Welfare and Institutions Code Sections 779, 1731.8, 1719, 1720

Statutes 2003, Chapter 4

Juvenile Offender Treatment Program Court Proceedings
04-TC-02

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

This test claim makes allegations regarding the duties of public defenders in the juvenile justice system as a result of a test claim statute that realigned the duties of the former Youthful Offender Parole Board (YOPB)[1] and the California Youth Authority (CYA).[2]

The purpose of the test claim legislation (Stats. 2003, ch. 4) was to "consolidate the operations of the Youthful Offender Parole Board under the Department of the Youth Authority and make related changes to the juvenile law." The test claim statute abolished the YOPB and created the Youth Authority Board within the Department of the Youth Authority. The board's duties were condensed to issues of discharge and parole of the juvenile, parole revocations, and disciplinary appeals. The remaining duties of the YOPB were shifted to the CYA.

Although the test claim statute (Stats. 2003, ch. 4) added, repealed or amended 48 statutes, only four were pled by the claimant: Welfare and Institutions Code sections 779, 1719, 1720 and 1731.8. As amended, these statutes: (1) clarified the authority of the juvenile court to change, modify, or set aside a prior order of commitment; (2) shifted the duty to set parole consideration dates from the YOPB to the CYA; (3) transferred the duties regarding the annual review of the ward from the YOPB to the CYA; and (4) specified that CYA shall provide copies of the reviews to the court and the county probation department.

The claimant argues that these changes have resulted in reimbursable increased costs to county public defenders.

Procedural History

Claimant Los Angeles County submitted the test claim on December 22, 2004. The Commission has not received comments from the state or other interested parties on the test claim.

[1] The Youthful Offender Parole Board (YOPB) became the Youth Authority Board under the 2003 test claim statute, and in 2005 became the Board of Parole Hearings (Welf. & Inst. Code, § 1716). Thus, references in this analysis to the Youth Authority Board also include the Board of Parole Hearings.

[2] The California Youth Authority (CYA) was renamed the Division of Juvenile Justice (DJJ) in a 2005 reorganization, so all references to the Youth Authority or CYA in this analysis now apply to the DJJ.

Positions of Parties and Interested Parties

The claimant alleges that the test claim statutes impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 for public defenders to perform the following duties that are "reasonably necessary in implementing" the test claim statutes:

1. Review case and court files, mental health, school, medical, psychological and psychiatric records and familiarize themselves with treatment and service needs of the youth;
2. Review court documents to assure court has followed the mandates of SB 459;
3. Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders;
4. Contact, visit and interview public defender clients sentenced to the California Youth Authority (CYA);
5. Monitor the setting of parole consideration dates to assure they comply with statutory mandates;
6. Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court;
7. Review CYA files, including education, special education, mental health, behavioral, gang and any other specialized files (all kept in separate locations);
8. Monitor the provision of treatment and other services;
9. Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan [IEP], treatment plan, and similar meetings;
10. File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client's needs are not being adequately addressed by CYA.
11. Coordinate with the Youth Authority in order to assist our clients in preparing for parole hearings, and represent our clients at parole hearings in appropriate cases.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local governments are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments to be eligible for reimbursement, one or more similarly situated local governments must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In

making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

Claims

The following chart provides a brief summary of the claims, the issues raised by the claimant and staff's recommendation.

Claim	Description	Recommendation
Court Orders to Modify or Set Aside Order of Commitment - Welfare and Institutions Code section 779	The amendment adds a sentence stating that the statute does not limit the authority of the court to change, modify or set aside an order of commitment after a noticed hearing and upon a showing of good cause that CYA is not providing treatment consistent with section 734. The claimant contends that the test claim statute, for the first time, allows the court to "substitute its judgment for the CYA" and change CYA treatment plans, thus requiring public defenders to file motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client's needs are not being adequately addressed by CYA.	*Deny* – The amendment is merely a clarification of existing law. Under prior law, and under the test claim statute, the court may only change, modify, or set aside an order of commitment when CYA fails to comply with the law, or abuses its discretion in the treatment of the ward. The test claim statute does not change that standard, and does not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.
Parole Consideration Dates and Parole Procedures – Welfare and Institutions Code sections 1719 & 1731.8.	These statutes address a juvenile's parole consideration date (PCD), and transfer the duty to set or modify the PCD from the YOPB to CYA. The claimant argues that the amendments to sections 1731.8 and 1719 mandate a new program or higher level of service for public defenders to monitor the parole procedures described in these sections in order to further assist the ward in a possible section 779 motion asking the court to change, amend, or modify a commitment order granting parole for the ward.	*Deny* - The amendments to sections 1731.8 and 1719 simply transfer the duties imposed on the YOPB to the CYA relating to the ward's PCD, and direct the CYA to comply with the existing regulations when modifying or deviating from the parole consideration date. Nothing on the face of these statutes imposes a new duty on local government. Thus, the test claim statutes do not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Ward Reviews - Welfare and Institutions Code section 1720.	This section was amended to change the process for reviewing the progress of the wards following their commitment to CYA. The wards' reviews were transferred from the YOPB to the CYA. The test claim statute also requires CYA to provide copies of the reviews prepared to the court and the probation department of the committing county. The claimant argues that the amendment to section 1720 (f), requiring that copies of the reviews be provided to the court and probation department of the committing county, requires the public defender to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the order of the court, the needs of the client, and the possible filing of a section 779 motion.	*Deny*- The amendment to section 1720 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service on county public defenders. Before the test claim statute was enacted, a ward had an existing due process right to receive copies of the reviews, have counsel review and evaluate the material in the review, and represent the ward as necessary.

Staff Analysis

Court Orders to Modify or Set Aside the Order of Commitment (§ 779): The Legislature amended section 779 regarding court orders to modify or set aside the order committing a ward to the CYA by adding: "This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734."[3] Claimant alleges that this provision requires its public defenders to provide several representational duties before CYA and the courts on behalf of minors or wards.

Staff finds that the amendment to section 779 does not impose any new state-mandated duties on county public defenders. The 2003 amendment was merely a clarification of existing law, as interpreted by the California Supreme Court.

Parole Consideration Date(s) (§ 1731.8) and Parole Procedures (§ 1719): Welfare and Institutions Code sections 1719 and 1731.8 address a juvenile's parole consideration date (PCD), which "represents, from its date of establishment, an interval of time in which a ward may

[3] Welfare and Institutions Code section 734 states: "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."

reasonably and realistically be expected to achieve readiness for parole. It is not a fixed term or sentence, nor is it a fixed parole release date." The test claim statute makes CYA rather than the YOPB responsible for setting PCDs.

The test claim statute also amends section 1719 to specify the duties for the Youth Authority Board (former YOPB) and CYA, and grants to CYA some of YOPB's former duties, and adds language authorizing CYA to modify PCDs. Under preexisting regulations, parole consideration dates could be modified by the YOPB, so the test claim statute merely transferred this authority to CYA and codified criteria for modification.

The claimant alleges that the amendments to sections 1731.8 and 1719 mandate a new program or higher level of service for public defenders to monitor the parole procedures in order to further assist the ward in a possible section 779 motion asking the court to change, amend, or modify a commitment order granting parole for the ward.

Staff finds that neither section 1719 nor section 1731.8 mandate a new program or higher level of service subject to article XIII B, section 6. First, the court's jurisdiction to change, modify or amend a commitment order has not changed. Second, the plain language of sections 1731.8 and 1719 does not impose any new duties on local government. The test claim amendments to sections 1731.8 and 1719 simply transferred the duties imposed on the YOPB to the CYA relating to the ward's parole consideration date, and directed the CYA to comply with the existing regulations when modifying or deviating from the parole consideration date.

Ward Reviews (§ 1720(f)): Welfare and Institutions Code section 1720 was amended to change the process for reviewing the progress of the wards following their commitment to CYA.

The test claim statute transfers the wards' reviews from the YOPB to the CYA, and each ward's case is now reviewed within 45 days of arrival at CYA and annually thereafter. The test claim statute also adds the following: "The department shall provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county."

According to the claimant, the amendment to section 1720 (f), requiring that copies of the reviews be provided to the court and probation department of the committing county, requires the public defender to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the order of the court, the needs of the client and statutory provisions including section 779.

Staff finds that the amendment to section 1720 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service subject to article XIII B, section 6. Under prior law, the ward had a constitutional due process right to have his or her attorney receive a copy of the review conducted by the YOPB, have counsel review and evaluate the material in the review, and to represent the ward as necessary. The amendments made to section 1720 did not change that right.

Conclusion and Recommendation

Staff finds that Welfare and Institutions Code sections 779, 1731.8, 1719, and 1720 (Stats. 2003, ch. 4) do not impose a reimbursable state mandate on counties within the meaning of article XIII B, section 6, of the California Constitution. Staff recommends that the Commission adopt this analysis to deny the test claim.

STAFF ANALYSIS

Claimants

County of Los Angeles

Chronology

12/22/04 Claimant Los Angeles County files test claim 04-TC-02

I. Background

This test claim seeks reimbursement for costs incurred by county public defenders as a result of the 2003 test claim statute that made some changes to the juvenile justice system. Before discussing the test claim statute, some background on the juvenile justice system is provided below.

The Juvenile Justice System

In the juvenile justice system, the emphasis is on offender treatment and rehabilitation rather than punishment.[4] Juvenile court proceedings are not considered to be criminal proceedings, and orders making minors wards of the juvenile court are not deemed to be criminal convictions.[5] Although since the 1960s, the courts have accorded juvenile offenders some of the constitutional protections afforded criminal defendants.[6]

The Office of the Legislative Analyst (LAO) described the process of juvenile justice as follows:

> Following the arrest of a juvenile offender, a law enforcement officer has the discretion to release the juvenile to his or her parents, or take the offender to juvenile hall. The county probation department, the agency responsible for the juvenile hall, has the discretion to accept and "book" the offender or not, in which case, the disposition of the juvenile is left to the police. Because most of the state's juvenile halls are overcrowded, mainly with juveniles being held for

[4] *In re Aline D.* (1975) 14 Cal.3d 557, 567.

[5] Welfare and Institutions Code section 203. This civil/criminal distinction, however, is not always clear. The U.S. Supreme Court has said:

> [I]t is clear under our cases that determining the relevance of constitutional policies, like determining the applicability of constitutional rights, in juvenile proceedings, requires that courts eschew 'the 'civil' label-of-convenience which has been attached to juvenile proceedings,' [Citation omitted.] and that 'the juvenile process . . . be candidly appraised.' (*Breed v. Jones* (1975) 421 U.S. 519, 529.) … [I]n terms of potential consequences, there is little to distinguish an adjudicatory hearing such as was held in this case from a traditional criminal prosecution. (*Id.* at p. 530.)

[6] For example, the right to counsel in juvenile judicial proceedings (*Application of Gault* (1967) 387 U.S. 1) and the protection against double jeopardy (*Breed v. Jones* (1975) 421 U.S. 519).

violent offenses, juvenile halls may accept only the most violent arrestees, turning away most other arrestees.

If the offender is placed in juvenile hall, the probation department and/or the district attorney can choose to file a "petition" with the juvenile court, which is similar to filing charges in adult court. Or, the district attorney may request that the juvenile be "remanded" to adult court because the juvenile is "unfit" to be adjudicated as a juvenile due to the nature of his or her offense. For a juvenile who is adjudicated and whose petition is sustained (tried and convicted) in juvenile court, the offender can be placed on probation in the community, placed in a foster care or group home, incarcerated in the county's juvenile ranch or camp, or sent to the Youth Authority[7] as a ward of the state. For a juvenile tried and convicted in adult court, the offender can be sentenced to the Department of Corrections, but can be placed in the Youth Authority through age 24.[8]

Juvenile court proceedings to declare a minor a ward of the court are commenced after the district attorney or probation officer files a petition,[9] which is tantamount to filing charges. The petition triggers a detention hearing,[10] after which the juvenile may be detained under specified circumstances.[11] The court may appoint counsel for the minor and his or her parents if they desire it at this hearing, and is required to appoint counsel for certain minors who are habitual or serious offenders unless the minor makes an "intelligent waiver" of the right to counsel.[12] Whether indigent or not, since 1961 the court has been required, at a detention hearing, to notify the juvenile and his or her parents of the right to counsel "at every stage of the proceedings."[13]

Depending on the minor's age and seriousness of the crime, the court may hold a fitness hearing after the detention hearing if the district attorney decides that the minor should be tried as an adult.[14]

After the detention hearing, a jurisdictional hearing is held to decide whether the minor is detained or released to home supervision.[15] During the jurisdictional hearing, the judge decides the merits of the petition. If the judge finds that the allegations in the petition are true, then a

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[7] The California Youth Authority (CYA) was renamed the Division of Juvenile Justice (DJJ) in a 2005 reorganization, so all references to the Youth Authority or CYA in this analysis now apply to the DJJ.

[8] Office of the Legislative Analyst, "Juvenile Crime – Outlook for California." May 1995, p. 1.

[9] Welfare and Institutions Code section 650.

[10] Welfare and Institutions Code sections 632-633.

[11] Welfare and Institutions Code section 636.

[12] Welfare and Institutions Code section 634.

[13] Welfare and Institutions Code section 633.

[14] Welfare and Institutions Code section 707.

[15] Welfare and Institutions Code section 700.

dispositional or sentencing hearing is held[16] to determine the minor's care, treatment and guidance, including punishment. Before the hearing, the probation officer writes a "social study" of the minor for the Court to help determine what should happen to the minor.

The judge in the disposition hearing may set aside the findings in the jurisdictional hearing, or may put the minor on informal probation. Otherwise, the judge may make the minor a ward of the court, meaning the court makes the decisions instead of the minor's parents. Wardship may mean the minor is put on probation, placed in foster care, a group home or private institution,[17] placed in local juvenile detention,[18] or placed in the California Youth Authority,[19] in addition to other conditions the judge may impose, such as fines, restitution, work programs, etc..

If the judge sentences the minor to the youth authority, it means that the judge believes that it would be best for the minor to learn from the discipline or programs at CYA.[20]

Less than two percent of juvenile offenders are committed to the CYA and become a state responsibility.[21] County probation departments supervise the remaining 98 percent.

For a graphic depiction of the juvenile justice process, see Appendix 1 attached.

California Youth Authority

CYA is the state agency responsible for protecting society from the criminal and delinquent behavior of juveniles.[22] The youth authority operates training and treatment programs that seek to educate, correct, and rehabilitate youthful offenders rather than punish them.[23] It is charged with operating 11 institutions and supervising parolees through 16 offices located throughout the state.[24] Individuals can be committed to the CYA by the juvenile court or on remand by the criminal court,[25] or returned to CYA by the former Youthful Offender Parole Board (YOPB),[26]

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[16] Welfare and Institutions Code section 706.

[17] Welfare and Institutions Code section 727.

[18] Welfare and Institutions Code section 730.

[19] Welfare and Institutions Code section 731.

[20] Welfare and Institutions Code section 734.

[21] Office of the Legislative Analyst. "California's Criminal Justice System: A Primer." January 2007, page 50. The Legislative Analyst's 1995 report stated that three percent were state wards, as did the (2003) legislative history of the test claim statute.

[22] Welfare and Institutions Code section 1700; according to the Legislative Analyst's Office, juveniles committed to CYA are generally between the ages of 12 and 24, and the average age is 19. Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 4.

[23] Welfare and Institutions Code section 1700.

[24] Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 4.

[25] Welfare and Institutions Code section 707.2, subdivision (a).

which became the Youth Authority Board under the 2003 test claim statute, and is now the Board of Parole Hearings.[27]

Juveniles committed to CYA are assigned a category number, ranging from 1 to 7, based on the seriousness of the offense committed; 1 being the most serious and 7 being the least serious.[28] Counties pay the state a monthly fee for persons who have been committed to CYA.[29] In 1996, a new fee structure was imposed to provide incentives for counties to treat less serious offenders at the county level. Counties are required to pay 100 percent of the average cost for "category 7" wards committed to CYA, 75 percent for "category 6" wards and 50 percent for "category 5" wards. At the time of the test claim statute (2003) counties paid over $50 million annually for their commitments to CYA.

Youthful Offender Parole Board/Youth Authority Board/Board of Parole Hearings

Before the test claim legislation, the YOPB was the paroling authority for young persons committed to the CYA. Although wards are committed to CYA by local courts, decisions relating to length of stay and parole were made by YOPB, which performed the following duties:

- Return persons to the court of commitment for redisposition by the court;
- Discharge of commitment;
- Orders to parole and conditions thereof;
- Revocation or suspension of parole;
- Recommendation for treatment program;
- Determination of the date of next appearance;
- Return nonresident persons to the jurisdiction of the state of legal residence.[30]

The history and duties of the YOPB were provided in the test claim statute's legislative history as follows.

> YOPB was established originally in 1941 by the Legislature as the "Youth Authority Board." When the Department of the Youth Authority was created in 1942, the Director also served as the Chairman of the Board. The Board separated from CYA in 1980 and was renamed the Youthful Offender Parole Board.
>
> YOPB members and hearing officers conduct about 20,000 hearings a year at the 11 CYA institutions, 4 camps, and regional parole offices for the approximately 6,400 wards at CYA and 4,000 on parole. Hearing officers include YOPB staff or

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[26] Legislative Analyst's Office, Analysis of the 1999-2000 Budget Bill, Criminal Justice Departmental Issues, page 5.

[27] Welfare and Institutions Code section 1716.

[28] California Code of Regulations, title 15, sections 4951-4957.

[29] Welfare and Institutions Code sections 912 and 912.5.

[30] Former Welfare and Institutions Code section 1719.

retired annuitants who are authorized to conduct hearings. YOPB hearings fall into the following general categories:

Within approximately 45-60 days, YOPB used to conduct an Initial Hearing where the initial parole consideration date (PCD) is set and treatment is ordered; however, the Legislature has been advised by the administration that since November of 2002, this function has been shifted to the CYA, with CYA staff recommendations subject to YOPB approval.

Once a year YOPB conducts an Annual Review to assess the progress of the ward and if they deem appropriate, modify the parole consideration date (PCD). YOPB can also hold Progress Reviews more frequently to review progress or modify the PCD.

At the request of CYA, YOPB holds disciplinary hearings to determine whether a time-add should be given (extending the parole consideration date) as a disciplinary action.

At the ward's parole consideration hearing, YOPB determines whether to grant parole or extend the institution stay. If parole is granted, YOPB sets conditions of parole.

YOPB also conducts Parole Revocation Hearings for parole violators to determine whether parole should be revoked and the ward returned to the institution.[31]

The former YOPB had authority over wards committed to the Youth Authority, such as permitting the ward "his liberty under supervision and upon such conditions as it believes best designed for the protection of the public" or ordering confinement "as it believes best designed for protection of the public" with specified limitations. The former YOPB could also order reconfinement or renewed release under supervision "as often as conditions indicate to be desirable" or revoke or modify any order "except an order of discharge" or modify an order of discharge, or discharge him or her from its control "when it is satisfied that such discharge is consistent with the protection of the public."[32]

The Test Claim Legislation

The purpose of the test claim legislation (Stats. 2003, ch. 4) was to "consolidate the operations of the Youthful Offender Parole Board under the Department of the Youth Authority and make related changes to the juvenile law."[33] The test claim statute abolished the YOPB and created the Youth Authority Board[34] within the Department of the Youth Authority. The board's duties

[31] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, pages G-H.

[32] Former Welfare and Institutions Code section 1766.

[33] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page B.

[34] The board was renamed the Board of Parole Hearings in 2005 (Stats. 2005, ch. 10) and the Juvenile Parole Board in 2010 (Stats. 2010, ch. 729).

were condensed to releases (discharge and parole), parole revocations, and disciplinary appeals and the board's remaining duties were shifted to the CYA.[35]

The powers and duties shifted to CYA include: returning persons to the court of commitment for redisposition by the court, determining the offense category, setting parole consideration dates using existing guidelines, conducting annual reviews, treatment program orders, making institutional placements, making furlough placements, returning nonresident persons to the jurisdiction of the state of legal residence, disciplinary decision making (with appeals to the board), and referring dangerous persons to prosecutors for extended detention.[36]

Additionally, the CYA is now required to provide county probation departments and juvenile courts with specified information concerning ward treatment and progress, and must compile specified data concerning CYA's population and effectiveness of treatment.

Although the test claim legislation (by Stats. 2003, ch. 4) added, repealed or amended 48 statutes, only four were pled by the claimant: Welfare and Institutions Code sections 779, 1719, 1720 and 1731.8. As amended, these statutes clarified the authority of the juvenile court to change, modify, or set aside a prior order of commitment; shifted to the duty from the YOPB to the CYA to set parole consideration dates; and transferred the duties regarding the annual review of the CYA ward from the YOPB to the CYA and specified that CYA shall provide copies of the reviews to the court and the county probation department.

The claimant argues that these changes have resulted in reimbursable increased costs to county public defender's offices.

Prior Commission Decisions

On January 25, 2001, the Commission adopted the *Extended Commitment – Youth Authority* statement of decision, finding that that section 1800 of the Welfare and Institutions Code (Stats. 1984, ch. 546) is a reimbursable state mandate for prosecuting attorneys to do the following:

- Review the Youthful Offender Parole Board's (YOPB's) written statement of facts upon which the YOPB bases its opinion that discharge from control of the California Youth Authority (CYA) at the time stated would be physically dangerous to the public;
- Prepare and file petitions with the superior court for the extended commitment of dangerous CYA wards;
- Represent the state in preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards;
- Retain necessary experts, investigators, and professionals to prepare for preliminary hearings and civil trials on petitions for the extended commitment of dangerous CYA wards.

[35] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page I.

[36] Welfare and Institutions Code section 1719 (c).

The Commission also found that costs incurred by counties for indigent representation by public defenders, custody, and transportation were ineligible for reimbursement because these costs resulted from statutes enacted before 1975.

In May 2007, the Commission determined that the 1996 statute raising CYA fees for counties was not a reimbursable mandate in the *California Youth Authority: Sliding Scale for Charges* (02-TC-01) test claim.

II. Positions of the Parties and Interested Parties

A. Claimant Position

The claimant alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 for public defenders to perform the following duties that are "reasonably necessary in implementing" the test claim statutes:

1. Review case and court files, mental health, school, medical, psychological and psychiatric records and familiarize themselves with treatment and service needs of the youth;
2. Review court documents to assure court has followed the mandates of SB 459;
3. Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders;
4. Contact, visit and interview public defender clients sentenced to the California Youth Authority (CYA);
5. Monitor the setting of parole consideration dates to assure they comply with statutory mandates;
6. Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court;
7. Review CYA files, including education, special education, mental health, behavioral, gang and any other specialized files (all kept in separate locations);
8. Monitor the provision of treatment and other services;
9. Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan [IEP], treatment plan, and similar meetings;
10. File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client's needs are not being adequately addressed by CYA.
11. Coordinate with the Youth Authority in order to assist our clients in preparing for parole hearings, and represent our clients at parole hearings in appropriate cases.

B. State Agencies and Interested Parties

No state agencies or interested parties have filed comments on the test claim.

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[37] Thus, the subvention requirement of section 6 is "directed to state mandated increases in the services provided by [local government] …"[38]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[39]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[40]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[41]
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity. [42]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[43] The determination

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[37] *County of San Diego, supra,* 15 Cal.4th 68, 81.

[38] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[39] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[40] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[41] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[42] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[44] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[45]

A. Do the test claim statutes mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution?

1. Court Orders to Modify or Set Aside the Order of Commitment (§ 779)

The Legislature amended section 779 regarding court orders to modify or set aside the order committing a ward to the CYA. The 2003 amendment to the test claim statute added the underlined and deleted the strikeout portions as follows:

> The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section ~~provided~~, ~~nothing in~~ this chapter ~~shall be deemed to~~ does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734.

Section 734, referenced in the underlined language above, has provided since 1961 that: "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."[46]

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[43] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[44] *County of San Diego, supra,* 15 Cal.4th 68, 109.

[45] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[46] Statutes 1961, chapter 1616.

The test claim (on p. 4) alleges that the 2003 amendment to section 779 results in a reimbursable new program as follows:

> Under prior law, the court had no authority to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority was unable to, or failed to, provide treatment consistent with Section 734. Further, under prior law, including the holding in Owen E. (1979) 23 Cal.3d 398, Section 779 does not constitute authority for a juvenile court to set aside an order committing a ward to the California Youth Authority merely because the court's view of rehabilitative progress and continuing treatment needs of the ward differ from CYA determination of such matters. [Emphasis in original.]

Thus, the test claimant argues that the test claim amendment, for the first time, requires public defenders to:

- File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client's needs are not being adequately addressed by CYA.
- Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders.
- Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court.
- Review CYA files, including education, special education, mental health, behavioral, gang and other specialized files (all kept in separate locations).
- Monitor the provision of treatment and other services;
- Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan (IEP), treatment plan, and similar meetings.

Staff finds that the amendment to section 779 does not impose any new state-mandated duties on county public defenders. Contrary to claimant's assertion, the 2003 amendment to section 779 simply clarifies the existing jurisdiction of the juvenile court to change, modify, or set aside an order of commitment to the CYA, and does not mandate any new duties on local government.

Generally, the juvenile court has continuing jurisdiction over a ward, even after the commitment order to the CYA.[47] After the commitment order, the ward's care and rehabilitation rest in the hands of the CYA. [48] CYA has wide latitude and broad discretionary powers in the treatment and discharge of persons committed to the CYA.[49] However, since 1961, section 779 has

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[47] *In re Robert W.* (1991) 228 Cal.App.3d 32, 34. This court cited section 779 for the holding that juvenile courts can "modify the conditions of wardship" following commitment to CYA.

[48] *In re Allen* (2000) 84 Cal.App.4th 513, 515.

[49] *In re Michael I.* (1998) 63 Cal.App.4th 462, 467.

authorized the juvenile court to change, modify, or set aside a prior order of commitment under limited circumstances.

In 1979, the California Supreme Court in *In re Owen E.*, interpreted the meaning of section 779, as the statute was originally enacted.[50] Under the facts of the case, the ward applied for parole two years after commitment and was denied parole. The ward's mother petitioned the juvenile court to vacate the commitment. The juvenile court agreed with the mother and concluded that the ward's rehabilitative needs would best be satisfied if he were released from custody. The juvenile court set aside its original commitment order and placed the minor on probation.[51] On appeal by the Director of the CYA, the California Supreme Court reversed the order of the juvenile court, finding that the juvenile court's statutory authority to change, modify, or set aside an order of commitment does not apply when the court simply disagrees with the rehabilitation plan because the CYA has the exclusive jurisdiction to determine questions of rehabilitation. The court held that the authority to change, modify, or set aside a prior order of commitment was limited to situations where it is shown that the "CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody."[52] If the CYA acts within the discretion conferred upon it, there is no basis for judicial intervention.[53]

As originally enacted, the first sentence of section 779 gives the court the authority to "change, modify, or set aside the order of commitment" and in the third sentence, requires the court to "give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority . . . ." The holding in *In re Owens E.* authorizes courts to ensure CYA's compliance with the law, including the provision of the treatment described section 734.

The 2003 amendment adding a sentence that "section [779] does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734" is a clarification of the existing statute as interpreted by the California Supreme Court in *Owen*. The legislative history of this amendment refers to it as a clarification.[54] There is no evidence in the legislative history of any intent to nullify the decision in *Owen,* or to change the law, or to increase the duties already provided by county public defenders. For these reasons, staff finds that the amendment to section 779 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service subject to article XIII B, section 6.

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[50] *In re Owen E.* (1979) 23 Cal.3d 398

[51] *In re Owen E., supra*, 23 Cal.3d 398, 400-401.

[52] *In re Owen E., supra*, 23 Cal.3d 398, 406.

[53] *In re Owen E., supra*, 23 Cal.3d 398, 405; *In re Allen, supra*, 84 Cal.App.4th at p. 515.

[54] Senate Committee on Public Safety, Analysis of SB 459 (2003-2004 Reg. Sess.) as amended March 12, 2003, page E. See also, the unpublished decision in *In re Michael M.* 2007 WL 4555337 (Cal.App.5 Dist.).

2. Parole Consideration Date(s) (§ 1731.8) and Parole Procedures (§ 1719)

Welfare and Institutions Code sections 1719 and 1731.8 address a juvenile's parole consideration date. The regulation that defines a parole consideration date states that: "A parole consideration date represents, from its date of establishment, an interval of time in which a ward may reasonably and realistically be expected to achieve readiness for parole. It is not a fixed term or sentence, nor is it a fixed parole release date."[55] One court described the parole consideration date as follows:

> The parole consideration date is neither a parole release date, a term, or a sentence. It is a date for further review, subject to change by the Youth Authority depending upon the rehabilitation process of the ward. Moreover, pursuant to Welfare and Institutions Code section 1762, wards must be considered for parole at least annually. The parole consideration date is merely an additional review of parole readiness based upon the ward's projected rehabilitation progress. It is not an inflexible time but may, within the principles of the rehabilitation program of the Youth Authority, be modified to reflect the needs of the ward.[56]

Under preexisting law, a parole consideration date (PCD) is required to be established for each ward at an initial YOBP hearing.[57] The initial PCD is established "from the date of acceptance by the Youth Authority of a ward committed by a court of competent jurisdiction or from the date of the disposition hearing in which parole is revoked."[58]

The test claim statute made CYA responsible for setting PCDs[59] and added the following:

> Notwithstanding any other provision of law, within 60 days of the commitment of a ward to the Department of the Youth Authority, the department shall set an initial parole consideration date for the ward and shall notify the probation department and the committing juvenile court of that date. The department shall use the category offense guidelines contained in Sections 4951 to 4957, inclusive, of, and the deviation guidelines contained in subdivision (i) of Section 4945 of, title 15 of the California Code of Regulations, that were in effect on January 1, 2003, in setting an initial parole consideration date.[60]

The test claim statute also amended section 1719 to specify the duties for the Youth Authority Board (former YOPB) and CYA, and granted to CYA some of YOPB's former duties, and added the following language authorizing a modification of PCDs:

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[55] California Code of Regulations, title 15, section 4945 (a).

[56] *In Re. Davis* (1978) 87 Cal.App.3d 919, 923-924.

[57] California Code of Regulations, title 15, section 4945 (b).

[58] California Code of Regulations, title 15, section 4945 (c).

[59] Welfare and Institutions Code section 1719 (c).

[60] Welfare and Institutions Code section 1731.8.

> The department [CYA] may extend a ward's parole consideration date, subject to appeal pursuant to subdivision (b) [authorizing a ward's appeal of adjustment to the parole consideration date to "at least two board members"] from one to not more than 12 months, inclusive, for a sustained serious misconduct violation if all other sanctioning options have been considered and determined to be unsuitable in light of the ward's previous case history and the circumstances of the misconduct. In any case in which a parole consideration date has been extended, the disposition report shall clearly state the reasons for the extension. The length of any parole consideration date extension shall be based on the seriousness of the misconduct, the ward's prior disciplinary history, the ward's progress toward treatment objectives, the ward's earned program credits, and any extenuating or mitigating circumstances. … The department may also promulgate regulations to establish a process for granting wards who have successfully responded to disciplinary sanctions a reduction of up to 50 percent of any time acquired for disciplinary matters. (§ 1719 (d).)

The claimant argues that the amendments to sections 1731.8 and 1719 mandate a new program or higher level of service for public defenders to monitor the parole procedures described in these sections in order to further assist the ward in a possible section 779 motion asking the court to change, amend, or modify a commitment order granting parole for the ward. The claimant continues its argument from the last section of this analysis; that pursuant to the 2003 test claim statute, the court may now substitute its judgment on rehabilitation for that of the CYA. The claimant argues as follows:

> Since the Youth Authority's Administrative Committee, (YAAC), order the youth's treatment and programming, it is inextricably bound with his or her success or failure at CYA. Since failure would be addressed by a § 779 motion, public defenders are under an obligation to coordinate with the YAAC and participate in their meetings to the extent allowed. Under the law prior to [the test claim statute], the court was powerless to challenge CYA's parole denials and the court was precluded from "substituting its judgment for that of CYA." (See In re Owen E., supra, 23 Cal.3d 398 at 405 …)
>
> Accordingly, [the test claim statute] now mandates a statutory scheme in which the court does substitute its judgment for that of the CYA, tantamount to the granting of parole; thus, the Public Defender has a new duty to monitor parole procedures and assist its clients in their attempts to gain parole.[61]

The claimant is wrong. First, as described above, the court's jurisdiction to change, modify, or amend a commitment order has not changed. The court does not have jurisdiction when a section 779 motion is filed to "substitute its judgment for that of the CYA," as suggested by the claimant.

Second, the plain language of sections 1731.8 and 1719 does not impose any new duties on local government. In fact, under prior law, parole consideration dates could be modified by the

[61] Test claim, page 6. Emphasis in original.

YOPB. For category 1 through 3 offenses, a board panel or referee could "approve a deviation or modification of six months earlier or later than the prescribed or previously established parole consideration date, except that a referee may modify a parole consideration date up to 12 months for DDMS [Disciplinary Decision Making System] behavior."[62] Any deviation in excess of this modification must be submitted to the full Board panel for decision.[63]

For category 4 (serious) offenses, a referee could approve a six-month deviation from the prescribed parole consideration date and may recommend further deviation by submitting the matter to a full Board panel for decision.[64] For category 5 offenses, a board panel or referee could in any annual review year modify an established parole consideration date by six months with certain exceptions.[65] For category 6 offenses, a referee can in any annual review year modify an established parole consideration date by six months with certain exceptions.[66] For category 7 offenses, a parole consideration date of one year or less is established subject to a six-month modification by a referee in any annual review year, with certain exceptions.[67]

Preexisting regulations also contain 20 factors to consider when modifying a parole consideration date, including:

1. Extent of involvement in commitment of offense(s);
2. Prior history of delinquency or criminal behavior including sustained petitions and/or convictions;
3. Involvement with dangerous or deadly weapons, their possession or use;
4. Violence, actual or potential. Injury to victims;
5. Behavior or adjustment while in custody prior to acceptance of commitment;
6. Attitude toward commitment offense(s) and victims of offense(s)
7. Alcohol/drug abuse;
8. Facts in mitigation or aggravation as established by court findings;
9. Psychiatric/psychological needs;
10. Staff evaluation;
11. Available confinement time;
12. Maturity and level of sophistication;
13. Motivation of the ward and prognosis for success or failure;
14. Multiplicity of counts of the same, related, or different offense;
15. Factors evaluated in the Community Assessment Report;

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[62] California Code of Regulations, title 15, sections 4951(b)(2), 4952 (b)(2), 4953 (b)(2). DDMS is a process to ensure a ward the right to due process in disciplinary matters. California Code of Regulations, title 15, sections 4630.

[63] California Code of Regulations, title 15, sections 4951(b)(3), 4952 (b)(3), 4953 (b)(3).

[64] California Code of Regulations, title 15, section 4954(b)(2).

[65] California Code of Regulations, title 15, section 4955(b)(2).

[66] California Code of Regulations, title 15, section 4956(b)(2).

[67] California Code of Regulations, title 15, section 4957(b)(2).

16. Availability of community-based programs and the ability to function in the same under parole supervision without danger to the public;
17. Mental or emotional injury to victim;
18. Vulnerable victim: aged or handicapped;
19. Presence of victim during commission of burglary, first degree;
20. Extent the committing offense was youth gang related.[68]

The regulations also include deviation guidelines for modifying an established parole consideration date to assist in determining readiness for parole.[69]

The amendments that were made by the test claim statute to sections 1731.8 and 1719 simply transferred the duties imposed on the YOPB to the CYA relating to the ward's parole consideration date, and directed the CYA to comply with the existing regulations that are described above when modifying or deviating from the parole consideration date. The statutes do not require local government do perform any new duties.

Accordingly, sections 1731.8 and 1719, as amended by the 2003 test claim statute, do not mandate a new program or higher level of service on local government subject to article XIII B, section 6 of the California Constitution.

3. Ward Reviews (§ 1720(f))

Welfare and Institutions Code section 1720 was amended by the test claim statute with respect to the process for reviewing the progress of the wards following their commitment to CYA.

Under prior law, the YOPB was required to hear the case of each ward "immediately after the case study of the ward has been completed and at such other times as is necessary to exercise the powers and duties of the board."[70] The YOPB was also required to "periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force."[71] The reviews were required annually, and if the review was delayed beyond the year, the ward was entitled to notice that contained the reason for the delay and the date the review hearing was to be held.[72]

Preexisting regulations require an annual review of each ward by CYA's treatment team, consisting of "a comprehensive progress report reviewing the ward's adjustment for the entire year." The report's contents are specified, which include a recommendation to the YOPB.[73]

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[68] California Code of Regulations, title 15, section 4945(i).

[69] California Code of Regulations, title 15, section 4945(j).

[70] Former Welfare and Institutions Code section 1720 (a). Section 1720 was initially enacted in 1979 (Stats. 1979, ch. 860) and last amended in 1984 (Stats. 1984, ch. 680).

[71] Former Welfare and Institutions Code section 1720 (b).

[72] Former Welfare and Institutions Code section 1720 (b) and (c).

[73] California Code of Regulations, title 15, section 4622 (b).

The test claim statute transferred the YOPB review duties to the CYA, and each ward's case is now reviewed within 45 days of arrival at CYA[74] and annually thereafter.[75] The contents of CYA reviews are specified in statute and must include information about the ward's treatment program.[76] The test claim statute also added the following: "The department shall provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county."[77]

According to the claimant, the amendment to section 1720 (f), requiring that copies of the reviews be provided to the court and probation department of the committing county, requires the public defender to review, evaluate, monitor, and change treatment plans as necessary to assure compliance with the order of the court, the needs of the client, and the possible filing of a section 779 motion. As indicated above, the 779 motion is used to request the court to change, modify, or set aside an order of commitment to CYA when CYA has failed to comply with law or has allegedly abused its discretion in dealing with a ward in its custody.

Staff finds that the amendment to section 1720 (f) does not mandate a new program or higher level of service subject to article XIII B, section 6. Under prior law, the ward had a constitutional due process right to have his or her attorney receive a copy of the review conducted by the YOPB, to review and evaluate the information, and to represent the ward as necessary. The amendments made to section 1720 did not change that right.

In 1998, before section 1720 was amended by the test claim statute, the court in *In re Michael I*., interpreted the requirements of section 1720 with respect to the ward's right to have his or her attorney review the ward's file and consult with the ward before an annual review.[78] Under the facts of the case, CYA did not permit the ward's counsel to meet with the ward until the afternoon before the review hearing and did not make the ward's file available until a month after the hearing. The court determined that CYA violated the ward's constitutional due process rights.[79]

The *Michael* court explained that a decision to deny parole is not part of the criminal prosecution and, thus, there is no absolute constitutional right to the presence of counsel at a parole revocation hearing. However, the loss of liberty entailed is a serious deprivation requiring that the ward be accorded due process. In this respect, the state's decision regarding the ward's need for counsel at the review hearing must be made on a case-by-case basis. If the ward denies that he committed any violations outlined in the reviews of the ward, or when the ward asserts

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[74] Welfare and Institutions Code section 1720 (a).

[75] Welfare and Institutions Code section 1720 (c).

[76] Welfare and Institutions Code section 1720 (e).

[77] Former Welfare and Institutions Code section 1720 (f). A "review" under section 1720 as amended appears to be the same as a "case study" under the prior version of section 1720, although the contents of it are specified in the amended version.

[78] *In re Michael I., supra,* 63 Cal.App.4th 462.

[79] *Id* at p. 469.

complex matters in mitigation, the ward has a right to the presence of counsel. The right to the presence of counsel should also be seriously considered when an admission is coerced.[80]

Under the facts in *Michael*, however, the ward was not requesting that his counsel be present at the review hearing, or that the state provide him with appointed counsel from the public defender's office. Rather, the ward asserted he had a due process right to meet with counsel before the review hearing and to have the state provide his counsel with access to the ward's review file before the hearing. The court agreed, and stated the following:

> However, if due process is to mean anything, CYA cannot deliberately structure procedures which prevent counsel retained at the ward's expense from reviewing the ward's file and consulting with the ward before such a hearing. Here, CYA frustrated all of McDonald's [the attorney's] reasonable and timely attempts to review Michael's file and arrange for a prehearing meeting so he and Michael could review its contents, discuss challenges thereto, if any explore possible mitigating evidence, and arrange to present such challenges and evidence to the board. A "brief meeting less than 24 hours before the hearing, without access to the file that outlined the recommendation and its factual support, renders Michael's retention of counsel worthless. . . . Moreover, one of the factors discussed above in determining whether counsel should be permitted to be present at the review is whether Michael planned to contest the allegations, present complex mitigating evidence, or claim any admissions were coerced. Without the ability to review his file and discuss its contents and any response with his lawyer, Michael and CYA could not know whether he would be entitled to McDonald's presence.[81]

Thus, claimant's assertion that the test claim statute, for the first time, requires the public defender's office to review and evaluate the information in the wards' reviews, is wrong. This right and duty existed in prior law under the ward's constitutional due process rights.

Accordingly, staff finds that section 1720 as amended by the 2003 test claim statute does not mandate a new program or higher level of service on county public defenders.

IV. Conclusion and Recommendation

Staff finds that the test claim statutes pled by the claimant (Welf. & Inst. Code, §§ 779, 1731.8, 1719 & 1720, Stats. 2003, ch. 4) do not constitute a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution. Thus, staff recommends that the Commission adopt this analysis to deny the test claim.

[80] *In re Michael I., supra,* 63 Cal.App.4th at pp. 467-468.

[81] *In re Michael I., supra,* 63 Cal.App.4th at p. 468.

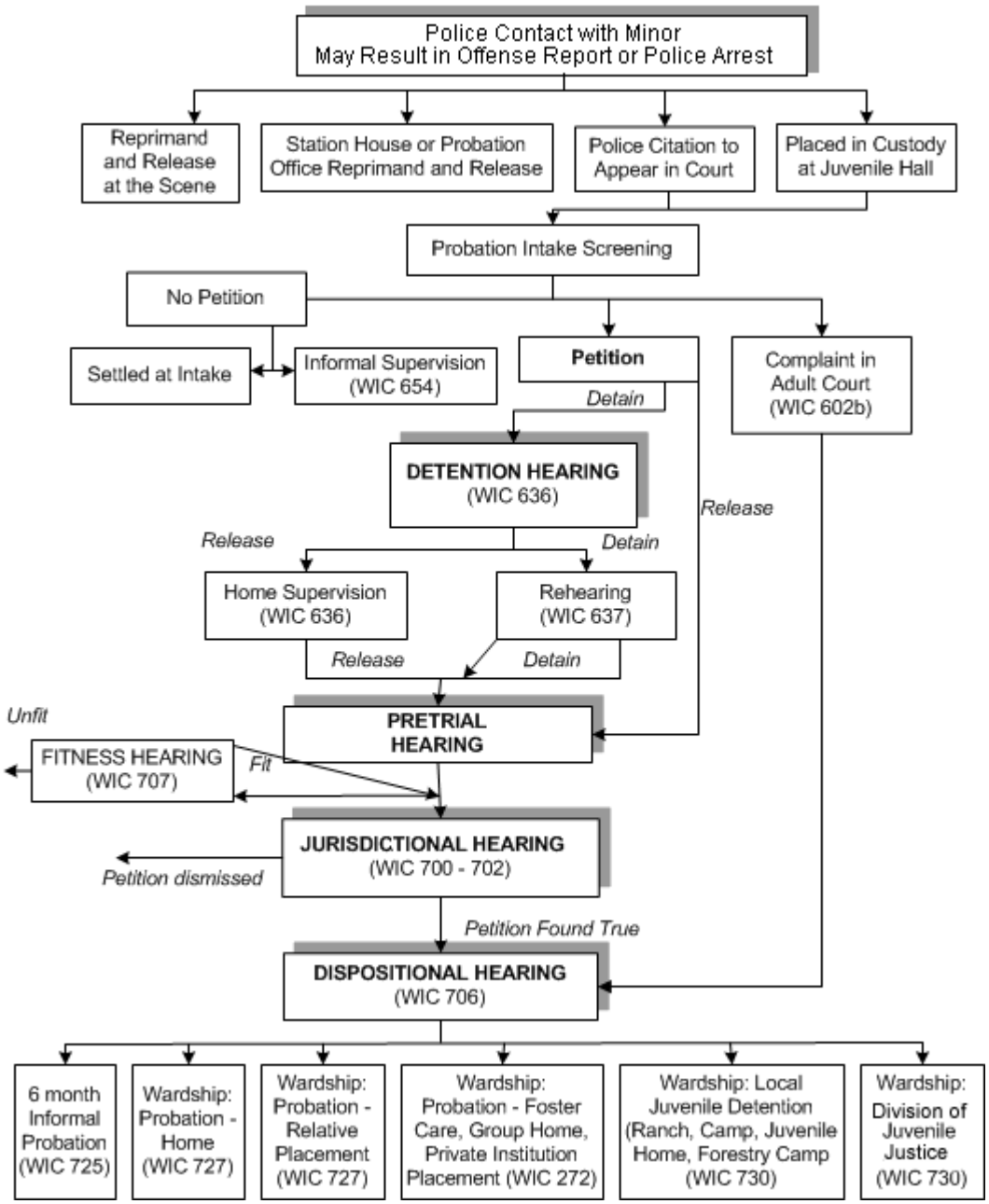
Police Contact with Minor
May Result in Offense Report or Police Arrest
Reprimand and Release at the Scene
Station House or Probation Office Reprimand and Release
Police Citation to Appear in Court
Placed in Custody at Juvenile Hall
Probation Intake Screening
No Petition
Settled at Intake
Informal Supervision (WIC 654)
Petition
Detain
Complaint in Adult Court (WIC 602b)
DETENTION HEARING (WIC 636)
Release
Release
Detain
Home Supervision (WIC 636)
Rehearing (WIC 637)
Release
Detain
Unfit
PRETRIAL HEARING
FITNESS HEARING (WIC 707)
Fit
JURISDICTIONAL HEARING (WIC 700 - 702)
Petition dismissed
Petition Found True
DISPOSITIONAL HEARING (WIC 706)
6 month Informal Probation (WIC 725)
Wardship: Probation - Home (WIC 727)
Wardship: Probation - Relative Placement (WIC 727)
Wardship: Probation - Foster Care, Group Home, Private Institution Placement (WIC 272)
Wardship: Local Juvenile Detention (Ranch, Camp, Juvenile Home, Forestry Camp (WIC 730)
Wardship: Division of Juvenile Justice (WIC 730)

Exhibit C

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 15, 2012

Ms. Nancy Patton
Acting Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA. 95814

Dear Ms. Patton:

Draft Staff Analysis on the County of Los Angeles Test Claim – Juvenile Offender Treatment Program Court Proceedings (04-TC-02)

The Department of Finance (Finance) has reviewed the draft staff analysis for the test claim on the Juvenile Offender Treatment Program Court Proceedings mandate submitted by the County of Los Angeles (claimant). The test claim alleges, in part, the realignment of the Youthful Offender Parole Board to the Department of the Youth Authority (Division of Juvenile Justice), pursuant to Chapter 4 of the Statutes of 2003, resulted in increased costs to county public defenders in the form of a reimbursable state mandate. Finance concurs with the draft staff analysis that recommends denial of the claimant's test claim.

Pursuant to section 1181.2, subdivision (c)(1)(E) if the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Jeff Carosone, Principal Program Budget Analyst at (916) 445-8913.

Sincerely,

Nona Martinez

Nona Martinez
Assistant Program Budget Manager

Enclosure

Received
February 15, 2012
Commission on
State Mandates

Enclosure A

DECLARATION OF JEFF CAROSONE
DEPARTMENT OF FINANCE
CLAIM NO. 04-TC-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

2-14-12
at Sacramento, CA.

Jeff Carosone
Jeff Carosone

Exhibit D

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

April 20, 2012

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Halsey:

LOS ANGELES COUNTY'S REVIEW
COMMISSION ON STATE MANDATES DRAFT STAFF ANALYSIS
JUVENILE OFFENDER TREATMENT PROGRAM PROCEEDINGS (04-TC-02)

The County of Los Angeles respectfully submits its review of the Commission's draft staff analysis of the County's Juvenile Offender Treatment Program Court Proceedings test claim.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

John Naimo FOR

Wendy L. Watanabe
Auditor-Controller

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Received
April 20, 2012
Commission on
State Mandates

Los Angeles County's Review
Commission on State Mandates Draft Staff Analysis
Juvenile Offender Treatment Program Court Proceedings (04-TC-02)

Executive Summary

This review examines the Commission on State Mandates (Commission) draft staff analysis of the Los Angeles County (County) test claim filed to recover costs incurred in providing new public defender services to juvenile offenders (wards) in camps and institutions operated by the California Youth Authority (CYA), now the Division of Juvenile Facilities (DJF) in the California Department of Corrections and Rehabilitation.

The County's claim is based on landmark legislation, Chapter 4, Statutes of 2003 (SB 459). This act shifted the focus of juvenile offender rehabilitation from punishment to treatment. To accomplish this, the Legislature amended Welfare and Institutions Code section 1720 to implement new treatment standards and procedures which require, among other things, that individual treatment planning, monitoring and progress reporting be instituted. This section also required that CYA, now DJF, provide juvenile courts with treatment reports.

In addition, SB 459 amended section 779 to require court proceedings "to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment". Because SB 459 created a mandate for the courts to begin overseeing the treatment of wards while in CYA, now DJF, facilities, and to intervene when those treatment needs are not being met, a new remedy and due process right for public defender clients was created. This required public defenders to implement new services designed to protect their clients' right to treatment specified in SB 459.

However, Commission staff find that SB 459 did not change a ward's treatment rights and remedies or the public defender services protecting them. So they conclude that SB 459 did not create a 'new program' requiring reimbursement of the County's costs. But the problem with this argument is that it is wrong.

Under prior law, SB 459's treatment remedy and right was not available. Juvenile courts had no "authority to set aside an order committing a ward to CYA, merely

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because the court's view of the rehabilitative progress and continuing needs of the juvenile offender differ from CYA determinations" (In re Owen E. 23 Cal. 3d 398, 403). Now juvenile courts do.

Clearly, SB 459 services are new and reimbursement of public defenders' costs in ensuring compliance with new treatment standards and procedures is required.

New Treatment

Welfare and Institutions Code section 1720 was amended by Chapter 4, Statutes of 2003 (SB 459) to implement new treatment standards and procedures for juvenile offenders (wards) in camps and institutions operated by the California Youth Authority (CYA), now the Division of Juvenile Facilities (DJF) in the California Department of Corrections and Rehabilitation. In addition, section 1720 required CYA, now DJF, to provide treatment reports to juvenile courts. This required county public defenders to implement new services designed to protect their clients' new rights and remedies to treatment in accordance with SB 459.

To recover the costs incurred by the Los Angeles County (County) Public Defender, a test claim was filed with the Commission on State Mandates (Commission) on December 22, 2004. This claim alleged that section 1720 along with sections 779, 1731.8 and 1719 of the Welfare and Institutions Code required the County to establish a 'new program' which qualifies for reimbursement under Article XIII B, Section 6 of the California Constitution and 17500 et seq. of the Government Code, commonly referred to as 'SB90'.

On February 1, 2012, the Commission issued its first (draft staff) analysis of the County's 'Juvenile Offender Treatment Program Court Proceedings' test claim. The Commission staff analysis concludes with a recommendation that the Commissioners deny the County's test claim. Staff base this recommendation on their analysis which finds that SB 459 mandated public defenders to provide the same services to wards as were required under prior law. Specifically, staff indicate that:

> "The amendment to section 1720 (Stats. 2003, ch. 4) does not mandate a new program or higher level of service on county public defenders. Before the test claim statute was enacted, a ward had an existing due process right to receive copies of reviews, have counsel

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> review and evaluate the material in the review, and represent the ward as necessary." (Staff Analysis, page 4)

Staff's finding, however, is not relevant to the County's test claim. The relevant issue is:

> Were county public defenders mandated to implement new services designed to protect their clients' rights to new treatment specified in SB 459?

The County maintains that the correct answer is yes, because section 1720, as amended by SB 459, sets higher treatment standards and reporting requirements than those found in prior law. According to Ms. Carol A. Clem, Division Chief, Special Services, Juvenile Services Division, Los Angeles County's Public Defender Office:

> "Prior to the amendment of Welfare and Institutions Code section 1720 by Chapter 4, Statutes of 2003 [SB 459], the Department of the Youth Authority (now the Division of Juvenile Justice) was not required to provide written copies of its required periodic "reviews of cases of wards" to the court and probation department of the committing county. The 2003 revision changed this by adding subdivision 1720(f):
>
> > **(f)** The division shall provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county.
>
> Chapter 4, Statutes of 2003 [SB 459] also mandated, for the first time, that the periodic reviews of cases of wards be in writing and, among other things, address specific treatment goals, needs and progress, by adding subdivision 1720(e):
>
> > **(e)** Reviews conducted by the division pursuant to this section shall be written and shall include, but not be limited to, the following: verification of the treatment or program goals and orders for the ward to ensure the ward is receiving treatment and programming that is narrowly

> tailored to address the correctional treatment needs of the ward and is being provided in a timely manner that is designed to meet the parole consideration date set for the ward; an assessment of the ward's adjustment and responsiveness to treatment, programming, and custody; a review of the ward's disciplinary history and response to disciplinary sanctions; an updated individualized treatment plan for the ward that makes adjustments based on the review required by this subdivision; an estimated timeframe for the ward's commencement and completion of the treatment programs or services; and a review of any additional information relevant to the ward's progress. "[1]

Under prior law, section 1720 as amended by Statutes of 1984, Chapter 680 did not refer to treatment or reporting requirements. Then, section 1720 only stated that:

> "(a) The case of each ward shall be heard by the board immediately after the case study of the ward has been completed and at such other times as is necessary to exercise the powers or duties of the board.
>
> "(b) The board shall periodically review the case of each ward for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These reviews shall be made as frequently as the board considers desirable and shall be made with respect to each ward at intervals not exceeding one year.
>
> "(c) The ward shall be entitled to notice if his or her annual review hearing is delayed beyond one year after the previous annual review hearing. The ward shall be informed of the reason for the delay and of the date the review hearing is to be held.
>
> "(d) Failure of the board to review the case of a ward within 15 months of a previous review shall not of itself entitle the ward to discharge from the control of the Youth Authority but shall entitle him or her to petition the superior court of the county from which he or she

[1] Ms. Clem's statement is also found in Exhibit 2, page 1.

> was committed for an order of discharge, and the court shall discharge him or her unless the court is satisfied as to the need for further control."

As may be readily seen, the prior version of Section 1720 contains none of the treatment requirements in the current (SB 459) version. In fact, the words 'treatment' and 'report' are not found in the prior version of section 1720.

Accordingly, the County Public Defender was required to provide new services designed to ensure that its clients received the treatment called for in SB 459 and created a 'new program' to do so... and met a threshold requirement for finding reimbursable 'costs mandated by the State' as defined in Government Code section 17514.

Ms. Clem describes the purpose and work of the County's 'new program':

> "Due to these State-imposed mandates, the Los Angeles County Public Defender created the CYA Unit (now DJJ Unit) in May, 2004, consisting of three experienced Deputy Public Defenders, a psychiatric social worker, and a paralegal, to monitor and advocate for the 285 Public Defender clients who were then in CYA facilities. Although caseload and staffing have since been reduced, the mandate for advocacy on behalf of those Public Defender clients still in DJJ facilities remains."[2]

Ms. Clem also illustrates the kinds of services which are reasonably necessary in implementing the new SB 459 program by providing a declaration of Deputy Public Defender Shelan Y. Joseph. Specifically, Ms. Clem states that:

> " Mr. Joseph outlines the duties of an attorney in the Public Defender's DJJ Unit. With the exception of the calculation and correction of time credits, none of the issues these duties address could have been the subject of litigation in the Los Angeles Superior Court prior to the passage of Chapter 4, Statutes of 2003 [SB 459].

[2] Ms. Clem's statement is also found in Exhibit 2, page 3.

> Also attached are examples of the work done by the DJJ Unit, including a 779 Motion on behalf of a boy who did not receive court-ordered neurological testing, a YAAC Parole Appeal on behalf of a boy who made excellent progress at DJJ facilities despite being diagnosed with schizoaffective disorder and very low intellectual functioning, and a memorandum to the Director of the Division of Juvenile Facilities outlining the agreement reached between a client, his Deputy Public Defender from the DJJ Unit, and his treatment staff at the facility regarding his treatment goals. Again, none of this advocacy would have been effective prior to the passage of Chapter 4, Statutes of 2003 [SB 459], as there would have been no remedy in court for a failure of treatment. (The names of the clients in these documents have been omitted in order to protect client confidences.)"[3]

It should be noted that prior to SB 459, CYA was not required to report the progress it was making in providing rehabilitative treatment to its wards to Juvenile courts. County public defenders as well as juvenile courts were often unaware of serious treatment deficiencies. According to California Inspector General there were many such deficiencies. In his "Review of the Intensive Treatment Program (of the) California Youth Authority" issued in November of 2002, he reported, on page 5, that:

> "Individualized Treatment Plans are nonexistent. Wards may see a psychologist only once a month, if that, and – if they are on psychotropic medication -- may also see a psychiatrist periodically, usually about once a month. Treatment is poorly documented and there appears to be little communication and coordination between staff psychologists and psychiatrists or between the youth correctional counselors and the professional staff. In general treatment is substandard." [4]

In addition, prior to SB 459, juvenile courts and county public defenders were not involved in ensuring that CYA's treatment was of benefit to wards. Indeed,

[3] Ms. Clem's statement is also found in Exhibit 2, page 3.

[4] The Inspector General's remarks are found in Exhibit 3, page 2.

according to the California Performance Review of CYA, they were not even aware of what that treatment was. In this regard, the review notes, on pages 9 - 10, that:

> "The California Youth Authority has not been mandated to involve local courts, judges and probation officers in the treatment and incarceration of youthful offenders. One superior court judge noted recently in correspondence to Senator Gloria Romero that local juvenile justice systems are not afforded the opportunity to oversee or be involved in decisions affecting wards committed to the California Youth Authority. In most cases, the committing court hears little about wards committed to the California Youth Authority until they are in trouble again.
>
> At present, there is no effective partnership between the California Youth Authority, the courts and county probation departments and communication between these entities is minimal. The cost of this disconnect is the loss of valuable resources and services for youth offenders paroled from California Youth Authority institutions."[5]

SB 459 by instituting new treatment standards, procedures and reports created the called-for partnership … a partnership which includes county public defenders to ensure that rehabilitative treatment afforded their clients meet SB 459 standards.

Therefore, the County Public Defender established a 'new program' to implement SB 459 and reimbursement of the County's costs in doing so is now required.

New Court Remedy

The County maintains that Welfare and Institutions Code section 779, as amended by SB 459, created a new treatment remedy for public defender clients and new requirements to provide public defender services in seeking that remedy. These

[5] This review excerpt is found in Exhibit 4, pages 2-3.

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services include monitoring the conditions of confinement while the ward is in DJJ custody and intervening in their behalf when there is a failure of treatment.

Commission staff disagree and contend that:

> "The amendment (to section 779) is merely a clarification of existing law. Under prior law, and under the test claim statute, the court may only change, modify, or set aside an order of commitment when CYA fails to comply with the law, or abuses its discretion in the treatment of the ward. The test claim statute does not change that standard, and does not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution" (Staff Analysis, page 3)

However, the County finds that under law prior to SB 459's enactment, section 779 did not include any language regarding 'treatment' or a showing of 'good cause' to change a ward's rehabilitative treatment. Indeed, Commission staff support the County's contention here by superimposing the language of the new section 779 on the language of the prior version, on page 14 of their analysis, as follows:

> "The Legislature amended section 779 regarding court orders to modify or set a side the order committing a ward to the CYA. The 2003 amendment to the test claim statute added the underlined ... portions as follows:
>
> > The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefore shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to

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> interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section provided, nothing in this chapter shall be deemed to does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734."

Commission staff maintain that SB 459's amendment of section 779, to provide new 'treatment' language, is not really new as the section 779 amendment also references section 734 which does reference "other treatment". Staff explain, on page 14 of their analysis, that:

> Section 734, referenced in the underlined language above, has provided since 1961 that: "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority." "

However, the phrase "other treatment provided by the Youth Authority" is general and not specific. The County maintains that after SB 459 was enacted that it is not possible to evaluate whether "other treatment" is of benefit to the ward without monitoring compliance with treatment standards and procedures mandated in SB 459 and intervening to change treatment when it is deficient.

Hence, to administer the treatment provision of Section 734, juvenile courts are now required to continuously supervise and, in effect, regulate the treatment of wards --- along with CYA (now DJF). This dual regulation was not permitted under law prior to SB 459. Before SB 459 was enacted, juvenile courts had no

"authority to set aside an order committing a ward to CYA, merely because the court's view of the rehabilitative progress and continuing needs of the juvenile offender differ from CYA determinations" (In re Owen E. (1979) 23 Cal. 3d 398, 403).

Further, the *In re Allen* ((2000) 84 Cal.App. 4th 513) decision, handed down before the enactment of SB 459, held that the "... Juvenile court's imposition of discretionary conditions of probation was an impermissible attempt to regulate or supervise minor's rehabilitation, a function solely in the hands of California Youth Authority (**CYA**) after the minor's commitment". The *Allen* court reasoned that:

> "... Notwithstanding the juvenile court's continuing jurisdiction over a ward, "[c]ommitment to the Youth Authority in particular, brings about a drastic change in the status of the ward which not only has penal overtones, including institutional confinement with adult offenders, but also removes the ward from the *direct supervision* of the juvenile court." (*In re Arthur N.* (1976) 16 Cal.3d 226, 237–238, 127 Cal.Rptr. 641, 545 P.2d 1345, italics added, fns. omitted.)
>
> In *In re Owen E.* (1979) 23 Cal.3d 398, 154 Cal.Rptr. 204, 592 P.2d 720, the court had occasion to address the interplay between **CYA** and the juvenile court over a ward after the juvenile court committed the ward to **CYA**. Two years after the commitment, the ward applied for, but was denied, parole. The ward's mother then petitioned the juvenile court to vacate his commitment (§ 778). The juvenile court, concluding the ward's rehabilitative needs would best be satisfied if he were released from custody, set aside its original commitment order and placed the minor on probation. (*Id.* at pp. 400–401, 154 Cal.Rptr. 204, 592 P.2d 720.)
>
> On appeal by the director of **CYA**, the California Supreme Court reversed the juvenile court's order. In doing so the court first compared the proceedings in juvenile court to those of adult court: "In the related field of ***516** jurisdiction to determine the rehabilitative needs of persons convicted of crimes, we have concluded the Adult Authority had the exclusive power to determine questions of rehabilitation. 'If ... the court were empowered ... to recall the sentence and grant probation

> if the court found that the defendant had become rehabilitated after his incarceration, there manifestly would be two bodies (one judicial and one administrative) determining the matter of rehabilitation, and it is unreasonable to believe that the Legislature intended such a result.' (*Holder v. Superior Court* (1970) 1 Cal.3d 779, 782, 83 Cal.Rptr. 353, 463 P.2d 705; see also *Alanis v. Superior Court* (1970) 1 Cal.3d 784, 786–787, 83 Cal.Rptr. 355, 463 P.2d 707.) While different statutes—even different codes—regulate the division of responsibility between the concerned administrative agency and court, it appears to be as unreasonable to assume the Legislature intended that both the juvenile court and **CYA** are to regulate juvenile rehabilitation as it is to assume that both the superior court and Adult Authority are to regulate criminal rehabilitation." (*In re Owen E., supra,* 23 Cal.3d at pp. 404–405, 154 Cal.Rptr. 204, 592 P.2d 720, parallel citations omitted.)
>
> - - -
>
> Simply put, the imposition of probationary conditions constitutes an impermissible attempt by the juvenile court to be a secondary body governing the minor's rehabilitation. " (*In re Allen* (2000) 84 Cal.App. 4th 514-515)[6]

Now, juvenile courts under SB 459's version of section 779 do have the authority, upon a showing of good cause, to govern the minor's rehabilitation.

Ms. Carol A. Clem, Division Chief, Special Services, Juvenile Services Division, Los Angeles County's Public Defender Office, provides further comparisons of the juvenile court's authority before and after enactment of SB 459 as follows:

> "Prior to the revisions of Chapter 4, Statutes of 2003 [SB 459], "The Legislature ha[d] not clearly defined the circumstances under which a juvenile court may intervene in a matter concerning the rehabilitative needs of a **ward** it has committed to CYA" In re Owen E. (1979) 23 Cal. 3d 398, 403 (emphasis in original). The Owen court stated that, "section 779 does not constitute authority for a juvenile court to set aside an order committing a ward to CYA merely because the court's

[6] Excerpted form the In re Allen decision found in Exhibit 5, pages 1-3.

view of the rehabilitative progress and continuing needs of the ward differ from CYA determinations on such matters arrived at in accordance with law." Id. at p. 405, and held that , "a juvenile court may not act to vacate a proper commitment to CYA unless it appears CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody." Id. at p. 406.

The Legislature addressed this issue directly in 2003, responding to the Owen court's implied suggestion that it, "clearly defined the circumstances under which a juvenile court may intervene in a matter concerning the rehabilitative needs of a ward it has committed to CYA." Owen, supra at p. 403 (emphasis in original). Chapter 4, Statutes of 2003 [SB 459], among other changes, added the following sentence to the first paragraph of Welfare and Institutions Code section 779 (emphasis added):

> This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734.

Senate and Assembly Bill Analyses of SB 459, as well as analyses by their respective Public Safety, Rules and Appropriations Committees, state that this provision:

> Clarifies that the court has the authority to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the CYA is unable to, or failing to, provide treatment as required under other provisions of law."

No longer must a court refrain from intervening unless there is an abuse of discretion by the Youth Authority. The Juvenile Court is now charged with monitoring the ward's progress through its receipt of the

periodic reviews, as required by Welfare and Institutions Code section 1720, and with changing, modifying, or setting aside an order of commitment when there is a failure of treatment, as now authorized by Welfare and Institutions Code section 779.

Because SB 459 created a mandate for the courts to begin overseeing the treatment of wards while in CYA (now DJJ) facilities, and to intervene when those treatment needs are not being met, a remedy not formerly available to our clients, the Public Defender is also required to monitor the conditions of confinement of his clients in DJJ custody and to intervene on their behalf when there is a failure of treatment. In addition, California Rules of Court, Rule 5.663(c) (formerly Rule 1479, adopted, eff. July 1, 2004), states:

> **(c) Right to representation** A child is entitled to have the child's interests represented by counsel at every stage of the proceedings, including post dispositional hearings. Counsel must continue to represent the child unless relieved by the court on the substitution of other counsel or for cause."[7]

Therefore, SB 459 created a mandate for the courts to begin overseeing the treatment of wards while in CYA, now DJF, facilities, and to intervene when those treatment needs are not being met, a <u>new</u> remedy and due process right for public defender clients was created. This required public defenders to implement new services designed to protect their clients' right to treatment specified in SB 459. This 'new program' clearly qualifies for reimbursement as claimed herein.

<u>Parole Consideration Dates</u>

The county maintains that the amendments to sections 1731.8 and 1719 mandate a new program for public defenders to monitor the parole procedures described in these sections in order to further assist the ward in a possible section 779 motion asking the court to change, amend, or modify a commitment order granting parole for the ward. Because the Youth Authority's Administrative Committee, (YAAC),

[7] Ms. Clem's statement is also found in Exhibit 2, pages 1-3.

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orders the youth's treatment and programming, it is inextricably bound with his or her success or failure at CYA. Since failure would be addressed by a § 779 motion, public defenders are under an obligation to coordinate with the YAAC and participate in their meetings to the extent allowed. Under the law prior to SB 459, the court was powerless to challenge CYA's parole denials and the court was precluded from "substituting its judgment for that of CYA." (See In re Owen E., supra, 23 Cal.3d 398 at 405 ...)

Accordingly, SB 459 now mandates a statutory scheme in which the court does substitute its judgment for that of the CYA, tantamount to the granting of parole; thus, the Public Defender has a new duty to monitor parole procedures and assist its clients in their attempts to gain parole.

Commission staff reject the County's conclusion because they believe that (1) "the court does not have jurisdiction when a section 779 motion is filed to "substitute its judgment for that of the CYA," (Staff Analysis, page 18.) and (2) "the plain language of sections 1731.8 and 1719 does not impose any new duties on local government" (Staff analysis, pages 18-19).

The County's reply is that (1) YAAC's treatment orders and programming are not excluded from treatment standards and procedures required under SB 459, so the juvenile court has a responsibility to review them and intervene when they are deficient and (2) the County Public Defender's clients have a new remedy to ensure that SB 459 treatment standards and procedures are applied in their case --- and this, of course, requires coordination with YAAC and participation in their meetings to the extent allowed.

Accordingly, reimbursement of the County's costs in implementing new parole consideration date services (in section 1731.8) and parole procedure services (in section 1719) is required.

Conclusion

The test claim legislation (Welfare and Institutions Code sections 779, 1731.8, 1719, and 1720 as added or amended by the Statutes of 2003, Chapter 4 (SB 459)) imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 for public defenders to perform the following duties that are 'reasonably necessary' in implementing the test claim statutes:

1. Review case and court files, mental health, school, medical, psychological and psychiatric records and familiarize themselves with treatment and service needs of the youth;

2. Review court documents to assure court has followed the mandates of SB 459;

3. Prepare and argue motions in cases where the court has not followed the mandates of SB 459 in its dispositional orders;

4. Contact, visit and interview public defender clients sentenced to the California Youth Authority (CYA);

5. Monitor the setting of parole consideration dates to assure they comply with statutory mandates;

6. Assess CYA treatment plans to assure they comply with statutory mandates, needs of the client and orders of the court;

7. Review CYA files, including education, special education, mental health, behavioral, gang and any other specialized files (all kept in separate locations);

8. Monitor the provision of treatment and other services;

9. Advocate for the provision of needed treatment and services within the CYA system, including advocacy at individual education plan [IEP], treatment plan, and similar meetings;

10. File motions in the sentencing court pursuant to Welfare and Institutions Code section 779 where the client's needs are not being adequately addressed by CYA.

11. Coordinate with the Youth Authority in order to assist our clients in preparing for parole hearings, and represent our clients at parole hearings in appropriate cases.

Exhibit 1

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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WENDY L. WATANABE
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ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
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JAMES L. SCHNEIDERMAN
JUDI E. THOMAS

LOS ANGELES COUNTY'S REVIEW
COMMISSION ON STATE MANDATES DRAFT STAFF ANALYSIS
JUVENILE OFFENDER TREATMENT PROGRAM PROCEEDINGS (04-TC-02)

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached review.

I declare that I have met and conferred with state and local officials, County Public Defender staff, County Counsel staff and experts in preparing the attached review and incorporated their statements in the review where indicated.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

4/19/12; Los Angeles, CA
Date and Place

Leonard Kaye
Signature

LAW OFFICES
LOS ANGELES COUNTY PUBLIC DEFENDER
SPECIAL OPERATIONS
JUVENILE SERVICES DIVISION
590 Hall of Records
320 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
(213) 893-0283

RONALD L. BROWN
PUBLIC DEFENDER

Argument of the Public Defender regarding SB 90 Test Claim for Public Defender services pursuant to SB 459

1. Prior to the amendment of Welfare and Institutions Code section 1720 by Chapter 4, Statutes of 2003 [SB 459], the Department of the Youth Authority (now the Division of Juvenile Justice) was not required to provide written copies of its required periodic "reviews of cases of wards" to the court and probation department of the committing county. The 2003 revision changed this by adding subdivision 1720(f):

   (f) The division shall provide copies of the reviews prepared pursuant to this section to the court and the probation department of the committing county.

2. Chapter 4, Statutes of 2003 [SB 459] also mandated, for the first time, that the periodic reviews of cases of wards be in writing and, among other things, address specific treatment goals, needs and progress, by adding subdivision 1720(e):

   (e) Reviews conducted by the division pursuant to this section shall be written and shall include, but not be limited to, the following: verification of the treatment or program goals and orders for the ward to ensure the ward is receiving treatment and programming that is narrowly tailored to address the correctional treatment needs of the ward and is being provided in a timely manner that is designed to meet the parole consideration date set for the ward; an assessment of the ward's adjustment and responsiveness to treatment, programming, and custody; a review of the ward's disciplinary history and response to disciplinary sanctions; an updated individualized treatment plan for the ward that makes adjustments based on the review required by this subdivision; an estimated timeframe for the ward's commencement and completion of the treatment programs or services; and a review of any additional information relevant to the ward's progress.

3. Prior to the revisions of Chapter 4, Statutes of 2003 [SB 459], "The Legislature ha[d] not clearly defined the circumstances under which a **juvenile** court may intervene in a matter concerning the rehabilitative needs of a **ward** it has committed to CYA" In re Owen E. (1979) 23 Cal. 3d 398, 403 (emphasis in original). The Owen court stated that, "section 779 does

not constitute authority for a juvenile court to set aside an order committing a ward to CYA merely because the court's view of the rehabilitative progress and continuing needs of the ward differ from CYA determinations on such matters arrived at in accordance with law." Id. at p. 405, and held that, "a juvenile court may not act to vacate a proper commitment to CYA unless it appears CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody." Id. at p. 406.

4. The Legislature addressed this issue directly in 2003, responding to the Owen court's implied suggestion that it, "clearly defined the circumstances under which a **juvenile** court may intervene in a matter concerning the rehabilitative needs of a **ward** it has committed to CYA." Owen, supra at p. 403 (emphasis in original). Chapter 4, Statutes of 2003 [SB 459], among other changes, added the following sentence to the first paragraph of Welfare and Institutions Code section 779 (emphasis added):

> This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide **treatment** consistent with Section 734.

Senate and Assembly Bill Analyses of SB 459, as well as analyses by their respective Public Safety, Rules and Appropriations Committees, state that this provision:

> 8) Clarifies that the court has the authority to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the CYA is unable to, or failing to, provide treatment as required under other provisions of law."

No longer must a court refrain from intervening unless there is an abuse of discretion by the Youth Authority. The Juvenile Court is now charged with monitoring the ward's progress through its receipt of the periodic reviews, as required by Welfare and Institutions Code section 1720, and with changing, modifying, or setting aside an order of commitment when there is a failure of treatment, as now authorized by Welfare and Institutions Code section 779.

5. Because SB 459 created a mandate for the courts to begin overseeing the treatment of wards while in CYA (now DJJ) facilities, and to intervene when those treatment needs are not being met, a remedy not formerly available to our clients, the Public Defender is also required to monitor the conditions of confinement of his clients in DJJ custody and to intervene on their behalf when there is a failure of treatment. In addition, California Rules of Court, Rule 5.663(c) (formerly Rule 1479, adopted, eff. July 1, 2004), states:

> **(c) Right to representation** A child is entitled to have the child's interests represented by counsel at every stage of the proceedings, including post-dispositional hearings. Counsel must continue to represent the child unless relieved by the court on the substitution of other counsel or for cause.

Due to these State-imposed mandates, the Los Angeles County Public Defender created the CYA Unit (now DJJ Unit) in May, 2004, consisting of three experienced Deputy Public Defenders, a psychiatric social worker, and a paralegal, to monitor and advocate for the 285 Public Defender clients who were then in CYA facilities. Although caseload and staffing have since been reduced, the mandate for advocacy on behalf of those Public Defender clients still in DJJ facilities remains.

6. The attached Declaration of DPD Shelan Y. Joseph outlines the duties of an attorney in the Public Defender's DJJ Unit. With the exception of the calculation and correction of time credits, none of the issues these duties address could have been the subject of litigation in the Los Angeles Superior Court prior to the passage of Chapter 4, Statutes of 2003 [SB 459].

7. Also attached are examples of the work done by the DJJ Unit, including a 779 Motion on behalf of a boy who did not receive court-ordered neurological testing, a YAAC Parole Appeal on behalf of a boy who made excellent progress at DJJ facilities despite being diagnosed with schizoaffective disorder and very low intellectual functioning, and a memorandum to the Director of the Division of Juvenile Facilities outlining the agreement reached between a client, his Deputy Public Defender from the DJJ Unit, and his treatment staff at the facility regarding his treatment goals. Again, none of this advocacy would have been effective prior to the passage of Chapter 4, Statutes of 2003 [SB 459], as there would have been no remedy in court for a failure of treatment. (The names of the clients in these documents have been omitted in order to protect client confidences.)

Dated: 2/29/2012

Carol A. Clem
Division Chief, Special Services

LAW OFFICES
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RONALD L. BROWN
PUBLIC DEFENDER

COUNTY OF LOS ANGELES TEST CLAIM
JUVENILE OFFENDER TREATMENT PROGRAM COURT PROCEEDINGS
WELFARE AND INSTITUTIONS CODE SECTIONS 779, 1731.8, 1719, 1720
ADDED OR AMENDED BY CHAPTER 4, STATUTES OF 2003 [SB 459]

Declaration of Shelan Y. Joseph

I, Shelan Joseph, declare as follows:

I am an attorney licensed to practice law in the State of California, presently, and since August of 1996, employed by the Los Angeles County Public Defender's Office.

In my duties as a Public Defender from May, 2004 through August, 2012, I was assigned to the Public Defender CYA Unit (now DJJ Unit) that represents youth committed to the Division of Juvenile Facilities (DJF).

In that capacity, pursuant to both California Rule of Court 5.336 and Penal Code Section 779, I monitored conditions of confinement on behalf of Public Defender clients committed to DJF.

Monitoring conditions of confinement included the following:

Advocating on behalf of clients to ensure that they were receiving appropriate treatment, training, education and mental health services.

For clients with mental health issues, I monitored clients to ensure continuous and appropriate treatment and medication administration. I also ensured that DJF was implementing programming consistent with the client's mental health disabilities. For example, for a client who was committed to DJF for a sex offense and who was diagnosed with Pervasive Developmental Disability, I ensured that the sex offender treatment program accounted for this disability and altered their curriculum to ensure that the sex offender program offered to the client was suited to his learning capabilities.

In the area of education, I monitored school progress to ensure that clients were on track to secure their high school diplomas. For special education clients, I attended Individualized Education Planning meetings. I advocated for clients to receive appropriate special education services. In addition, I monitored the services being provided by DJF, and where appropriate, filed Compliance Complaints with the State to mandate DJF to provide services.

I monitored treatment progress outlined by DJF to ensure that clients were on track to parole. I advocated at Parole Board hearings on behalf of clients. If clients were denied parole, where appropriate, I filed appeals to the Youth Offender Parole Board.

I reviewed all DJF documentation on behalf of the client to verify that correct sentencing credits, registration requirements and treatment objectives were documented.

Where clients did not receive appropriate credits I sent correct minute orders to DJF in order to correct the inaccuracies.

Where DJF imposed inaccurate registration requirements and/or did not follow treatment objectives I filed and litigated 779 motions with the appropriate Juvenile Courts to request alternative placements for our clients. 779 Motions were filed on behalf of those clients who were not receiving appropriate care and service within DJF.

I declare under penalty of perjury the foregoing is true and correct.

Executed this 25th day of February, 2012, in Los Angeles, California.

Shelan Y. Joseph

Juvenile Parole Board
Mr. Chuck Supple, Chairman
4241 Williamsborough Dr. #223
Sacramento, California 95823

SENT VIA FEDERAL EXPRESS

Re: YAAC APPEAL FOR (OMITTED FOR CONFIDENTIALITY)

Dear Board Decision-Makers,

I am an attorney with the Los Angeles County Public Defender's Office and I currently represent the above named ward pursuant to SB459. On behalf of my client, we respectfully appeal the YAAC decision of October 17, 2007, by Mr. Nesbit, and Mr. Chabot, denying *omitted* parole.

The bases for appeal are: (1) the decision is contrary to law or policy; (2) the decision is contrary to board policy; and (3) there are extenuating circumstances that apply to *omitted* case. *omitted* appeal form is attached herein.

Factual Background:

omitted is 21 years old. He was committed to the Division of Juvenile Justice (DJJ) in October of 2001. In 2003, while at the Preston Youth Correctional Facility, *omitted* was hearing voices and experiencing visual hallucinations.

In November of 2003, *omitted* was diagnosed with schizoaffective disorder. In May, 2004, *omitted* began decompensating. He began experiencing an increase in auditory hallucinations, he lost twenty-five pounds and began to self-mutilate. *omitted* was transferred to the Intermediate Care Facility, in Norwalk, where he remained until October, 2005, when he was transferred to the Intensive Treatment Program at Heman G. Stark.

While on the Intensive Treatment Program, *omitted* has gained an understanding of his mental health issues. He has been medication compliant and has no further auditory or visual hallucinations. He has actively participated in all areas of treatment.

In addition to his mental health issues, *omitted* is also a special education student. He has conflicting reports regarding his level of cognitive functioning. Some reports have diagnosed *omitted* as mentally retarded. Other experts have diagnosed him as specific learning disabled. Despite the contradicting views on *omitted* cognitive classification, all experts agree that he is very low functioning. *omitted* last individual education plan dated March 8, 2007, found him to be emotionally disturbed. In his IEP, *omitted* tested at the second grade level in reading and in the first grade level in

written expression. *omitted* receives his educational instruction in the Special Day class setting.[1]

Despite *omitted* challenges he has run an excellent program on the Intensive Treatment Program since 2005. He is currently Phase Level A. In the past year, *omitted* has not received any Level II or III DDMS. He has made significantprogress understanding his mental health diagnosis. He is medication compliant and involved in all aspects of treatment. *omitted* has denounced his gang, is actively participating in tattoo removal, and has not had any documented gang activity on the unit.

In December, 2006, at his annual review, YAAC authorized a two month time cut for *omitted* due to his excellent progress in treatment and behavior.

In denying parole on October 9, 2007, the parole board stated that *omitted* had difficulty expressing himself. In addition, the board stated that *omitted* needs to "better understand his victim and his actions." The board also indicated that *omitted* ***may*** benefit from inpatient treatment services.

The ITP treatment team developed a solid parole plan for *omitted.* Included in his parole plan was a day treatment program at College Hospital five days a week, along with counseling, education, and mental health services.

Bases for Appeal:

1. The decision is contrary to law or policy

A. The Parole Board's decision violated *omitted* **Federal and Constitutional Rights under the American Disabilities Act (ADA) and the Individual with Disabilities Education Act (IDEA)**

The Parole Board's decision to deny parole was based in large part upon the fact that *omitted* could not "express" himself. In fact, Mr. Chabot stated that "*omitted* needed to work on expressing himself better."

[1] Please see attached Memorandum dated, October 16, 2007, submitted by Dr. Gilbert Turnquist, school psychologist for *omitted.*

This assertion is a violation of both the ADA as well as the IDEA. *omitted* qualifies under the ADA due to his mental impairment. As defined by the ADA, a mental impairment is, "[a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." Clearly, *omitted* DSM-IV Tr[2] diagnosis of schizoaffective disorder qualifies him an individual under ADA.

Similarly,under the IDEA, "a person under 22 years of age and is defined as a person with one or more of the following limiting conditions...(5) emotional disturbance qualifies." Due to *omitted* special education qualification of Emotional Disturbance he is also an individual described under IDEA.

Therefore, it is contrary to law discriminate against *omitted* on the basis of his mental health diagnosis or his cognitive disabilities. It is clear that the parole boards blatant disregard of *omitted* cognitive impairments is a violation of both Federal and State Law. As stated by Parole Board CommissionerEnglish at the October 9, 2007, in her dissent, she stated that *omitted* is "limited in his cognitive skills and will need considerable external support." *omitted* deficits clearly impact his "expression," thereby limitingthe way he communicates and articulates himself. For the parole board to document that *omitted* has "difficultyexpressing himself"and use that as a factor in denying parole is a violation of Federal and State Law and a violation of *omitted* right to due process.

B. The Parole Board Decision is in violation of Penal Code Section 1719

Penal Code Section 1719, delineates the powers and duties of the DJJ Parole Board. The board is authorized to conduct hearings related to ordering parole and conditions of parole. Specifically,the Board is to make decisions pertinent to release on parole. The parole board is not authorized and/or qualified to make clinical assessments or evaluations. It is not within the purview of the parole board to make clinical determinations relative to parole.

An additional reason given by Mr. Nesbit and Mr. Chabot in denying parole was the fact that *omitted* parole plan recommended out patient services from College Hospital. The Board commissioners opined that "in-patient" services may be better for *omitted*. Specifically,the board stated that, "*omitted* may benefit from inpatient treatment services." *omitted* was brought before the parole board based on the opinions of qualified clinical professionals. Both Nancy White, LCSW, and Dr. Lynch, Psy. D., who has been working with *omitted* for two years, evaluated *omitted* and participated in developing his parole plan.[3] This plan included that *omitted* participate in an intensive out-patient program with College Hospital. The parole plan was formulatedbased on professional clinical evaluations coupled with compliance under ***Farrell***, that wards be paroled to the least restrictive environment.

The Boards total disregard for the clinical opinion in support of release clearly violates the parole boards policy as they are not trained mental health professionals qualified to make clinical

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[2] *omitted* has been diagnosed with an Axis I diagnosis of Schizoaffective Disorder under Section 295.70 of the DMS-IV TR.

[3] Please see the attached Memorandum dated, October 9, 2007, submitted by Dr. Timothy Lynch, psychologist for *omitted*.

assessments related to treatment settings. The determination of which clinical setting would best serve *omitted* should rest solely with the professionals qualified to make clinical determinations.

2. The Decision is Contrary to Board Policy

omitted was not informed of his right to appeal the parole board's decision at the hearing. As of today's date he has not been advised of his right to appeal the decision.

3. There are Extenuating Circumstances Relating to *omitted* Case Which Require Board Action in the Interest of Justice

As detailed above and in his DJJ file,*omitted* has run an exemplary program while on the ITP. He has completed all board ordered programs, complied with treatment, attended group, denounced his gang, participated in tattoo removal and been medication compliant. The circumstances of his committing offense and his presentation during the board hearing need to be viewed in the larger context of his history of mental health issues and his low cognitive functioning. It is unconstitutional and contrary to public policy to incarcerate someone who has clearly progressed in treatment because they cannot present or express themselves at a level deemed suitable by members of the board who are not qualified to assess his mental health or cognitive deficits.

In conclusion, *omitted* hearing was conducted without evidence of due process of law, and the denial of parole was a violation of his constitutional rights. Contrary to the assertions at the hearing, the treatment team is clinically qualified to determine what a suitable parole plan is for *omitted*, given his conduct and good performance on the unit.

For all of the above reasons, *omitted* respectfully requests that the October 17, 2007, decision be overturned, and that he receive a new hearing where he can present, with the assistance of counsel and the treatment team why parole is appropriate at this time.

Sincerely,

Shelan Y. Joseph
Deputy Public Defender

cc: Ramon Martinez, Superintendent Heman G. Stark
Timothy Lynch, Psy. D.
Gilbert Turnquist, Psy.D.

Sincerely,

SHELAN Y. JOSEPH
Deputy Public Defender
Bar No: 180606

cc: Dr. Timothy Lynch

LAW OFFICES OF THE PUBLIC DEFENDER
SHELAN Y. JOSEPH, Deputy Public Defender
16352 Filbert Street
Sylmar, California 91342
(818) 364-6897
State Bar No. 180606

Attorney for Minor

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, JUVENILE COURT

PEOPLE OF THE STATE OF CALIFORNIA, **Petitioner,**	) **Case No. KJ22501**
	) **PETITION TO**
vs.	) **MODIFY/SET ASIDE**
	) **COMMITMENT ORDER**
	) **[WIC § 779]**
OMITTED FOR CONFIDENTIALITY, **Minor.**	)
	) **Dept.: 282**

TO THE ABOVE-ENTITLED COURT, BERNIE WARNER THE DIRECTOR OF THE DIVISION OF JUVENILE JUSTICE, AND THE PEOPLE OF THE STATE OF CALIFORNIA, REPRESENTED BY THEIR ATTORNEY, STEVE COOLEY, DISTRICT ATTORNEY FOR LOS ANGELES COUNTY:

Minor *omitted*, by and through his attorney Michael P. Judge, Public Defender of Los Angeles County, hereby moves this court to exercise its authority under Welfare & Institutions Code section 779 to set aside the order committing *omitted* to the Division of Juvenile

Justice, or, in the alternative, moves to change or modify the commitment order. The Department of Juvenile Justice is unable to, or failing to, provide treatment consistent with Welfare and Institutions Code section 734. This motion is based on the pleadings, minor's history, points and authorities, exhibits, and any additional argument made at the time set for hearing on the motion.

DATED: February 13, 2006.

Respectfully submitted,
MICHAEL P. JUDGE
PUBLIC DEFENDER

By _____
SHELAN Y. JOSEPH
Deputy Public Defender

I. STATEMENT OF FACTS

MINOR'S HISTORY

A. MINOR'S JUVENILE COURT HISTORY

A 777 motion was filed against *omitted*, on December 8, 2004, in Department 282 of the Pomona Juvenile Court. Subsequent to a dispositional hearing, on April 12, 2005, the court sentenced *omitted* to the Department of Juvenile Justice (DJJ).

Omitted juvenile history consists of two sustained petitions. On July 9, 2002, subsequent to an admission the court sustained a petition alleging a misdemeanor violation of Penal Code Section 243.6, the disposition ordered was Home on Probation. On May 15, 2003, the court terminated *omitted* Home on Probation order and sent him to Camp Community Placement (CCP). On February 19, 2004, a new petition alleging a violation of Penal Code 245(a)(1) was filed. On May 6, 2004, pursuant to an admission to a violation of 245(a)(1), the court ordered *omitted* to CCP. On December 8, 2004, a motion was filed pursuant to Welfare and Institution Code 777 alleging several violations of Camp rules. On April 12, 2005, as a result of a sustained 777 motion, the court ordered *omitted* to the DJJ.

B. MENTAL HEALTH HISTORY

Prior to his commitment to DJJ, an Evidence Code Section 730 psychological evaluation was performed on *omitted* by Dr. Douglas B. Allen, Ph.D., on March 17, 2005. In his report, Dr. Allen noted that *omitted* had been in an automobile accident, which resulted in a head injury. (Exhibit 1, pg. 4). In addition, Dr. Allen noted that *omitted* suffers from a seizure disorder for which he is prescribed Dilantin. (Exhibit 1, pg. 3, 4). Dr. Allen recommended that "*omitted* be referred to a Board Certified Neurologist for further neurological study given his history of seizures, which has required medication management." (Exhibit 1, pg. 6).

C. CYA HISTORY

The Court committed *omitted* to DJJ on April 12, 2005. The court set the maximum time of confinement at three years. *Omitted* actual confinement ends in August 22, 2006. His DJJ jurisdiction ends October 20, 2011.

Omitted was received at the Southern Youth Reception Center and Clinic in Norwalk, California on September 26, 2005. On December 23, 2005, the Honorable Judge Tia Fischer signed a court order to have DJJ perform neurological testing on *omitted*. (Exhibit 2).

On January 5, 2006, counsel for *omitted*, faxed and mailed via United States Postal Service the order for neurological testing to Mr. Tom Blay, Intake Coordinator for DJJ, in Sacramento. (Exhibit 3). On January 6, 2006, pursuant to a telephone conversation with Mr. Blay, wherein he requested specific information as to why the neurological testing was needed, counsel sent additional correspondence addressing Mr. Blay's inquiries. (Exhibit 4). On January 10, 2006, counsel for *omitted* received a copy of an electronic mail message from Dr. Thomas, MD, Medical Director of DJJ, stating that DJJ does not have a board certified neurologist on site, and therefore, DJJ cannot comply with the court's order. (Exhibit 5).

II. THE CALIFORNIA YOUTH AUTHORITY HAS FAILED TO PROVIDE ADEQUATE AND TIMELY TREATMENT

Welfare and Institutions Code Section **1766 (b)** provides that within 60 days of intake, the California Youth Authority shall provide the court with a treatment plan for the ward, including an estimated time frame for each of the treatment programs or services identified. Welfare and Institutions Code Section 1720(b) provides that the California Youth Authority shall review the case to determine whether the orders and dispositions should be modified or continued at intervals not exceeding one year. Subsection (e) of 1720 provides that, reviews shall be written and include verification of the treatment goals and orders ensuring treatment is received in a timely manner, including an assessment of the ward's adjustment and responsiveness to treatment, an updated individualized treatment plan, an estimated timeframe for the ward's start and completion of the treatment programs or services; and other information. Subsection (f) of 1720 states that the department shall provide copies of the reviews prepared pursuant to this section to the court.

The DJJ is not meeting *omitted* needs. DJJ cannot perform the neurological testing ordered by this court. As a result, DJJ does not have the capacity to determine what, if any neurological deficits *omitted* has. Without this knowledge, DJJ cannot properly care for or treat *omitted* as required by Welfare and Institution Code Section 734.

MEMORANDUM OF POINTS AND AUTHORITIES

I

WELFARE AND INSTITUTIONS CODE SECTION 779 PROVIDES THIS COURT WITH THE AUTHORITY TO CHANGE, MODIFY, OR SET ASIDE AN ORDER OF COMMITMENT

In pertinent part, Welfare and institutions Code section 779 provides: "The court committing a ward to the Youth Authority may thereafter change, modify, or set aside

the order of commitment." In 2003, section 779 was amended by Senate Bill 459 to include, "This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734." (Welf & Inst. Code § 779.) Welfare and Institutions Code section 734 states, "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefitted by the reformatory educational discipline or other treatment provided by the Youth Authority." (Welf. & Inst. Code § 734.)

II

THE YOUTH AUTHORITY IS FAILING TO PROVIDE PROPER TREATMENT TO THE MINOR

As stated above, the DJJ has not developed an adequate treatment plan for *omitted*. The court should be dissatisfied with the inability of DJJ to comply with its order to conduct neurological testing. Moreover, *omitted* neurological needs remain undetermined. Without proper assessments *omitted* mental and physical conditions cannot be benefitted by a commitment to DJJ. Therefore, the defense respectfully requests that the court to terminate *omitted* commitment to the Division of Juvenile Justice.

III

CONCLUSION

Counsel respectfully requests that this Court consider terminating its order committing *omitted* to the Department of Juvenile Justice. DJJ cannot perform the necessary

neurological testing ordered by this court to determine *omitted* needs. Therefore, DJJ cannot properly determine the treatment needs of *omitted*

DATED: February 13, 2006.

Respectfully submitted,
MICHAEL P. JUDGE
PUBLIC DEFENDER

By

_____

SHELAN Y. JOSEPH
Deputy Public Defender

OFFICE OF THE INSPECTOR GENERAL

STEVE WHITE, INSPECTOR GENERAL

• *PROMOTING INTEGRITY* •

REVIEW OF THE INTENSIVE TREATMENT PROGRAM

CALIFORNIA YOUTH AUTHORITY

REPORT

NOVEMBER 2002

NOTE: INFORMATION IN THIS REPORT HAS BEEN REDACTED FOR REASONS OF CONFIDENTIALITY

process of implementing a new screening mechanism, which is designed to provide a broader measure of a ward's mental health and behavior.

FINDING 3

The Office of the Inspector General found that treatment services provided to wards in the intensive treatment program are limited in scope, lacking in planning, poorly documented, and generally deficient in quality.

The treatment portrayed in the written descriptions of the intensive treatment programs bears little resemblance to the treatment actually provided to the wards. The program descriptions typically promise a range of treatment methods and an individualized treatment plan for each ward. In reality, treatment is limited for the most part to one or two hours a week of group therapy and individual counseling provided by a youth correctional counselor with little counseling expertise or training. Individualized treatment plans are nonexistent. Wards may see a psychologist only once a month, if that, and—if they are on psychotropic medication—may also see a psychiatrist periodically, usually about once a month. Treatment is poorly documented and there appears to be little communication and coordination between staff psychologists and psychiatrists or between the youth correctional counselors and the professional staff. In general, treatment is substandard.

FINDING 4

The Office of the Inspector General found serious deficiencies in the handling by mental health clinicians of suicidal wards in the intensive treatment program.

Intensive treatment wards are at high risk for suicide. Yet, the review showed that members of the intensive treatment program mental health staff consistently failed to document important information about wards referred for suicidal evaluation, failed to specify recommended treatment for wards, and failed to communicate to the custody staff how the wards should be monitored.

FINDING 5

The Office of the Inspector General found a lack of follow-up care for wards leaving the intensive treatment program.

The Office of the Inspector General found that 69 percent of the 221 wards leaving the intensive treatment program during the twelve months preceding the review were either transferred to the general population or released on parole. The statistics show that the majority of intensive treatment program wards leaving the program are likely to receive no further treatment for their mental illness at the California Youth Authority.

RECOMMENDATIONS

The Office of the Inspector General recommends that the California Youth Authority take the following actions:

California Performance Review

Ward / Parolee Population Management

Providing education, training, and treatment to youthful offenders is central to the mission of the California Youth Authority. Forty years ago, California was the undisputed national leader in carrying out that responsibility. But in the 1980s, tougher sentencing for juveniles, subsequent overcrowding of youth correctional facilities, and a societal emphasis on custody over rehabilitation began eating away at the State's programs for helping incarcerated youths.

Today, a new set of forces is at work. In recent years, the number of youthful offenders in California correctional facilities has fallen by almost half, from 10,114 in June 1996 to 4,879 in June 2003, with the number expected to decline to 3,740 by June 2009. Most of the youths now committed to state custody are proportionately more violent and have significantly greater needs for mental health care and other program services compared to the youths of earlier years. At the same time, the state is under increasing challenge from the public, from lawmakers, and from the courts for failing to provide humane and constitutionally adequate conditions of confinement for incarcerated youths and for not providing adequate education and treatment services.

In light of those circumstances, the Corrections Independent Review Panel examined what California can do to improve its treatment, education, and parole services for the serious, chronic, and violent youthful offenders committed to its custody. As a result of that study, the panel recommends that the State institute a series of best-practices reforms in its education and treatment programs to more successfully protect society by helping youthful offenders reintegrate back into the community.

Fiscal Impact

Implementing the panel's recommendations can be expected to result in long-term savings by reducing disciplinary incidents in youth correctional institutions, helping youthful offenders earn earlier release, and reducing the number who commit new crimes and return to custody. The recommendations will also assist the new Department of Correctional Services in complying with the requirements of the consent degree anticipated in a major court action, Farrell v. Harper. A detailed legislative financial analysis involving key stakeholders is needed to more fully determine the fiscal impact of the recommendations.

Background

The mission of the California Youth Authority is as follows:

> To protect the public from criminal activity by providing education, training, and treatment services for youthful offenders committed by the courts; directing these offenders to participate in community and victim restoration; and assisting local justice agencies with their efforts to control crime and delinquency, and encouraging the development of state and local programs to prevent crime and delinquency. [1]

The department's historical obligation to provide juvenile offenders with education, training, and treatment services was set forth when the California Youth Authority was created by the Youth Corrections Act of 1941. At the time of its enactment, the law was revolutionary in that it substituted training and treatment for youthful offenders in place of retributive punishment, which had been the national norm. In the years following, the act also made California the national model in juvenile treatment. By the mid-1960s the success of California's training and treatment model became not only accepted practice across the country, but also the formal legal policy of the United States, certified by the U.S. Supreme Court, in Kent v. United States (1966). Although the U.S. Supreme Court has since modified the treatment model, allowing juveniles to be tried as adults in cases involving particularly egregious offenses, it has nonetheless preserved the importance of individual assessment of the circumstances of the juvenile before sentencing, and the general policy of rehabilitation for juveniles remains sacrosanct. The U. S. Supreme Court continues to affirm the special developmental status of those under the age of 18 and the State's obligation to provide them with special protection.

Studies have shown that wards who participate in education and vocational training programs have a lower risk of recidivism. [2] Yet, despite those studies, and despite the historical mandate to provide treatment services to youths committed to the California Youth Authority, the State's commitment to providing such services has been eroding since the early 1980s. During the 1980s and 1990s, the department's budget failed to keep pace with rising ward populations resulting from "tough on crime" sentencing laws that made sanctions for juvenile crime comparable to those of adults and from stricter parole policies instituted by the Youthful Offender Parole Board that lengthened incarceration times. Largely because of Youthful Offender Parole Board policies, the average length of stay for wards increased from 21.6 months in 1991-92 to 27.6 months in 2002-03. [3] Between 1987 and 1991, the ward population in California Youth Authority facilities averaged 139 percent of bed capacity and over-crowded living conditions and double bunking became standard. [4]

With the overcrowding came increased violence in youth correctional facilities—group disturbances, suicidal behavior, escape attempts, and other acts of destructive conduct. And, in an escalating cycle, increased violence led to longer stays, still more overcrowding, and still more violence. Research by the California Youth Authority shows that before crowding began in 1987 disciplinary incidents were significantly fewer. In 1987 the disciplinary rate for serious ward misbehavior stood at 102.5 incidents per 100 wards, but as crowding increased between 1987 and 1991, the rate of disciplinary actions increased by 33 percent to 136.2 incidents per 100 wards. Under

need improvement.

Wards who have been incarcerated in California Youth Authority institutions are generally the most serious and violent offenders in the juvenile justice system. The department currently provides parole services to approximately 4,200 wards through 16 parole offices located throughout California. The parole offices are divided into two regions: the northern region, which supervises approximately 1,880 parolees, and the southern region, which supervises approximately 2,200 parolees. The northern region is comprised of seven field offices encompassing 47 counties, including the Bay Area, the Central Coast, Northern California, and the San Joaquin Valley. The southern region includes nine field offices covering 11 counties, including Los Angeles, San Luis Obispo, Santa Barbara, Ventura, San Diego, and Imperial counties. [35]

Parole agents assigned to each parole office must work closely with local law enforcement to enforce conditions of parole, protect the community, and broker community resources to promote the ward's successful integration into society. All 16 parole offices provide core parole services. A detailed description of these services and other programs offered by the California Youth Authority are listed in Appendix A.

At present, the authority to grant or revoke parole rests exclusively with the Youth Authority Board in accordance with California Code of Regulations, Title 15, Section 4966, and California Welfare and Institutions Code Section 1723. The parole hearing process, which includes setting projected parole dates, involves both the Youth Authority Board and the California Youth Authority staff. The projected parole date, also called the "projected board date," is based on the ward's committing offense. Absent from this phase of the process is the committing court and community probation resources. A more coordinated effort and partnership involving the committing courts, local community resources, and the California Youth Authority would improve case management and provide a more effective continuum of treatment services.

At present, counties do not have the option of supervising non violent wards

The California Youth Authority is presently responsible for supervising all wards released from state youth correctional facilities and returned to communities. These wards remain under the jurisdiction of the California Youth Authority rather than the counties. Instead, non violent wards could be returned to counties for probation services upon release from state youth correctional facilities. The California Youth Authority could pay counties a pre-determined "rebate" for every non-violent ward (presently designated as Categories 5, 6, and 7) for whom the county agrees to provide parole supervision and services. The change would enable the new Department of Correctional Services to re-direct resources and supervision to high-risk parolees in Categories 1, 2, 3, and 4, thereby improving the likelihood of success for these offenders (Appendix B.)

The current parole population of non violent, Category 5, 6, and 7 wards totals approximately 1,740. Field parole agents who provide parole supervision are spread out over a large geographical area, making it difficult for remote areas to be covered. With responsibility for this parole population removed, parole positions could be reduced proportionately and the additional resources could be re-directed to high-risk parolees to lower the ward-to-parole agent ratio.

Counties are not paying the true cost incurred by the state for supervising wards

The sliding fee scale outlined in California Welfare and Institutions Code Section 912.5 and in Title 15 of the California Code of Regulations does not reflect the actual cost incurred by the California Youth Authority for treatment, training, and supervision of lower level wards. The sliding fee scale designates specific percentages of a pre-determined per-capita cost incurred by the California Youth Authority to be reimbursed to the state by each county. [36] The base cost in the sliding scale fee is $36,500 yearly and counties pay a flat fee of $175.00/ month for all high risk commitments. Counties pay 50 percent, 75 percent, or 100 percent of the per capita cost for non-violent wards classified respectively in Categories 5, 6, and 7. (A new provision to this section, enacted on July 1, 2003, allows for annual review of actual costs incurred and subsequent adjustment of the pre-determined base amount for the sliding scale). [37]

The sliding fee scale was introduced in 1997 to encourage counties to find alternatives to California Youth Authority commitment for non-violent offenders and appears to have had that effect. An estimate of future overall youthful offender population shows a continuing decrease in the California Youth Authority population (See Appendix C, Table 1). Conversely, the more violent ward population continues to rise. That fact, coupled with the development of increased services for more troublesome wards, has increased the true cost incurred by the Youth Authority to house each ward. Current estimates of actual per capita costs range between $66,000 estimated by the California Youth Authority [38] and $80,000 [39] estimated by the Juvenile Justice Reform Group and Kevin Carruth, Undersecretary of Youth and Adult Corrections Agency. Both figures far exceed the current $36,500 per capita reimbursement rate (Appendix D.)

Given these circumstances, an upward adjustment to the sliding fee scale of 25 percent to $50,000 is warranted. This prudent adjustment will continue to encourage counties to reduce the number of non violent youthful offenders sent to the California Youth Authority without making the cost prohibitive and will encourage local program development. The option of sending the most difficult, unmanageable youth that the county cannot effectively program will remain affordable.

Judges and probation officers have no role in decisions to continue incarceration

The California Youth Authority has not been mandated to involve local courts, judges, and probation officers in the treatment and incarceration of youthful offenders. One superior court judge noted recently in correspondence to Senator Gloria Romero that local juvenile justice systems are not afforded the opportunity to oversee or be involved in decisions affecting wards committed to the California Youth Authority. [40] In most cases, the committing court hears little about wards committed to the California Youth Authority until they are in trouble again. Much to the same extent, county probation departments are also left out of the loop about wards until they receive a notification of additional charges because the ward's stay at the California Youth Authority has been extended. According to Dr. Barry Krisberg of the National Council on Crime and Delinquency in correspondence to G. Kevin Carruth, Undersecretary of Youth and Adult Corrections Agency, most judges would welcome the chance to interact with youthful offenders throughout all stages of the juvenile

justice system. [41] Furthermore, the concept of coordinating efforts and increasing community involvement seems to be the resounding theme among youthful offender advocates, employees of the California Youth Authority, and the Department of Finance.

At present, there is no effective partnership between the California Youth Authority, the courts, and county probation departments and communication between these entities is minimal. The cost of this disconnect is the loss of valuable resources and services for youthful offenders paroled from California Youth Authority institutions. The amount of additional time wards serve in California Youth Authority institutions for misbehavior varies. Many receive much more time. At present, 540 California Youth Authority wards will serve all of their available confinement time due to time extensions for disciplinary or treatment reasons. [42] Often, these time extensions are unknown to the counties until they receive a request for payment of services provided.

Partly because of these extensive time adds, Senate Bill 459, which went into effect on January 1, 2004, provided for the new Youth Authority Board to serve as the second and final review level to hear appeals regarding treatment and training and disciplinary time extensions. The Corrections Independent Review Panel has concluded that this appeal process should be retained, but that for wards in Categories 5-7, the decision of the Youth Authority Board will be reviewed by the committing court.

When wards are referred for return to the county for probation, the California Youth Authority should reimburse the county $5,000 annually for aftercare services provided to each ward. [43] A caveat to this recommendation is that probation officers not be granted the authority to revoke probation and refer wards directly to the California Youth Authority for revocation, but instead may refer the case to the court for review and recommendation. The presiding judge may hold the commitment to the California Youth Authority in abeyance, conditional on successful completion of probation.

Recognizing that some counties are not equipped to provide these services, and that the needs of some wards may be greater than the capacity of county probation services to provide, the state should encourage counties to develop "joint use facility agreements" with adjoining counties to provide aftercare services. Counties also should be allowed to contract with the California Youth Authority for parole services in accordance with a "needs assessment" conducted for the ward.

The California Youth Authority has lost valuable parole resources to budget cuts

In the past four years, the California Youth Authority has lost a number of parole resources as a result of budget cuts. Programs such as the "Transitional Residential Program" and "Fouts Springs" offered pre-release planning and other options in lieu of re-institutionalizing for parolees who violate technical conditions of parole. The programs were similar to the traditional half way houses but offered stronger treatment, educational, counseling and job assistance components. [44] The Transitional Residential Program, established in 1982 in Los Angeles County, provided pre-parole placement in a residential center operated by Volunteers of America, Inc. The program provided employment development services, job referrals, counseling services, and 24-hour supervision for up to 34 wards. Participants were required to seek full-time employment and, upon obtaining employment, were responsible for their transportation costs. After a ward successfully completed the program, the parole agent made a recommendation for parole consideration to the Youth Authority Board. Although the Transitional Residential Program did not formally track participants, the former administrator estimated that 75-80 percent of program graduates had not re-offended within a year of completing the program. Anecdotal evidence indicates that most participants maintained employment and often were promoted to jobs earning a higher wage. [45] The program was discontinued because of budget cuts.

Fouts Springs was developed in 1987 to fulfill a need for drug treatment options for northern California parolees having a substance abuse history. The program offered 90-day drug treatment in a partnership between the California Youth Authority and Fouts Springs Youth Correctional Facility. The program was operated by Solano and Colusa counties as a relapse option in lieu of parole revocation. The cost benefits of this short-term program were significant when compared with the cost of re-incarcerating wards for a period of 6 to 12 months for technical parole violations involving substance abuse. For wards, a return to custody counts as a parole failure, whereas the Fouts Springs program was in lieu of revocation. This program was also discontinued due to budget constraints.

The California Youth Authority needs more specialized Parole Agent IIs

The California Youth Authority presently does not have enough specialized Parole Agent IIs to adequately supervise sex offenders and mentally ill wards on parole. Providing treatment, supervision, and critical services to sex offenders paroling from California Youth Authority institutions is critical to the parolee's re-integration into the community, and only Parole Agent IIs receive specialized training for that purpose. Inside the institutions, sex offenders receive treatment and training designed to address the urge to offend. Aftercare treatment, provided to parolees by Parole Agent IIs, who have been trained in the sex offender curriculum, is designed to reinforce the concepts, therapeutic issues, and relapse prevention techniques. As of April 5, 2004, there were 381 sex offenders in the department's parolee population, yet eight parole offices have no specialized Parole Agent IIs to provide sex offender services, thus breaking the continuum of treatment. [46] It is critical this group of offenders be afforded highly individualized parole services and that treatment services be continued.

Recommendations

The panel recommends that the state take the actions listed below to improve the ability of the California Youth Authority Parole Branch to meet the specialized treatment and mental health needs of the wards under its supervision. The recommendations are intended to create a more effective partnership with county probation and court services to enable wards released from California Youth Authority institutions to be better served in their local communities.

- Adjust the sliding fee scale used to determine how much a county pays the state for housing non-violent wards in the California Youth Authority from $36,500 to $50,000 to more accurately reflect the actual cost of those services.

- Grant committing courts sole authority and final review for revoking parole or probation or for extending length of stay at the California Youth Authority for wards in Categories 5, 6, and 7.

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(Cite as: 84 Cal.App.4th 513, 100 Cal.Rptr.2d 902)

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Court of Appeal, Third District, California.
In re ALLEN N., a Person Coming Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
Allen N., Defendant and Appellant.

No. C032402.
Oct. 30, 2000.

Following a contested jurisdictional hearing, the Superior Court, Sacramento County, No. JV 98681, Harold Craig Manson, J., found that juvenile committed felony assault and great bodily injury during the commission of that offense and committed him to the California Youth Authority (**CYA**). Juvenile appealed imposition of conditions of probation. The Court of Appeal, Raye, J., held that imposition of discretionary conditions of probation was an impermissible attempt to regulate or supervise juvenile's rehabilitation.

Affirmed as modified.

West Headnotes

[1] Infants 211 ⚿2682

211 Infants
211XV Juvenile Justice
211XV(G) Disposition
211XV(G)2 Particular Dispositions
211k2681 Correctional or Punitive Order or Disposition
211k2682 k. In general. Most Cited Cases
(Formerly 211k230.1)

Infants 211 ⚿2714

211 Infants
211XV Juvenile Justice
211XV(G) Disposition
211XV(G)3 Disposition Proceedings
211k2714 k. Judgment or order; conclusiveness, operation, and effect. Most Cited Cases
(Formerly 211k230.1)

Notwithstanding the juvenile court's continuing jurisdiction over a ward, commitment to the Youth Authority removes the ward from the direct supervision of the juvenile court.

[2] Infants 211 ⚿2692(1)

211 Infants
211XV Juvenile Justice
211XV(G) Disposition
211XV(G)2 Particular Dispositions
211k2688 Probation or Suspension of Sentence
211k2692 Conditions
211k2692(1) k. In general. Most Cited Cases
(Formerly 211k225)

Juvenile court's imposition of discretionary conditions of probation was an impermissible attempt to regulate or supervise minor's rehabilitation, a function solely in the hands of California Youth Authority (**CYA**) after the minor's commitment.

****903 *514** Brendon Ishikawa, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Robert R. Anderson, Senior Assistant Attorney General, Harry Joseph Colombo, Supervising Deputy Attorney General, Charles Fennessey, Deputy Attorney General, for Plaintiff and Respondent.

RAYE, J.

Following a contested jurisdictional hearing, the juvenile court found that Allen N., a minor and ward of the court based upon previously sustained petitions, committed felony assault (Pen.Code, § 245, subd. (a)(1)) and great bodily injury during the commission of that offense (Pen.Code, § 12022.7).[FN1]

84 Cal.App.4th 513, 100 Cal.Rptr.2d 902, 00 Cal. Daily Op. Serv. 8757, 2000 Daily Journal D.A.R. 11,565
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FN1. The minor had the following previously sustained petitions: April 3, 1997—unlawful taking of a vehicle (Veh.Code, § 10851, subd. (a)), threatening a public officer (Pen.Code, § 71); July 18, 1997—unlawful taking of a vehicle (Veh.Code, § 10851, subd. (a)); June 26, 1998—falsely identifying himself to a peace officer (Pen.Code, § 148.9, subd. (a)); and December 11, 1998—assault by means of force likely to produce great bodily injury (Pen.Code, § 245, subd. (a)(1)).

The minor was committed to the California Youth Authority (**CYA**) for a maximum confinement period of 8 years and 10 months. The juvenile court then imposed the following probationary conditions: "You are not to have any contact or communication with Ronnie Obey, or Shawna Williams, or their families. ¶ And the prior orders of the Court, including your non-association with Augustine Ribota, your requirement that you participate in anger control management counseling, and that you not associate with individuals known to be members of gangs, and that you not wear or display ***515** any gang-related clothing, or emblems, or paraphernalia, those orders remain in effect." FN2

FN2. The juvenile court also imposed a restitution fine and restitution to the victim in an amount to be determined. The minor is not challenging these statutorily required orders. (See Welf. & Inst.Code, § 730.6.)

On appeal, the minor contends the juvenile court erred in imposing the conditions of probation because it had committed him to **CYA**. The People urge that the probationary conditions were proper since the juvenile court does not lose jurisdiction over the minor after the commitment and that the conditions were in the minor's best interest. In so arguing, the People fail to recognize the distinction between the juvenile court's jurisdiction and its supervisory power. We shall strike the challenged conditions.

"Under section 602 any person who is under the age of 18 when he or she commits a criminal offense is within the jurisdiction of the juvenile court. Once an individual is adjudged a ward of the juvenile court that court may retain jurisdiction over the ward until he or she attains the age of 21 or 25 depending upon the nature of the offense. ([Welfare & Inst. Code] § 607.)" FN3 (*Joey W. v. Superior Court* (1992) 7 Cal.App.4th 1167, 1172, 9 Cal.Rptr.2d 486.) Sections 778 and 779 permit the juvenile court to change, modify or set aside a commitment to the Youth Authority.

FN3. All further undesignated section references are to the Welfare and Institutions Code.

[1] Notwithstanding the juvenile court's continuing jurisdiction over a ward, "[c]ommitment to the Youth Authority in particular, brings about a drastic change in the status of the ward which not only has penal overtones, including institutional confinement with adult offenders, but also removes the ward from the *direct supervision**904* of the juvenile court." (*In re Arthur N.* (1976) 16 Cal.3d 226, 237–238, 127 Cal.Rptr. 641, 545 P.2d 1345, italics added, fns. omitted.)

In *In re Owen E.* (1979) 23 Cal.3d 398, 154 Cal.Rptr. 204, 592 P.2d 720, the court had occasion to address the interplay between **CYA** and the juvenile court over a ward after the juvenile court committed the ward to **CYA**. Two years after the commitment, the ward applied for, but was denied, parole. The ward's mother then petitioned the juvenile court to vacate his commitment (§ 778). The juvenile court, concluding the ward's rehabilitative needs would best be satisfied if he were released from custody, set aside its original commitment order and placed the minor on probation. (*Id.* at pp. 400–401, 154 Cal.Rptr. 204, 592 P.2d 720.)

On appeal by the director of **CYA**, the California Supreme Court reversed the juvenile court's order. In doing so the court first compared the proceedings in juvenile court to those of adult court: "In the related field of ***516** jurisdiction to determine the rehabilitative needs of persons convicted of crimes, we have concluded the Adult Authority had the exclusive power to determine questions of rehabilitation. 'If ... the court were empowered ... to recall the sentence and grant probation if the court found that the defendant had become rehabilitated after his incarceration, there manifestly would be two bodies (one judicial and one administrative) determining the matter of rehabilitation, and it is unreasonable to believe that the Legislature intended such a result.' (*Holder v.*

Superior Court (1970) 1 Cal.3d 779, 782, 83 Cal.Rptr. 353, 463 P.2d 705; see also *Alanis v. Superior Court* (1970) 1 Cal.3d 784, 786–787, 83 Cal.Rptr. 355, 463 P.2d 707.) While different statutes—even different codes—regulate the division of responsibility between the concerned administrative agency and court, it appears to be as unreasonable to assume the Legislature intended that both the juvenile court and **CYA** are to regulate juvenile rehabilitation as it is to assume that both the superior court and Adult Authority are to regulate criminal rehabilitation." (*In re Owen E., supra,* 23 Cal.3d at pp. 404–405, 154 Cal.Rptr. 204, 592 P.2d 720, parallel citations omitted.) [FN4]

> FN4. *In re Owen E.* went on to hold that while the juvenile court retained jurisdiction over a ward to change, modify, or set aside any of its previous orders, the court was authorized to intervene only where it appeared that "**CYA** has failed to comply with law or has abused its discretion in dealing with a ward in its custody." (23 Cal.3d at p. 406, 154 Cal.Rptr. 204, 592 P.2d 720.)

[2] Here, the juvenile court's imposition of discretionary conditions of probation constitutes an attempt to regulate or supervise the minor's rehabilitation, a function solely in the hands of **CYA** after the minor's commitment. Nor is it of any import, as suggested by the People, that similar parole conditions may be imposed by **CYA** or that there is not yet a conflict between the conditions imposed by the court and **CYA**. Simply put, the imposition of probationary conditions constitutes an impermissible attempt by the juvenile court to be a secondary body governing the minor's rehabilitation.

DISPOSITION

The conditions of probation imposed by the court and set forth herein in the second paragraph of this opinion are stricken. In all other respects, the judgment (order committing the minor to **CYA**) is affirmed. The juvenile court is to amend its records accordingly and to forward copies of all such pertinent documents to the Director of **CYA**.

SIMS, Acting P.J., and MORRISON, J., concur.

Cal.App. 3 Dist.,2000.
In re Allen N.

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84 Cal.App.4th 513, 100 Cal.Rptr.2d 902, 00 Cal. Daily Op. Serv. 8757, 2000 Daily Journal D.A.R. 11,565
(Cite as: 84 Cal.App.4th 513)

In re ALLEN N., a Person Coming Under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent,
v.
ALLEN N., Defendant and Appellant.

No. C032402.

Court of Appeal, Third District, California.
Oct. 30, 2000.

SUMMARY

The juvenile court found that a minor committed felony assault (Pen. Code, § 245, subd. (a)(1)) and inflicted great bodily injury during the commission of that offense (Pen. Code, § 12022.7). The court committed the minor to the California Youth Authority (CYA) and imposed conditions of probation, including prohibitions against association with certain persons and gang members and mandatory anger management counseling. (Superior Court of Sacramento County, No. JV98681, Harold Craig Manson, Judge.)

The Court of Appeal struck the conditions of probation and affirmed the judgment in all other respects. The court held that the juvenile court erred in imposing probation conditions, since regulation and supervision of a minor's rehabilitation are solely in the hands of CYA following commitment. The juvenile court is authorized to intervene following CYA commitment only when it appears the CYA has failed to comply with law or abused its discretion. (Opinion by Raye, J., with Sims, Acting P. J., and Morrison, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Delinquent, Dependent, and Neglected Children § 111--Delinquent Children--Disposition--Commitment to Youth Authority--Imposition of Probation Conditions.

The juvenile court erred in imposing conditions of probation, including prohibitions against association with certain persons and gang members and mandatory anger management counseling, upon a minor committed to the California Youth Authority (CYA) upon findings that he committed felony assault with infliction of great bodily injury. Regulation and supervision of a minor's rehabilitation are solely in the hands of CYA following commitment, which removes the minor from the direct supervision of the juvenile court. The juvenile court is authorized to intervene following CYA commitment only when it appears the CYA has failed to comply with law or abused its discretion.

[See 10 Witkin, Summary of Cal. Law (9th ed. 1989) Parent and Child, § 816 et seq.]

COUNSEL

Brendon Ishikawa, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Robert R. Anderson, Assistant Attorney General, Harry Joseph Colombo and Charles Fennessey, Deputy Attorneys General, for Plaintiff and Respondent.

RAYE, J.

Following a contested jurisdictional hearing, the juvenile court found that Allen N., a minor and ward of the court based upon previously sustained petitions, committed felony assault (Pen. Code, § 245, subd. (a)(1)) and great bodily injury during the commission of that offense (Pen. Code, § 12022.7). [FN1]

> FN1 The minor had the following previously sustained petitions: April 3, 1997-unlawful taking of a vehicle (Veh. Code, § 10851, subd. (a)), threatening a public officer (Pen. Code, § 71); July 18, 1997-unlawful taking of a vehicle (Veh. Code, § 10851, subd. (a)); June 26, 1998-falsely identifying himself to a peace officer (Pen. Code, § 148.9, subd. (a)); and December 11, 1998-assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)).

The minor was committed to the California Youth Authority (CYA) for a maximum confinement period of 8 years and 10 months. The juvenile court then imposed the following probationary conditions: “You are not to have any contact or communication with Ronnie Obey, or Shawna Williams, or their families. ¶

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And the prior orders of the Court, including your non-association with Augustine Ribota, your requirement that you participate in anger control management counseling, and that you not associate with individuals known to be members of gangs, and that you not wear or display ***515** any gang-related clothing, or emblems, or paraphernalia, those orders remain in effect." [FN2]

> FN2 The juvenile court also imposed a restitution fine and restitution to the victim in an amount to be determined. The minor is not challenging these statutorily required orders. (See Welf. & Inst. Code, § 730.6.)

(1) On appeal, the minor contends the juvenile court erred in imposing the conditions of probation because it had committed him to CYA. The People urge that the probationary conditions were proper since the juvenile court does not lose jurisdiction over the minor after the commitment and that the conditions were in the minor's best interest. In so arguing, the People fail to recognize the distinction between the juvenile court's jurisdiction and its supervisory power. We shall strike the challenged conditions.

"Under section 602 any person who is under the age of 18 when he or she commits a criminal offense is within the jurisdiction of the juvenile court. Once an individual is adjudged a ward of the juvenile court that court may retain jurisdiction over the ward until he or she attains the age of 21 or 25 depending upon the nature of the offense. ([Welf. & Inst. Code] § 607.)" [FN3] (*Joey W. v. Superior Court* (1992) 7 Cal.App.4th 1167, 1172 [9 Cal.Rptr.2d 486].) Sections 778 and 779 permit the juvenile court to change, modify or set aside a commitment to CYA.

> FN3 All further undesignated section references are to the Welfare and Institutions Code.

Notwithstanding the juvenile court's continuing jurisdiction over a ward, "[c]ommitment to the Youth Authority in particular, brings about a drastic change in the status of the ward which not only has penal overtones, including institutional confinement with adult offenders, but also removes the ward from the *direct supervision* of the juvenile court." (*In re Arthur N.* (1976) 16 Cal.3d 226, 237-238 [127 Cal.Rptr. 641, 545 P.2d 1345], italics added, fns. omitted.)

In *In re Owen E.* (1979) 23 Cal.3d 398 [154 Cal.Rptr. 204, 592 P.2d 720], the court had occasion to address the interplay between CYA and the juvenile court over a ward after the juvenile court committed the ward to CYA. Two years after the commitment, the ward applied for, but was denied, parole. The ward's mother then petitioned the juvenile court to vacate his commitment (§ 778). The juvenile court, concluding the ward's rehabilitative needs would best be satisfied if he were released from custody, set aside its original commitment order and placed the minor on probation. (23 Cal.3d at pp. 400-401.)

On appeal by the Director of CYA, the California Supreme Court reversed the juvenile court's order. In doing so the court first compared the proceedings in juvenile court to those of adult court: "In the related field of ***516** jurisdiction to determine the rehabilitative needs of persons convicted of crimes, we have concluded the Adult Authority had the exclusive power to determine questions of rehabilitation. 'If ... the court were empowered ... to recall the sentence and grant probation if the court found that the defendant had become rehabilitated after his incarceration, there manifestly would be two bodies (one judicial and one administrative) determining the matter of rehabilitation, and it is unreasonable to believe that the Legislature intended such a result.' (*Holder v. Superior Court* (1970) 1 Cal.3d 779, 782 [83 Cal.Rptr. 353, 463 P.2d 705]; see also *Alanis v. Superior Court* (1970) 1 Cal.3d 784, 786-787 [83 Cal.Rptr. 355, 463 P.2d 707].) While different statutes-even different codes-regulate the division of responsibility between the concerned administrative agency and court, it appears to be as unreasonable to assume the Legislature intended that both the juvenile court and CYA are to regulate juvenile rehabilitation as it is to assume that both the superior court and Adult Authority are to regulate criminal rehabilitation." (*In re Owen E., supra,* 23 Cal.3d at pp. 404-405.) [FN4]

> FN4 *In re Owen E.* went on to hold that while the juvenile court retained jurisdiction over a ward to change, modify, or set aside any of its previous orders, the court was authorized to intervene only where it appeared that "CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody." (23 Cal.3d at p. 406.)

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(Cite as: 84 Cal.App.4th 513)

Here, the juvenile court's imposition of discretionary conditions of probation constitutes an attempt to regulate or supervise the minor's rehabilitation, a function solely in the hands of CYA after the minor's commitment. Nor is it of any import, as suggested by the People, that similar parole conditions may be imposed by CYA or that there is not yet a conflict between the conditions imposed by the court and CYA. Simply put, the imposition of probationary conditions constitutes an impermissible attempt by the juvenile court to be a secondary body governing the minor's rehabilitation.

Disposition

The conditions of probation imposed by the court and set forth herein in the second paragraph of this opinion are stricken. In all other respects, the judgment (order committing the minor to CYA) is affirmed. The juvenile court is to amend its records accordingly and to forward copies of all such pertinent documents to the Director of CYA.

Sims, Acting P. J., and Morrison, J., concurred. ***517**

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In re Allen N.
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In re ALINE D., a Person Coming Under the Juvenile Court Law. KENNETH E. KIRKPATRICK, as Chief Probation Officer, etc., Plaintiff and Respondent,
v.
ALINE D., Defendant and Appellant

Crim. No. 18130.

Supreme Court of California
June 5, 1975.

SUMMARY

After a ward of the juvenile court had been placed with unsuccessful results in various local treatment facilities, she was committed to the Youth Authority. (Superior Court of Los Angeles County, No. 429615 Juvenile, David V. Kenyon and Thomas Wilfred LeSage, Judges.)

On the ward's appeal, the Supreme Court reversed the order of commitment. Preliminarily, the court noted that Welf. & Inst. Code, § 734, provides that no ward of the juvenile court shall be committed to the to the Youth Authority unless the judge is fully satisfied that the ward will probably be benefited thereby. Then, from its review of the record, the Supreme Court concluded that the juvenile court's referee had, in fact, disclosed a substantial dissatisfaction with the prospect of commitment to the authority and had ordered the commitment for the sole reason that suitable alternatives did not exist. It was held that such noncompliance with the statute constituted reversible error. Finally, the reviewing court declared that the unavailability of suitable alternatives, standing alone, does not justify the commitment of a nondelinquent or marginally delinquent minor to an institution primarily designed for the incarceration and discipline of serious offenders.

In Bank. (Opinion by Richardson, J., with Wright, C. J., Tobriner, Mosk and Sullivan, JJ., concurring. Separate dissenting opinion by Clark, J., with McComb, J., concurring.) ***558**

HEADNOTES
Classified to California Digest of Official Reports

(1) Delinquent, Dependent and Neglected Children § 3--Purpose of Juvenile Court Law.

The Juvenile Court Law is to be liberally construed to carry out its purposes as expressed in Welf. & Inst. Code, § 502.

(2) Delinquent, Dependent and Neglected Children § 36--Commitment to Youth Authority.

In the light of Welf. & Inst. Code, § 734, providing that no ward of the juvenile court shall be committed to the Youth Authority unless the judge is fully satisfied that the ward will probably be benefited thereby, it was reversible error to commit such a ward to the authority, where it appeared that the juvenile court's referee had expressed a substantial dissatisfaction with the prospect of commitment to the authority, and had ordered the commitment for the sole reason that suitable alternatives did not exist.

(3) Delinquent, Dependent and Neglected Children § 35--Youth Correction.

Juvenile commitment proceedings are designed for the purpose of rehabilitation and treatment, not punishment.

(4) Delinquent, Dependent and Neglected Children § 6--Care and Custody-- Propriety of Commitment.

The unavailability of suitable alternatives, standing alone, does not justify the commitment of a nondelinquent or marginally delinquent minor to an institution primarily designed for the incarceration and discipline of serious offenders.
[See **Cal.Jur.2d,** Delinquent, Dependent, and Neglected Children, § 23; **Am.Jur.2d,** Juvenile Courts and Delinquent and Dependent Children, § 32.]

COUNSEL

Richard S. Buckley, Public Defender, John J. Gibbons, George H. Meyerhoff and Laurance S. Smith, Deputy Public Defenders, for Defendant and Appellant. ***559**

Laurence R. Sperber, Paul N. Halvonik and J. Anthony Kline as Amici Curiae on behalf of Defendant and Appellant.

Evelle J. Younger, Attorney General, Jack R. Winkler,

Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, Howard J. Schwab and Beverly K. Falk, Deputy Attorneys General, for Plaintiff and Respondent.

RICHARDSON, J.

We consider the question whether a minor who has previously been adjudicated a ward of the juvenile court and then placed, with unsuccessful results, in various local treatment facilities, may thereafter be committed to the California Youth Authority ("CYA") despite the expressed doubt of the court, acting through its referee, that she would benefit from such a commitment. The record before us reflects that the referee ordered the CYA commitment solely because there appeared to be no other available placement facility. We have concluded that, under the existing statutory scheme, and particularly Welfare and Institutions Code section 734, the commitment was improper and, accordingly, that the cause should be remanded to the juvenile court for reconsideration.

We recite pertinent portions of the troubled history of the minor, Aline D. At the time of her commitment to CYA, she was 16, her father was absent from the family home and her mother had rejected her. She had an I.Q. of 67 and a behavioral history of assaultive conduct and association with juvenile gangs. She was originally placed in a family treatment program at juvenile hall, for reasons not specified in the record. This placement continued from February 23, 1972, to May 1, 1972, and, according to a probation report, was "singularly unsuccessful." Thereafter, she was released to the care of her mother but, one week later, ran away from home. An attempt was made to place her in a probation department community day-care program, but her limited intellectual potential disqualified her. On September 25, 1972, Aline was placed at the McKinnon Girls Home in Los Angeles, but soon thereafter the Home reported that she was having "problems with stealing, shoplifting, ... refusal to attend school," and was participating in a juvenile gang. Her placement with the Home terminated a few weeks ***560** later when she was arrested following an incident at a high school campus. Aline was returned to juvenile court on allegations that she had violated Education Code section 13560 (wilful insult and abuse of teacher) and Penal Code section 653g (unlawful loitering about a school). Following a hearing, the first charge was sustained and, on November 10, 1972, Aline's wardship was continued and "suitable placement" ordered for her.

Thereafter, on November 20, 1972, Aline was placed at the Penny Lane residential school in Los Angeles where she remained for 10 days after which time her placement was terminated for various reasons, including her use of marijuana, bullying of associates, and membership in a juvenile gang.

On December 14, 1972, Aline was placed at the Detroit Arms Home, where she remained until January 10, 1973. Her placement there was terminated as a result of her "active association" with the gang. A probation report, describing the circumstances of her association with the gang, reported that Aline let in eight or nine boy members of the gang who thereafter took three or four girls and left for two days, causing considerable difficulties.

Aline was returned to juvenile hall, pending further efforts to place her. A report of the foregoing placement efforts summarizes as follows: "Since this current detention on January 10, 1973 all efforts to place minor have met with defeat. Placements are not willing to handle the kinds of behavior minor has displayed in former placements." The responsible placement coordinator indicated that Los Angeles County has had no facilities capable of coping with the minor other than the Las Palmas Girls School.

On February 13, 1973, Las Palmas rejected Aline as unsuitable, because of her record of "assaultive behavior." The Las Palmas officials by letter recommended a commitment to CYA "where she would have the structure she obviously needs and also vocational training." On March 1, 1973, the probation officer filed a supplemental petition in juvenile court, alleging that Aline is not acceptable for placement in Los Angeles County institutions or facilities. ***561**

On May 21, 1973, a hearing was held before a juvenile court referee. The referee heard testimony from Mrs. Holt, a probation officer, and considered the contents of her placement report as well as letters and evaluations from psychiatrists regarding Aline's situation. The officer described her investigation of all conceivable placements available to Aline, including her mother and potential foster parents. The investigation included seven different facilities. Each placement was found unsuitable for Aline, although Mrs. Holt learned that Penny Lane eventually planned

to establish a "closed setting for girls." According to Mrs. Holt, Aline, as a "severely delinquent young girl," requires a "closed facility" (by which is meant one with locked doors and limited visitation privileges), similar to county camps available for the placement of delinquent boys. If Aline were male, rather than female, Mrs. Holt would have recommended a camp community placement rather than CYA.

The reports of two psychiatrists and a clinical psychologist were before the court but have not been filed with us. The record does, however, contain their recommendations that Aline not be committed to CYA. One psychiatrist stated his opinion that Aline is not truly delinquent and that involvement with more delinquent and criminally oriented youths may adversely influence her. Near the conclusion of the hearing, the referee noted his lack of options. He observed that Aline could not simply be left in juvenile hall, as that facility serves only as a temporary detention facility. He explained his reluctance to order the proceedings dismissed, for Aline's mother had refused to accept her, and Aline would be back "on the streets." He agreed with Aline's counsel that it would be "very unwise to commit this minor to the California Youth Authority for the sole reason that it does not seem that there is anything else." Moreover, the referee acknowledged that "The fact remains, nevertheless, that all agree, including two psychiatrists, a clinical psychologist, Mrs. Holt, *all agree that she's not an appropriate subject for commitment to the youth authority, but that it is being done only because that seems to be the only recourse*." (Italics added.)

After suspending the hearing temporarily to determine whether Aline might be eligible for placement by the Department of Public Social Services, and after learning that such placement would be refused, the referee concluded that he must order Aline committed to CYA, since "... the only other alternative that seems available to me now would be to ***562** dismiss this case and turn this lady out in the street, and I'm not going to do that." Counsel's motion to dismiss the proceedings, and for a rehearing, were denied, and Aline was ordered committed to CYA. Aline appeals.

Although the referee, following the hearing, signed a written form which contained a printed "finding" to the effect that the ward probably would benefit from a CYA commitment, our review of the record, summarized above, leads us to conclude that the referee ordered Aline committed to CYA solely because there appeared to be no other suitable placement for her. The motivation of the referee appears in his conclusion that "it seems that we are powerless" to avoid a CYA commitment. As we will develop below the provisions of the Juvenile Court Law do not permit a CYA commitment under such circumstances.

Preliminarily, we note the provisions of Welfare and Institutions Code section 502, which express in broad terms the general purposes of the Juvenile Court Law. These are to "secure for each minor ... such care and guidance, preferably in his own home, as will serve the ... welfare of the minor and the best interests of the State; ... and when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents." (1) The Juvenile Court Law is to be liberally construed to carry out the foregoing purposes.

In specific amplification of the foregoing purposes and with particular reference to the matter before us, section 734 of the Welfare and Institutions Code provides that "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is *fully satisfied* that the mental and physical condition and qualifications of the ward are such as to render it *probable that he will be benefited* by the reformatory educational discipline or other treatment provided by the Youth Authority." (Italics added.)

(2) The foregoing language makes it clear that a CYA commitment may not be made for the sole reason that suitable alternatives do not exist. Instead, the court must be "fully satisfied" that a CYA commitment probably will benefit the minor. In the instant case, the referee's in-court statements, far from indicating that he was "fully satisfied," disclosed instead a substantial *dissatisfaction* with a CYA commitment. ***563** The requirements of section 734 not having been met, the commitment order must be reversed.

The rationale underlying section 734 becomes clear upon consideration of certain other sections of the Juvenile Court Law pertaining to the disposition of juvenile court wards. A review of these sections discloses a carefully conceived pattern affording the juvenile court a wide variety of choices at the dispo-

sitional phase of juvenile proceedings. Thus, a minor adjudged a "dependent child" under section 600 as one needing parental care and control or being destitute, or mentally or physically deficient, or whose home is unfit, may, under section 727, be placed in the care of (a) some reputable person of good moral character, (b) some association organized to care for such minors, (c) the probation officer for purposes of placement, or (d) any other public agency organized to provide care for needy or neglected children.

If the child is adjudged a ward of the court under section 601 because he refuses parental authority, or is beyond parental control, or is a truant or in danger of leading an immoral life, "... the court may order any of the types of treatment referred to in Section 727, and as an additional alternative, may commit the minor to a juvenile home, ranch, camp or forestry camp. If there is no county juvenile home, ranch, camp or forestry camp within the county, the court may commit the minor to the county juvenile hall. ... Such ward may be committed to the Youth Authority only upon a proceeding for the modification of an order of the court conducted pursuant to the provisions of Section 777 [requiring the filing of a supplemental petition in order to change placement to CYA]." (*Id*., § 730.)

Finally, when a minor is adjudged a ward of the court under section 602, i.e., the minor has committed a criminal offense or having been adjudged a ward under section 601 fails to obey an order of the juvenile court, "... the court may order any of the types of treatment referred to in Sections 727 and 730, and as an additional alternative, may commit the minor to the Youth Authority."

We may assume that Aline's wardship presently derives from a finding, under section 602, that she had either committed a criminal offense or had failed to obey an order of the juvenile court, by reason of a *nunc pro tunc* order to that effect entered on June 27, 1973. In any event, Aline's counsel does not suggest otherwise. ***564**

Under section 732, "Before a minor is conveyed to any state or county institution pursuant to this article, it shall be ascertained from the superintendent thereof that the person can be received." Likewise section 1736 provides in part that CYA "may in its discretion accept such [juvenile court] commitments." While sections 732 and 1736 suggest that CYA is vested with a measure of discretion to accept or reject juvenile court commitments, section 736, subdivision (a), indicates that such discretion is a limited one. Section 736, subdivision (a), provides that "The Youth Authority *shall* accept a person committed to it pursuant to this article if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide such care. ..." (Italics added; see also *Bryan* v. *Superior Court*, 7 Cal.3d 575, 584-586 [102 Cal.Rptr. 831, 498 P.2d 1079], regarding the CYA's rejection criteria.)

As properly observed by Justice Kingsley in the opinion by the Court of Appeal in this case, "The statutory scheme ... as now embodied in sections 730 et seq. of the Welfare and Institutions Code, contemplates a progressively restrictive and punitive series of disposition orders in cases such as that now before us - namely, home placement under supervision, foster home placement, placement in a local treatment facility and, as a last resort, Youth Authority placement."

As is evident from the applicable statutes, "Commitments to the California Youth Authority are made only in the most serious cases and only after all else has failed." (Thompson, Cal. Juvenile Court Deskbook, § 9.15, p. 123.) This concept is well established and has been expressed by the CYA itself. In light of the general purposes of juvenile commitments expressed in Welfare and Institutions Code section 502, discussed above, "... commitment to the Youth Authority is generally viewed as *the final treatment resource* available to the juvenile court and which least meets the description in the above provision [§ 502]. Within the Youth Authority system, there is gathered from throughout the State the most severely delinquent youths which have exhausted local programs." (Italics added; California Youth Authority, Criteria and Procedure for Referral of Juvenile Court Cases to the Youth Authority (1971) p. 1.)

We find of some significance the expressed guidelines and criteria prepared by the CYA itself in the above referenced publication which juvenile courts may use in CYA referrals. The "Criteria" lists (at p. 2) several "inappropriate cases" for commitment, including (1) *youths who* ****565*** *are dependent or primarily placement problems* - "For these youths in need of a home and peer acceptance, as well as accepting adults, life in an institution might be totally

fulfilling, resulting in an orientation to an institutional existence"; (2) *unsophisticated, mildly delinquent youths*, "for whom commingling with serious delinquents who make up the bulk of the Youth Authority population might result in a negative learning experience and serious loss of self-esteem"; and (3) *mentally retarded or mentally disturbed youths*, "for whom the probable benefits of treatment within the mental health system exceed those of programs within the Youth Authority. The Youth Authority has no programs for the mentally retarded nor psychiatric treatment programs for the mentally ill." The foregoing classifications in combination approach a behavioral profile of Aline, for in addition to her dependency and placement problems and delinquency, the record suggests that she is "borderline" mentally retarded.

Furthermore, statistics compiled by CYA indicate that at Ventura School for Girls (the only suitable CYA institution for Aline), Aline would be placed in the company of girls who had committed serious criminal offenses, including 16 homicides, 31 robberies and 38 assaults. (Department of the Youth Authority, Characteristics of California Youth Authority Wards (1974) Table 1E, p. 7.) According to the CYA's 1973 annual report, 85 percent of all youths committed to CYA had three or more delinquency "contacts," and 35 percent had eight or more such contacts. (Department of the Youth Authority, 1973 Annual Report, p. 11.)

In sum, the record before the juvenile court discloses that CYA may not be a suitable placement facility for Aline, and that the referee himself, acting for the juvenile court, entertained very substantial doubt in the matter. The record does not disclose that the court was, in the language of the statute, "fully satisfied that the ... condition and qualifications of the ward are such as to render it probable that he will be benefitted" by the discipline or treatment available at CYA.

In order to assist the juvenile court in its reconsideration of the cause, we note a few possible alternative dispositions. Our suggestions should not be considered exhaustive of the possibilities, and the court should explore, of course, any other placement opportunities which the parties or the probation officer may suggest. ***566**

First, although the record indicates that Aline was ineligible for placement at various institutions within Los Angeles County, it is not clear whether the placement officer or the court considered the possibility of placing Aline at a juvenile home, ranch or camp in another county. Section 888 of the Welfare and Institutions Code provides in pertinent part that, "Any county establishing such juvenile home, ranch, or camp under the provisions of this article [to place §§ 601 or 602 wards] may, by mutual agreement, accept children committed to such home, ranch, or camp by the juvenile court of another county in the State and the State shall reimburse the county maintaining the home, ranch, or camp to the amount of one-half the administrative cost of maintaining each child so committed. ..."

Second, reference was made at the May 1973 hearing to the anticipated establishment of closed facilities at the Penny Lane school where Aline had once been placed. Mrs. Holt seemed to believe that such closed facilities might be a suitable placement for Aline.

Third, testimony at Aline's hearing described facilities in Los Angeles County for *boys* of the type appropriate for minors such as Aline. Although appearing to be the least promising alternative, conceivably some arrangement could be made to provide care and treatment for Aline at these facilities under some segregated arrangement.

Fourth, the record indicates that Aline may be a "borderline" mentally retarded child. Under Welfare and Institutions Code section 6550 et seq. provision is made for the commitment to state hospital of juvenile court wards found (following evaluation and report) to be mentally retarded or mentally disordered. (See also § 6512.)

Finally, if on reconsideration the court determines that no appropriate alternative placement exists, but also finds that Aline probably would benefit from a CYA commitment under present circumstances, the court could consider the possibility of a temporary 90-day CYA commitment for purposes of observation and diagnosis, with provision for a report by the director of CYA concerning Aline's amenability to treatment. (See Welf. & Inst. Code, § 704.) If the report indicates that Aline would not benefit from the treatment she would receive at CYA, and if no ap-

propriate alternative placement exists at that time, then the proceedings should be dismissed. (Welf. & Inst. Code, § 782.) ***567**

(3) Juvenile commitment proceedings are designed for the purposes of rehabilitation and treatment, not punishment. (See *In re J. L. P.*, 25 Cal.App.3d 86, 89 [100 Cal.Rptr. 601]; Welf. & Inst. Code, § 502.) We fully recognize that in some cases, as in that before us, the question of appropriate placement poses to the appropriate officials seemingly insurmountable difficulties. Budgetary limitations, varying from county to county, may well preclude the maintenance of those specialized facilities otherwise necessary to provide the minor with optimum care and treatment. Even if such facilities exist, the minor's past conduct may itself require his or her exclusion therefrom. Nevertheless, under the present statutory scheme, supported by sound policy considerations, a commitment to CYA must be supported by a determination, based upon substantial evidence in the record, of probable benefit to the minor. (4) The unavailability of suitable alternatives, standing alone, does not justify the commitment of a nondelinquent or marginally delinquent child to an institution primarily designed for the incarceration and discipline of serious offenders.

The order of commitment is reversed and the cause remanded for further proceedings consistent with this opinion.

Wright, C. J., Tobriner, J., Mosk, J., and Sullivan, J., concurred.

CLARK, J.

I dissent.

Welfare and Institutions Code section 734 precludes neither a judge's expression of sorrow when required to commit a juvenile ward to the California Youth Authority, nor his expression of regret when less restrictive alternatives are unobtainable. Instead, section 734 only requires that the juvenile court find CYA commitment to be the most beneficial disposition available. The record reveals this statutory requirement has been more than satisfied.

Aline's history of delinquency includes shoplifting, theft, smoking marijuana and assaulting a grandmother. Her behavior has frequently been characterized as "assaultive," leading her probation officer to describe her as "a severely delinquent young girl ... in terms of being a public menace."

Exhaustive efforts - all unsuccessful - were made to place Aline within the community. The first placement, in a family treatment program, was ***568** regarded as "singularly unsuccessful" [FN1] and terminated after two months. Admission in a community day care program was then denied the ward due to her low intelligence. McKinnon Girls Home released Aline in two weeks because of "problems with stealing, shoplifting, bedwetting, refusal to attend school" and the claim she was a leader of a local street gang, the Cripts.

FN1 Unless otherwise noted, the remarks in quotations are derived from the record.

Aline's fourth placement, at Penny Lane School, lasted only 10 days because she "[s]moked grass at a concert - is muscle of the resistive kids - threatens weaker girls - girls are terrified as she leans on being a member of the Cript gang. About five Cript boys came to Penny Lane to see her - 'freaked out' staff as one got into the house." Her fifth disposition, at the Detroit Arms, was terminated when Aline "let in eight or nine Cripts in the placement who took three or four girls and split for two days."

At this point the Los Angeles County placement coordinator concluded the county had no facility capable of coping with Aline, "other than possibly Las Palmas Girls School." However, Las Palmas declined to enroll the ward, concluding her assaultive behavior, low intelligence level and nonacceptance of responsibility revealed Aline "could not benefit from either our school or group therapy[,] the two main aspects of our program." Las Palmas recommended she be committed to the CYA "where she could have the structure she obviously needs and also vocational training."

Before Aline's commitment to the Youth Authority *seven* additional placement alternatives were investigated, all proving unsatisfactory. The commitment hearing itself was recessed to give the probation officer time to explore placement with the Department of Public Social Services. However, like previous efforts, this proved fruitless.

The record clearly reveals that all parties at the

hearing - including Aline's counsel - agreed that every conceivable placement alternative had been exhausted, the only remaining disposition being to either completely dismiss Aline's wardship or to commit her to the CYA. [FN2] Since Aline's mother has refused to accept her back into the home, dismissal would place this child in the streets and under the influence of ***569** her gang. In these circumstances, release would provide Aline nothing but the opportunity to qualify more fully for CYA commitment - hardly a course of action to be recommended to the juvenile court system.

> FN2 From the juvenile court hearing to the present time, neither appellant nor the majority has specified any county facility suitable for Aline. Their contention that such a placement alternative *perhaps* exists is of no help to the lower court.

In contrast, CYA commitment offers Aline foreseeable benefit through treatment and training. The authority is empowered "to make use of law enforcement, detention, probation, parole, medical, educational, correctional, segregative and other facilities, institutions and agencies, whether public or private, within the State." (Welf. & Inst. Code, § 1753.) Its director is authorized to "enter into agreements with the appropriate public officials for separate care and special treatment in existing institutions for persons subject to the control of the Authority." (Welf. & Inst. Code, § 1753.) Finally, it can even train its own specialists. (Welf. & Inst. Code, § 1752.6.) Far from being a single "placement facility," [FN3] the CYA is an *administration* comprised of *many* facilities, capable of providing individualized treatment where necessary.

> FN3 *Ante*, p. 565.

> Similarly, the majority's description of the authority as "punitive" is misconceived. California juvenile law has specifically rejected the concept of punishment: "The purpose of [the chapter establishing the CYA] is to protect society more effectively by substituting for retributive punishment methods of training and treatment ...." (Welf. & Inst. Code, § 1700.) "Care and guidance" are the fundamental principles around which the juvenile justice system is fashioned. (Welf. & Inst. Code, § 502.) Treatment is not punitive even though the ward's mobility is curtailed. (Cf. *In re De La O* (1963) 59 Cal.2d 128 [28 Cal.Rptr. 489, 378 P.2d 793, 98 A.L.R.2d 705].)

The propriety of a CYA commitment under these circumstances cannot be negated by a juvenile court judge's expression of concern and regret. Such expression is not uncommon and should be commended - not masked by judicial indifference. Aline and her unfortunate circumstances understandably frustrated the judge. But while he no doubt was sorry that the ward's misconduct was sufficiently serious to "force the system to the wall," his statements were intended to make Aline realize that, in ordering commitment, he was doing only what her circumstances and conduct compelled. Such communication increases the minor's understanding for the system, improving his or her chance for rehabilitation and accountability to society.

Moreover, although the juvenile court judge commonly fears commitment may prove counterproductive, such fear is not prohibited by section 734. The code only requires the court's satisfaction that the conditions and qualifications of the ward "render it *probable* that he will ***570** be benefited" by commitment. [FN4] (Italics added.) It is unreasonable to interpret this section to require full satisfaction that successful treatment will not be jeopardized by adverse influences.

> FN4 The judge here entered a *written finding* specifically stating that commitment to the CYA would be beneficial to Aline. However, the majority chooses to reject this finding and to reverse this case on the basis of explanatory remarks clearly intended by the juvenile judge to benefit the child.

Finally, the majority's holding will stifle communication between judge and ward, replacing it with the formalism characteristic of the adult criminal trial. This is unfortunate. The closer a juvenile hearing moves toward becoming an adversarial proceeding, the more a child tends to view the law as either his oppressor or his fool - depending on who "wins the contest."

In conclusion, Aline must be characterized as an aggressive, assaultive delinquent who may benefit from CYA training and discipline. Disposition of her

case should not rest on a judge's expression of sorrow or dismay. If it does, we fail both Aline and the juvenile justice system.

I would affirm the judgment of the juvenile court.

McComb, J., concurred.

On July 3, 1975, the opinion was modified to read as printed above. ***571**

Cal.
In re Aline D.
14 Cal.3d 557, 536 P.2d 65, 121 Cal.Rptr. 816

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137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885, 06 Cal. Daily Op. Serv. 2600, 2006 Daily Journal D.A.R. 3654
(Cite as: 137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885)

C

Court of Appeal, First District, Division 3, California.
In re ANTOINE D., a Person Coming Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
Antoine D., Defendant and Appellant.

No. A110521.
March 28, 2006.

Background: Ward of juvenile court who had been committed to the California Youth Authority (CYA) filed a motion to vacate his commitment on the ground that CYA had failed to keep him safe or to provide him with adequate educational and treatment services. State conceded that ward, who was bisexual, had not received adequate education in part because of his removal from school due to safety concerns. The Superior Court, City and County of San Francisco, No. JW006127,Patrick J. Mahoney, J., denied motion on ground that it would lose jurisdiction over ward if the CYA commitment was set aside. Ward appealed.

Holdings: The Court of Appeal, Parrilli, J., held that:
(1) vacating or modifying CYA commitment would not extinguish juvenile court jurisdiction over ward, which jurisdiction extended until he was 25, and
(2) ward's release on parole did not render his appeal moot.

Reversed and remanded.

West Headnotes

[1] Infants 211 2911

211 Infants
211XV Juvenile Justice
211XV(J) Appeal and Review
211k2911 k. Discretion of lower court. Most Cited Cases
(Formerly 211k251)

The appellate court reviews a juvenile court's commitment decision in a juvenile delinquency proceeding for abuse of discretion, indulging all reasonable inferences to support the juvenile court's decision. West's Ann.Cal.Welf. & Inst.Code § 602.

[2] Appeal and Error 30 893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

Issues of statutory interpretation are reviewed de novo on appeal.

[3] Infants 211 2554

211 Infants
211XV Juvenile Justice
211XV(E) Trial and Adjudication
211k2554 k. Jurisdiction and venue. Most Cited Cases
(Formerly 211k196)

Infants 211 2726

211 Infants
211XV Juvenile Justice
211XV(G) Disposition
211XV(G)4 Amendment, Modification, and Revocation
211k2723 Amendment, Modification, or Extension of Punitive Disposition or Probation in General
211k2726 k. Place or conditions of confinement; programs and services. Most Cited Cases
(Formerly 211k230.1)

Infants 211 2772

137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885, 06 Cal. Daily Op. Serv. 2600, 2006 Daily Journal D.A.R. 3654
(Cite as: 137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885)

211 Infants
211XV Juvenile Justice
211XV(G) Disposition
211XV(G)7 Effect of Age, Majority, or Expiration of Sentence or Jurisdiction
211k2772 k. Correctional or punitive disposition. Most Cited Cases
(Formerly 211k230.1)

Infants 211 2806

211 Infants
211XV Juvenile Justice
211XV(H) Opening and Vacating; Post-Adjudication Relief
211k2797 Proceedings
211k2806 k. Judgment; conclusiveness. Most Cited Cases
(Formerly 211k230.1)

Juvenile court's vacating or modifying commitment of ward to California Youth Authority (CYA), when ward was 22 years old, would not extinguish that court's jurisdiction over ward, as jurisdiction extended until ward was 25; because ward was committed for second degree robbery, jurisdiction continued until he was 25, regardless of whether commitment was subsequently vacated or modified based on ward's showing that he, based in part on his bisexuality, was not being kept safe or provided adequate educational and treatment services. West's Ann.Cal.Welf. & Inst.Code §§ 602, 607(b), 707, 734, 778, 779.
See 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent and Child, § 952 et seq.

[4] Infants 211 2903

211 Infants
211XV Juvenile Justice
211XV(J) Appeal and Review
211k2903 k. Dismissal and mootness. Most Cited Cases
(Formerly 211k247)

Juvenile ward's release on parole from California Youth Authority (CYA) commitment did not render moot his appeal from juvenile court's denial of his motion for vacation of that commitment; even though his confinement had ended, juvenile remained subject to direct supervision of CYA as a parolee, and subject to reconfinement, whereas if ward were granted relief on appeal, and juvenile court were to vacate commitment on remand, that court would regain direct supervision over him and could consider his request for placement in transitional living facility which would accommodate his special needs as a bisexual. West's Ann.Cal.Welf. & Inst.Code §§ 602, 727(a), 730, 780, 778, 779, 1766.

[5] Appeal and Error 30 781(1)

30 Appeal and Error
30XIII Dismissal, Withdrawal, or Abandonment
30k779 Grounds for Dismissal
30k781 Want of Actual Controversy
30k781(1) k. In general. Most Cited Cases

An appeal is moot, and should be dismissed, when any ruling by the appellate court would not have practical impact nor provide the parties effectual relief.

****886** Leslie Prince, Suisun City, By appointment of the Court of Appeal under the First DistrictAppellate Project'sIndependent Case System, for Appellant.

Bill Lockyer, Attorney General; Robert R. Anderson, Chief Assistant Attorney General; Gerald A. Engler, Senior Assistant Attorney General; Martin S. Kaye, Supervising Deputy Attorney General; ****887** Michael E. Banister, Deputy Attorney General, for Respondent.

PARRILLI, J.

***1318** Appellant Antoine D., a ward of the juvenile court, moved to modify his commitment to the California Youth Authority (CYA) under Welfare and Institutions Code sections 778 and 779.[FN1] The juvenile court denied the motion based on concern that it would lose jurisdiction over appellant were it to modify his CYA commitment. On appeal, appellant claims the juvenile court's ruling was an abuse of discretion because: (1) the court would not have lost jurisdiction by granting the motion, and (2) in any event, loss of jurisdiction was an improper basis for denying the motion. We reverse.

FN1. Unless otherwise stated, all statutory references herein are to the Welfare and Institutions Code.

137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885, 06 Cal. Daily Op. Serv. 2600, 2006 Daily Journal D.A.R. 3654
(Cite as: 137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885)

FACTUAL AND PROCEDURAL BACKGROUND

On March 3, 2002, appellant, then 17 years old, approached victim Adalvero Roman as he was driving into a parking space on an unlit block of ***1319** Beaver Street, near Market Street in San Francisco. Holding what appeared to be a gun in his right hand, appellant ordered Roman out of the vehicle and to turn over his wallet. Appellant took about $26 from Roman's wallet and told him to "[w]alk that way and don't turn around or I'll blast your head off." He then drove off in Roman's vehicle, where police found and arrested him about 15 minutes later. Roman later identified appellant at a "cold show" as the perpetrator of the crime.

Appellant was charged with three felonies: second degree robbery, carjacking, and criminal threats. Appellant admitted the robbery charge, and the other charges were dismissed. In September 2002, the juvenile court declared wardship over appellant, and committed him to CYA for a period of confinement at the Herman G. Stark Youth Correctional Facility (Stark Facility) up to six years eight months.[FN2]

> FN2. Appellant had on several previous occasions been declared a ward of the juvenile court for offenses, including assault by means of force likely to cause bodily harm and grand theft.

On March 7, 2005, after about two and a half years of confinement, appellant filed a motion to modify his CYA commitment—specifically, to vacate it—on the ground CYA had failed to keep him safe or provide him adequate educational and treatment services. As an alternative placement, appellant, a bisexual, requested to be sent for probation to the Ark House in San Francisco, a transitional living facility designed to meet the needs of homeless lesbian, gay, bisexual and transgender young adults.

In moving to vacate his CYA commitment, appellant argued he had been, and would continue to be, subjected to serious acts of physical and mental abuse from CYA staff and wards based on his sexual orientation. Since being confined to the Stark Facility, appellant had, among other things, been cut severely in the face by a ward with a razor blade; confined by CYA to his cell and excluded from school and other group activities "for his own safety" for up to 23 hours a day nearly every day for several weeks; forced by two wards to perform oral copulation on another ward; and singled out repeatedly by staff and wards based on his sexual orientation. Appellant also argued he had not received an adequate education at CYA, an issue plaintiff conceded at the hearing. By January 2005, when appellant was 20 years old, he had completed only 99 of the 200 credits required to earn a high school diploma,****888** in part because CYA had at times removed him from school out of concern for his safety.

***1320** The juvenile court denied appellant's motion on April 20, 2005, reasoning that, under section 607, it would lose jurisdiction over him were it to set aside the CYA commitment. But for "that reason alone," the juvenile court stated, "[it] would have no problem doing what has been requested."

On appeal, appellant claims the juvenile court misinterpreted section 607 in denying his motion. We agree.

DISCUSSION

A. Welfare and Institutions Code Section 607.

[1][2] We review a juvenile court's commitment decision for abuse of discretion, indulging all reasonable inferences to support its decision. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396, 4 Cal.Rptr.3d 809; *In re Darryl T.* (1978) 81 Cal.App.3d 874, 877, 146 Cal.Rptr. 771.) We review matters involving statutory interpretation, however, as a matter of law. (*In re Wanomi P.* (1989) 216 Cal.App.3d 156, 165, 264 Cal.Rptr. 623.)

[3] When a juvenile is declared a ward of the juvenile court, the juvenile becomes "subject to its continuing jurisdiction." (*People v. Sanchez* (1942) 21 Cal.2d 466, 470–471, 132 P.2d 810.) Section 602 provides that any person who is under the age of 18 years when he or she violates any law of this state "is within the jurisdiction of the juvenile court, which may adjudge [him or her] to be a ward of the court." Further, section 607 permits the juvenile court to retain jurisdiction over a ward until he or she turns 21 years old (§ 607, subd. (a)), or 25 years old if the ward "was committed to the Department of the Youth Authority" for a crime "listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 ...." [FN3] (§ 607, subd. (b).) Section 607

also bars the juvenile court from discharging from its jurisdiction a ward committed to CYA so long as the ward remains under CYA jurisdiction. (§ 607, subd. (c).)

> FN3. Section 607 provides in relevant part: [¶] "(a) The court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains the age of 21 years, except as provided in subdivisions (b), (c), and (d). [¶] (b) The court may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth Authority. [¶] (c) The court shall not discharge any person from its jurisdiction who has been committed to the Department of the Youth Authority so long as the person remains under the jurisdiction of the Department of the Youth Authority, including periods of extended control ordered pursuant to Section 1800...."

***1321** Here, the juvenile court denied appellant's motion to modify his CYA commitment on the ground that, under section 607, it would lose jurisdiction over him were it to grant the motion. Specifically, the court reasoned that, under subdivision (c), vacating appellant's CYA commitment would eliminate subdivision (b) as a source of jurisdiction because he would no longer meet the provision's requirement that "the ward was committed to [CYA]." [FN4] Because appellant was 22 years old when he sought ****889** modification, subdivision (a) was already eliminated as a source of jurisdiction.

> FN4. There appears to be no dispute appellant meets subdivision (b)'s requirement that his crime be "listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707." (§ 607, subd. (b).) Appellant robbed the victim under threat of a gun, a crime listed in paragraph (3) of section 707 subdivision (b).

Appellant offers a contrary interpretation. He argues the juvenile court retains jurisdiction over him until age 25 because he was committed to CYA for second degree robbery, a crime "listed in subdivision (b) ... of Section 707 ...." (§ 607, subd. (b).) The court's jurisdiction continues, appellant reasons, regardless of whether his commitment is subsequently vacated or modified. Moreover, subdivision (c) is not to the contrary. It mandates retention of jurisdiction in certain cases but nowhere limits the court's jurisdiction. We agree.

When interpreting a statute, we ascertain the Legislature's intent in order to effectuate the purpose of the law. (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614, 9 Cal.Rptr.3d 503; *In re Tino V.* (2002) 101 Cal.App.4th 510, 513, 124 Cal.Rptr.2d 312.) We begin with the statute's language. "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature." (*In re Tino V., supra,* 101 Cal.App.4th at pp. 513–514, 124 Cal.Rptr.2d 312, quoting *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798, 268 Cal.Rptr. 753, 789 P.2d 934; *see also In re Charles G., supra,* 115 Cal.App.4th at p. 614, 9 Cal.Rptr.3d 503.) We examine the language " ' "in context, keeping in mind the nature and obvious purpose of the statute" ' " and " '... harmoniz[ing] "the various parts of [it] ... by considering the particular clause or section in the context of the statutory framework as a whole." ' " (*In re Charles G., supra,* 115 Cal.App.4th at p. 614, 9 Cal.Rptr.3d 503, citations omitted.) In so doing, we avoid interpretations that would produce absurd results, which we presume the Legislature did not intend. (*Ibid.*, citing *People v. Mendoza* (2000) 23 Cal.4th 896, 908, 98 Cal.Rptr.2d 431, 4 P.3d 265.)

Thus, to determine whether the juvenile court below misinterpreted section 607, we consider as a whole the statutory framework for juvenile delinquency. In so doing, we keep in mind its purpose: "(1) to serve the 'best ***1322** interests' of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and 'enable him or her to be a law-abiding and productive member of his or her family and the community,' and (2) to 'provide for the protection and safety of the public....' " (*In re Charles G., supra,* 115 Cal.App.4th at pp. 614–615, 9 Cal.Rptr.3d 503, quoting § 202, subds. (a), (b), & (d).)

137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885, 06 Cal. Daily Op. Serv. 2600, 2006 Daily Journal D.A.R. 3654
(Cite as: 137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885)

To accomplish the juvenile delinquency laws' stated purposes, the Legislature offers the juvenile court many statutory tools. Under section 202, subdivision (b), for example, the court may order delinquent wards to "receive care, treatment and guidance which is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances." (*See also In re Eddie M.* (2003) 31 Cal.4th 480, 507, 3 Cal.Rptr.3d 119, 73 P.3d 1115 [acknowledging the juvenile court's "broad discretion to choose probation and/or various forms of custodial confinement in order to hold juveniles accountable for their behavior, and to protect the public"].)

More specifically, section 727, subdivision (a), permits the court to make "any and all reasonable orders for [a ward's] care, supervision, custody, conduct, maintenance, and support ... *subject to further order of the court.*" (§ 727, subd. (a), emphasis added.) Under section 730, "any and all reasonable orders" include placing a ward on probation subject to "any and all reasonable conditions of behavior as may be appropriate under th[e] disposition." (§ 727, subd. (a); § 730; *see also In re Charles G., supra,* 115 Cal.App.4th at p. 616, 9 Cal.Rptr.3d 503; *In re Ronny P.* ****890** (2004) 117 Cal.App.4th 1204, 1207, 12 Cal.Rptr.3d 675 [juvenile court has "broad discretion" to "make dispositional orders and impose conditions [of probation] under ... section 730"].) "Section 726 explicitly acknowledges 'the power of the court to retain jurisdiction over a minor and *to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.*' " (*In re Charles G., supra,* 115 Cal.App.4th at p. 615, 9 Cal.Rptr.3d 503, quoting § 726.)

In moving below, appellant relied on sections 778 and 779, which authorize the juvenile court to "change, modify or set aside" a prior order over a ward based on changed circumstances or new evidence. This authority includes setting aside or modifying an order committing the ward to CYA where it appears CYA has failed to comply with the law or abused its discretion in dealing with the ward. (§ 779; *In re Owen E.* (1979) 23 Cal.3d 398, 406, 154 Cal.Rptr. 204, 592 P.2d 720.) Specifically, as appellant sought ***1323** here, the court may modify or vacate a CYA commitment upon a showing under section 734 that the ward is unlikely to benefit from CYA's education and treatment. (§ 779.)

Considering this statutory framework as a whole in light of its stated legislative purpose, it is clear juvenile delinquency laws are designed to provide the juvenile court maximum flexibility to craft suitable orders aimed at rehabilitating the particular ward before it. (*See In re Aline D.* (1975) 14 Cal.3d 557, 563, 121 Cal.Rptr. 816, 536 P.2d 65 [acknowledging "a carefully conceived" statutory framework "affording the juvenile court a wide variety of choices at the dispositional phase of juvenile proceedings"], superseded on other grounds by statute as stated in *In re Luisa Z.* (2000) 78 Cal.App.4th 978, 93 Cal.Rptr.2d 231.) Accordingly, to preserve this flexibility, we interpret section 607, subdivision (b), to operate to extend jurisdiction over a ward until age 25 so long as: (1) the ward was committed to CYA; (2) for a crime listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of section 707; and (3) notwithstanding a subsequent order modifying or vacating the ward's CYA commitment. Section 607, subdivision (c), which speaks of an order to discharge a ward from the court's jurisdiction rather than to modify or vacate CYA commitment, does not alter our analysis and, indeed, is inapplicable here.

A contrary interpretation of section 607, subdivision (b)—one in which vacating or modifying CYA commitments extinguishes jurisdiction—would unnecessarily limit the juvenile court's options for rehabilitating the ward. In particular, where a ward is between the ages of 22 and 25, a contrary interpretation would discourage a juvenile court from vacating a CYA commitment that may be inconsistent with the ward's rehabilitative needs for fear of losing jurisdiction. That is what happened below.

Accordingly, to prevent this result in the future, we conclude section 607, subdivision (b), continues to apply to a ward of the juvenile court once his or her CYA commitment has been vacated or modified. Our conclusion accords with that reached by our colleagues in the Court of Appeal, Third District in *In re Charles G., supra,* 115 Cal.App.4th 608, 9 Cal.Rptr.3d 503. There, the court rejected statutory interpretations of section 202, subdivision (e), and section 208.5 that would have limited the juvenile court's authority to impose new orders of punishment on a ward released on probation once he or she reaches adulthood. The court reasoned:

"[I]nterpreting [those statutes] to apply only to wards who are minors at the time they are detained or committed would make ***1324** a juvenile court reluctant to place a ward on probation when the ward is days or ****891** months shy of his or her 18th birthday, since the court would have no option to detain and punish the ward if he or she violated probation after becoming an adult." (*Id.* at p. 616, 9 Cal.Rptr.3d 503.) Thus, the court interpreted the statutes to apply to adult wards, a conclusion more consistent with the broad statutory grant of authority to juvenile courts and with the dual statutory purpose of rehabilitating delinquents and protecting public safety. (*Ibid.*)

Similarly, we conclude interpreting section 607, subdivision (b), to continue to operate once a ward's CYA commitment is vacated or modified is more consistent with the juvenile court's authority set forth in sections 726, 727, 730, 778 and 779. It is also better suited to meet the dual statutory purpose of rehabilitating juvenile delinquents and protecting public safety. Because we reject the juvenile court's contrary interpretation and remand for the court to exercise its jurisdiction to rule on modification of appellant's CYA commitment, we need not consider his alternative argument that lack of jurisdiction was an improper basis for denying modification.

B. Mootness.

[4] With this appeal pending, on July 6, 2005, appellant was released from the Stark Facility on parole. Plaintiff claims that renders this appeal moot. We disagree.

[5] An appeal is moot, and should be dismissed, when any ruling by this court would not have practical impact or provide the parties effectual relief. (*Woodward Park Homeowners Ass'n v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888, 92 Cal.Rptr.2d 268; *La Jolla Cove Motel and Hotel Apartments, Inc. v. Superior Court* (2004) 121 Cal.App.4th 773, 781, 17 Cal.Rptr.3d 467.) Here, in seeking modification of his CYA commitment, appellant requested to be placed on probation at the Ark House subject to the court's supervision. Appellant's release on parole did not afford him that relief.

Plaintiff is correct that appellant is no longer physically confined by CYA. But that does not mean he is no longer committed to CYA. As our Supreme Court has explained, upon commitment to CYA, a ward remains under the juvenile court's jurisdiction, but his or her status " ' "drastic[ally] change [s]." ' " (*In re Allen N.* (2000) 84 Cal.App.4th 513, 515, 100 Cal.Rptr.2d 902; *see also* § 1704.) For the duration of the CYA commitment, the ward's treatment and rehabilitation—including physical ***1325** confinement and parole—are placed under the direct supervision of CYA rather than the juvenile court. (*In re Allen N., supra,* 84 Cal.App.4th at p. 515, 100 Cal.Rptr.2d 902; *see also* §§ 780, 1766.) Moreover, while the juvenile court retains jurisdiction during CYA commitment to vacate or set aside the commitment (§§ 778–779), or to make other reasonable orders for the ward's care or treatment (§§ 727, 730), its authority may be invoked only "where it appear[s] that 'CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody.' " (*In re Allen N., supra,* 84 Cal.App.4th at pp. 513, 516 & fn. 4, 100 Cal.Rptr.2d 902, quoting *In re Owen E., supra,* 23 Cal.3d at p. 406, 154 Cal.Rptr. 204, 592 P.2d 720; *see also In re Ronald E.* (1977) 19 Cal.3d 315, 327, 137 Cal.Rptr. 781, 562 P.2d 684; *In re Robert W.* (1991) 228 Cal.App.3d 32, 34, 279 Cal.Rptr. 625.)

Thus, when appellant's confinement ended, he remained under CYA commitment as a parolee and subject to its direct supervision. As such, if appellant were to violate his parole terms, CYA would be authorized to reconfine him. (§ 1766) Absent a showing CYA violated the law or ****892** abused its discretion in dealing with appellant, the juvenile court could not interfere. (*In re Allen N., supra,* 84 Cal.App.4th at p. 516, 100 Cal.Rptr.2d 902.)

But to the contrary, were the juvenile court on remand to vacate appellant's CYA commitment, it would regain direct supervision over him. (*In re Allen N., supra,* 84 Cal.App.4th at pp. 515–16, 100 Cal.Rptr.2d 902.) Without requiring any showing that CYA violated the law or abused its discretion, the court could make "any and all reasonable orders for [appellant's] care, supervision, custody, conduct, maintenance, and support"—including an order placing him under the supervision of a probation officer at a "suitable licensed community care facility" like Ark House. (§§ 727, subd. (a), 730; *see also In re Ronny P., supra,* 117 Cal.App.4th at p. 1207, 12 Cal.Rptr.3d 675 [juvenile court has "broad discretion" to "make dispositional orders and impose conditions [of probation] under ... section 730"].) Any such order would then be "subject to further order of

the court" for the duration of appellant's wardship. (§ 202, subd. (b); § 727, subd. (a).) In particular, should appellant violate probation, the court could order him sent to a foster home or other appropriate institution, or commit him back to CYA. (§ 777.)

Thus, were the juvenile court on remand to grant his motion, appellant would receive effectual relief notwithstanding his release on parole. Accordingly, this appeal is not moot. (*Cf. In re Charles G., supra,* 115 Cal.App.4th at p. 611, 9 Cal.Rptr.3d 503 [dismissing appeal as moot where ward's confinement *and* probation had terminated].)

***1326 DISPOSITION**

The order denying modification of appellant's CYA commitment is reversed. The case is remanded to the juvenile court, so that it may exercise its jurisdiction and rule on the motion to modify.

We concur: McGUINESS, P.J., and POLLAK, J.

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Supreme Court of the United States
Application of Paul L. GAULT and Marjorie Gault, Father and Mother of Gerald Francis Gault, a Minor, Appellants.

No. 116.
Argued Dec. 6, 1966.
Decided May 15, 1967.

Proceeding on appeal from a judgment of the Supreme Court of Arizona, 99 Ariz. 181, 407 P.2d 760, affirming dismissal of petition for writ of habeas corpus filed by parents to secure release of their 15-year-old son who had been committed as juvenile delinquent to state industrial school. The United States Supreme Court, Mr. Justice Fortas, held that juvenile has right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination.

Judgment reversed and cause remanded with directions.

Mr. Justice Harlan dissented in part; Mr. Justice Stewart dissented.

West Headnotes

[1] Constitutional Law 92 1062

92 Constitutional Law
92VII Constitutional Rights in General
92VII(A) In General
92k1062 k. Children and minors, rights of. Most Cited Cases
(Formerly 92k82(2), 92k82, 92k209)

Constitutional Law 92 3015

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)3 Persons or Entities Protected
92k3015 k. Children and the unborn. Most Cited Cases
(Formerly 92k210(1))

Constitutional Law 92 3922

92 Constitutional Law
92XXVII Due Process
92XXVII(C) Persons and Entities Protected
92k3922 k. Children and minors. Most Cited Cases
(Formerly 92k252, 92k251)

Neither Fourteenth Amendment nor Bill of Rights is for adults alone. U.S.C.A.Const. Amend. 14.

[2] Constitutional Law 92 3840

92 Constitutional Law
92XXVII Due Process
92XXVII(A) In General
92k3840 k. In general. Most Cited Cases
(Formerly 92k255(1), 92k255)

Due process of law is primary and indispensable foundation of individual freedom. U.S.C.A.Const. Amend. 14.

[3] Infants 211 3185

211 Infants
211XVIII Records
211k3181 Juvenile Delinquent and Offender Records
211k3185 k. Access and dissemination; confidentiality. Most Cited Cases
(Formerly 211k133, 326k14)

State may, if it deems it appropriate, provide and improve provision for confidentiality of records of police contacts and court action relating to juveniles.

[4] Constitutional Law 92 4464

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applica-

tions
92XXVII(G)24 Juvenile Justice
92k4464 k. In general. Most Cited Cases
(Formerly 92k255(4), 92k255)

Due process clause of Fourteenth Amendment requires that juvenile court delinquency hearing measure up to essentials of due process and fair treatment. U.S.C.A.Const. Amend. 14.

[5] Constitutional Law 92 4465

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)24 Juvenile Justice
92k4465 k. Proceedings. Most Cited Cases
(Formerly 92k255(4), 92k255)

Where no notice of delinquency hearing was given to juvenile's parents at time juvenile was taken into custody, juvenile's mother was informed orally on same evening that there would be hearing on next afternoon and was then told reason why juvenile was in custody, and only written notice that parents received at any time was note on plain paper from probation officer that judge had set specified date for further hearing on delinquency, notice of hearing was inadequate to comply with requirements of due process. U.S.C.A.Const. Amend. 14; A.R.S. § 8–224.

[6] Constitutional Law 92 4465

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)24 Juvenile Justice
92k4465 k. Proceedings. Most Cited Cases
(Formerly 92k255(4), 92k255)

Notice of juvenile delinquency proceedings to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must set forth alleged misconduct with particularity. U.S.C.A.Const. Amend. 14; A.R.S. § 8–224.

[7] Infants 211 2556

211 Infants
211XV Juvenile Justice
211XV(E) Trial and Adjudication
211k2556 k. Notice and process. Most Cited Cases
(Formerly 211k198, 211k16.7)

Notice at time of hearing on merits in juvenile delinquency proceeding is not timely.

[8] Infants 211 2556

211 Infants
211XV Juvenile Justice
211XV(E) Trial and Adjudication
211k2556 k. Notice and process. Most Cited Cases
(Formerly 211k198, 211k16.7)

Child and his parents or guardian must be notified, in writing, of specific charge or factual allegations to be considered at juvenile delinquency hearing, and such written notice must be given at earliest practicable time, and in any event sufficiently in advance of hearing to permit preparation. U.S.C.A.Const. Amend. 14.

[9] Constitutional Law 92 4465

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)24 Juvenile Justice
92k4465 k. Proceedings. Most Cited Cases
(Formerly 92k255(4), 92k255)

Due process requires that notice of juvenile delinquency proceeding be of type that would be deemed constitutionally adequate in civil or criminal proceeding. U.S.C.A.Const. Amend. 14.

[10] Constitutional Law 92 4465

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)24 Juvenile Justice
92k4465 k. Proceedings. Most Cited Cases
(Formerly 92k255(4), 92k255)

Due process of law does not allow juvenile delinquency hearing to be held, in which youth's freedom and his parents' right to his custody are at stake, without giving them timely notice, in advance of hearing, of specific issues they must meet. U.S.C.A.Const. Amend. 14.

[11] Infants 211 2556

211 Infants
211XV Juvenile Justice
211XV(E) Trial and Adjudication
211k2556 k. Notice and process. Most Cited Cases
(Formerly 211k198, 211k16.7)

Where 15-year-old boy and his parents had no counsel at juvenile delinquency proceedings and were not told of their right to counsel, their failure to object to lack of constitutionally adequate notice of hearing did not constitute waiver of requirement of adequate notice. A.R.S. § 8–224.

[12] Infants 211 2832

211 Infants
211XV Juvenile Justice
211XV(I) Counsel; Prosecutorial Misconduct
211k2829 Eligibility and Qualifications of Counsel; Conflicts of Interest
211k2832 k. For defense. Most Cited Cases
(Formerly 211k205, 211k16.9)

Neither probation officer, who was also superintendent of detention home, and whose role in adjudicatory delinquency hearing, by statute and in fact, was arresting officer and witness against child, nor judge presiding over delinquency hearing could represent or act as counsel for child. A.R.S.Const. art. 6, § 15; A.R.S. §§ 8–201, 8–202, 8–204, subsec. C.

[13] Infants 211 2823

211 Infants
211XV Juvenile Justice
211XV(I) Counsel; Prosecutorial Misconduct
211k2822 Right to Counsel
211k2823 k. In general. Most Cited Cases
(Formerly 211k205, 211k16.9)

There is no material difference, with respect to right to counsel, between adult and juvenile proceedings in which adjudication of delinquency is sought.

[14] Infants 211 2445

211 Infants
211XV Juvenile Justice
211XV(A) In General
211k2444 Nature, Form, and Purpose of Proceedings
211k2445 k. In general. Most Cited Cases
(Formerly 211k194.1, 211k194, 211k16.5)

Proceeding wherein issue is whether child will be found to be delinquent and subjected to loss of his liberty for years is comparable in seriousness to felony prosecution.

[15] Infants 211 2823

211 Infants
211XV Juvenile Justice
211XV(I) Counsel; Prosecutorial Misconduct
211k2822 Right to Counsel
211k2823 k. In general. Most Cited Cases
(Formerly 211k205, 211k16.9)

Juvenile charged with delinquency needs assistance of counsel to cope with problems of law, to make skilled inquiry into facts, and to insist upon regularity of proceedings, and to ascertain whether he has defense and to prepare and submit it.

[16] Infants 211 2824(1)

211 Infants
211XV Juvenile Justice
211XV(I) Counsel; Prosecutorial Misconduct
211k2822 Right to Counsel
211k2824 Stage or Condition of Cause
211k2824(1) k. In general. Most Cited Cases
(Formerly 211k205, 211k16.9)

Child charged with delinquency requires guiding hand of counsel at every step of delinquency proceedings against him.

[17] Infants 211 2823

211 Infants
211XV Juvenile Justice
211XV(I) Counsel; Prosecutorial Misconduct
211k2822 Right to Counsel
211k2823 k. In general. Most Cited Cases
(Formerly 211k205, 211k16.9)

Assistance of counsel is essential for purposes of determination of juvenile delinquency. U.S.C.A.Const. Amend. 14.

[18] Constitutional Law 92 4465

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)24 Juvenile Justice
92k4465 k. Proceedings. Most Cited Cases
(Formerly 92k255(4), 92k255)

As component part of fair hearing required by due process, notice of right to counsel should be required at all juvenile delinquency proceedings and counsel provided on request when family is financially unable to employ counsel. U.S.C.A.Const. Amend. 14.

[19] Constitutional Law 92 4465

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)24 Juvenile Justice
92k4465 k. Proceedings. Most Cited Cases
(Formerly 92k255(4), 92k255)

Due process clause of Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to institution in which juvenile's freedom is curtailed, child and his parents be notified of child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent child. U.S.C.A.Const. Amend. 14.

[20] Infants 211 2825

211 Infants
211XV Juvenile Justice
211XV(I) Counsel; Prosecutorial Misconduct
211k2822 Right to Counsel
211k2825 k. Waiver; self-representation. Most Cited Cases
(Formerly 211k205, 211k16.9)

Knowledge by alleged juvenile delinquent's mother that she could have appeared at delinquency hearing with counsel did not constitute waiver of right to counsel.

[21] Infants 211 2823

211 Infants
211XV Juvenile Justice
211XV(I) Counsel; Prosecutorial Misconduct
211k2822 Right to Counsel
211k2823 k. In general. Most Cited Cases
(Formerly 211k205, 211k16.9)

Infants 211 2826

211 Infants
211XV Juvenile Justice
211XV(I) Counsel; Prosecutorial Misconduct
211k2822 Right to Counsel
211k2826 k. Indigents and paupers; public defenders. Most Cited Cases
(Formerly 211k205, 211k16.9)

Juvenile charged with delinquency and his par-

ents had right expressly to be advised that they might retain counsel and to be confronted with need for specific consideration of whether they did or did not choose to waive that right, and, if they were unable to afford to employ counsel, they were entitled, in view of seriousness of charge and potential commitment, to appointed counsel unless they chose waiver. U.S.C.A.Const. Amend. 14.

[22] Constitutional Law 92 3855

92 Constitutional Law
92XXVII Due Process
92XXVII(A) In General
92k3848 Relationship to Other Constitutional Provisions; Incorporation
92k3855 k. Fifth Amendment. Most Cited Cases
(Formerly 92k266(2), 92k255(2), 92k255)

Privilege against self-incrimination is applicable to state proceedings. U.S.C.A.Const. Amends. 5, 14.

[23] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Privilege against self-incrimination is related to question of safeguards necessary to assure that admissions or confessions are reasonably trustworthy and that they are not mere fruits of fear or coercion but are reliable expressions of the truth. U.S.C.A.Const. Amends. 5, 14.

[24] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Privilege against self-incrimination has broader and deeper thrust than rule preventing use of confessions which are products of coercion because coercion is thought to carry with it danger of unreliability. U.S.C.A.Const. Amends. 5, 14.

[25] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

One of purposes of privilege against self-incrimination is to prevent state, whether by force or by psychological domination, from overcoming mind and will of person under investigation and depriving him of freedom to decide whether to assist state in securing his conviction. U.S.C.A.Const. Amends. 5, 14.

[26] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Scope of privilege against self-incrimination is comprehensive. U.S.C.A.Const. Amends. 5, 14.

[27] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Privilege against self-incrimination can be claimed in any proceeding, whether criminal or civil, administrative or judicial, investigatory or adjudicatory. U.S.C.A.Const. Amends. 5, 14.

[28] Witnesses 410 297(1)

410 Witnesses
410III Examination
410III(D) Privilege of Witness
410k297 Self-Incrimination
410k297(1) k. In general. Most Cited Cases

Privilege against self-incrimination protects any disclosures which witness may reasonably apprehend could be used in criminal prosecution or which could lead to other evidence that might be so used. U.S.C.A.Const. Amends. 5, 14.

[29] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Availability of privilege against self-incrimination does not turn upon type of proceeding in which its protection is invoked, but upon nature of statement or admission and exposure which it invites. U.S.C.A.Const. Amends. 5, 14.

[30] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Privilege against self-incrimination may be claimed in civil or administrative proceeding, of statement is or may be inculpatory. U.S.C.A.Const. Amends. 5, 14.

[31] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Juvenile proceedings to determine delinquency, which may lead to commitment to state institution, must be regarded as criminal for purposes of privilege against self-incrimination. U.S.C.A.Const. Amends. 5, 14.

[32] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Constitution guarantees that no person shall be compelled to be a witness against himself when he is threatened with deprivation of his liberty. U.S.C.A.Const. Amends. 5, 14.

[33] Criminal Law 110 393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In general. Most Cited Cases

Constitutional privilege against self-incrimination is applicable in case of juveniles as it is with respect to adults. U.S.C.A.Const. Amends. 5, 14.

[34] Infants 211 2625(15)

211 Infants
211XV Juvenile Justice
211XV(F) Evidence
211k2618 Admissibility
211k2625 Confessions, Admissions, and Statements
211k2625(12) Interrogation and Investigatory Questioning
211k2625(15) k. Warnings and counsel; waivers. Most Cited Cases
(Formerly 211k174, 211k16.8)

If counsel is not present, for some permissible

reason, when admission is obtained from juvenile, greatest care must be taken to assure that admission was voluntary, in sense not only that it has not been coerced or suggested, but also that it is not product of ignorance of rights or of adolescent fantasy, fright or despair.

[35] Courts 106 ⚿176

106 Courts
106IV Courts of Limited or Inferior Jurisdiction
106k174 Particular Courts of Special Civil Jurisdiction
106k176 k. Procedure. Most Cited Cases

Infants 211 ⚿2579

211 Infants
211XV Juvenile Justice
211XV(E) Trial and Adjudication
211k2579 k. Reception of evidence; witnesses. Most Cited Cases
(Formerly 211k207)

Same rule applies with respect to sworn testimony in juvenile courts as applies in adult tribunals.

[36] Infants 211 ⚿2645

211 Infants
211XV Juvenile Justice
211XV(F) Evidence
211k2635 Weight and Sufficiency
211k2645 k. Effect of confession, admission, or statement. Most Cited Cases
(Formerly 211k174, 211k16.8)

In absence of valid confession adequate to support determination of juvenile court, confrontation and sworn testimony by witnesses available for cross-examination were essential for finding of delinquency and order committing 15-year-old boy to state institution for maximum of six years. A.R.S. § 8–201, subsec. 6(a, d); U.S.C.A.Const. Amends. 6, 14.

[37] Infants 211 ⚿2645

211 Infants
211XV Juvenile Justice
211XV(F) Evidence
211k2635 Weight and Sufficiency
211k2645 k. Effect of confession, admission, or statement. Most Cited Cases
(Formerly 211k174, 211k16.8)

Absent valid confession, determination of delinquency and order of commitment to state institution cannot be sustained in absence of sworn testimony subjected to opportunity for cross-examination. U.S.C.A.Const. Amends. 6, 14.

****1431 *3** Norman Dorsen, New York City, for appellants.

Frank A. Parks, Phoenix, Ariz., for appellee, pro hac vice, by special leave of Court.

Merritt W. Green, Toledo, Ohio, for Ohio Ass'n of Juvenile Court Judges, as amicus curiae.

Mr. Justice FORTAS delivered the opinion of the Court.

This is an appeal under 28 U.S.C. s 1257 (2) from a judgment of the Supreme Court of Arizona affirming the ***4** dismissal of a petition for a writ of habeas corpus. 99 Ariz. 181, 407 P.2d 760 (1965). The petition sought the release of Gerald Francis Gault, appellants' 15-year-old son, who had been committed as a juvenile delinquent to the State Industrial School by the Juvenile Court of Gila County, Arizona. The Supreme Court of Arizona affirmed dismissal of the writ against various arguments which included an attack upon the constitutionality of the Arizona Juvenile Code because of its alleged denial of procedural due process rights to juveniles charged with being 'delinquents.' The court agreed that the constitutional guarantee of due process of law is applicable in such proceedings. It held that Arizona's Juvenile Code is to be read as 'impliedly' implementing the 'due process concept.' It then proceeded to identify and describe 'the particular elements which constitute due process in a juvenile hearing.' It concluded that the proceedings ending in commitment of Gerald Gault did not offend those requirements. We do not agree, and we reverse. We begin with a statement of the facts.

I.

On Monday, June 8, 1964, at about 10 a.m., Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. Gerald was then still subject to a six months' probation

order which had been entered on February 25, 1964, as a result of his having been in the company of another boy who had stolen a wallet from a lady's purse. The police action on June 8 was taken as the result of a verbal ****1432** complaint by a neighbor of the boys, Mrs. Cook, about a telephone call made to her in which the caller or callers made lewd or indecent remarks. It will suffice for purposes of this opinion to say that the remarks or questions put to her were of the irritatingly offensive, adolescent, sex variety.

***5** At the time Gerald was picked up, his mother and father were both at work. No notice that Gerald was being taken into custody was left at the home. No other steps were taken to advise them that their son had, in effect, been arrested. Gerald was taken to the Children's Detention Home. When his mother arrived home at about 6 o'clock, Gerald was not there. Gerald's older brother was sent to look for him at the trailer home of the Lewis family. He apparently learned then that Gerald was in custody. He so informed his mother. The two of them went to the Detention Home. The deputy probation officer, Flagg, who was also superintendent of the Detention Home, told Mrs. Gault 'why Jerry was there' and said that a hearing would be held in Juvenile Court at 3 o'clock the following day, June 9.

Officer Flagg filed a petition with the court on the hearing day, June 9, 1964. It was not served on the Gaults. Indeed, none of them saw this petition until the habeas corpus hearing on August 17, 1964. The petition was entirely formal. It made no reference to any factual basis for the judicial action which it initiated. It recited only that 'said minor is under the age of eighteen years, and is in need of the protection of this Honorable Court; (and that) said minor is a delinquent minor.' It prayed for a hearing and an order regarding 'the care and custody of said minor.' Officer Flagg executed a formal affidavit in support of the petition.

On June 9, Gerald, his mother, his older brother, and Probation Officers Flagg and Henderson appeared before the Juvenile Judge in chambers. Gerald's father was not there. He was at work out of the city. Mrs. Cook, the complainant, was not there. No one was sworn at this hearing. No transcript or recording was made. No memorandum or record of the substance of the proceedings was prepared. Our information about the proceedings***6** and the subsequent hearing on June 15, derives entirely from the testimony of the Juvenile Court Judge,[FN1] Mr. and Mrs. Gault and Officer Flagg at the habeas corpus proceeding conducted two months later. From this, it appears that at the June 9 hearing Gerald was questioned by the judge about the telephone call. There was conflict as to what he said. His mother recalled that Gerald said he only dialed Mrs. Cook's number and handed the telephone to his friend, Ronald. Officer Flagg recalled that Gerald had admitted making the lewd remarks. Judge McGhee testified that Gerald 'admitted making one of these (lewd) statements.' At the conclusion of the hearing, the judge said he would 'think about it.' Gerald was taken back to the Detention Home. He was not sent to his own home with his parents. On June 11 or 12, after having been detained since June 8, Gerald was released and driven home.[FN2] There is no explanation in the record as to why he was kept in the Detention Home or why he was released. At 5 p.m. on the day of Gerald's release, Mrs. Gault received a note signed by Officer Flagg. It was on ****1433** plain paper, not letterhead. Its entire text was as follows:

FN1. Under Arizona law, juvenile hearings are conducted by a judge of the Superior Court, designated by his colleagues on the Superior Court to serve as Juvenile Court Judge. Arizona Const., Art. 6, s 15, A.R.S.; Arizona Revised Statutes (hereinafter ARS) ss 8—201, 8—202.

FN2. There is a conflict between the recollection of Mrs. Gault and that of Officer Flagg. Mrs. Gault testified that Gerald was released on Friday, June 12, Officer Flagg that it had been on Thursday, June 11. This was from memory; he had no record, and the note hereafter referred to was undated.

'Mrs. Gault:

'Judge McGHEE has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further Hearings on Gerald's delinquency

'/s/ Flagg'

***7** At the appointed time on Monday, June 15, Gerald, his father and mother, Ronald Lewis and his father, and Officers Flagg and Henderson were present before Judge McGhee. Witnesses at the habeas corpus proceeding differed in their recollections of Gerald's

testimony at the June 15 hearing. Mr. and Mrs. Gault recalled that Gerald again testified that he had only dialed the number and that the other boy had made the remarks. Officer Flagg agreed that at this hearing Gerald did not admit making the lewd remarks.[FN3] But Judge McGhee recalled that 'there was some admission again of some of the lewd statements. He—he didn't admit any of the more serious lewd statements.' [FN4] Again, the complainant, Mrs. Cook, was not present. Mrs. Gault asked that Mrs. Cook be present 'so she could see which boy that done the talking, the dirty talking over the phone.' The Juvenile Judge said 'she didn't have to be present at that hearing.' The judge did not speak to Mrs. Cook or communicate with her at any time. Probation Officer Flagg had talked to her once—over the telephone on June 9.

FN3. Officer Flagg also testified that Gerald had not, when questioned at the Detention Home, admitted having made any of the lewd statements, but that each boy had sought to put the blame on the other. There was conflicting testimony as to whether Ronald had accused Gerald of making the lewd statements during the June 15 hearing.

FN4. Judge McGhee also testified that Gerald had not denied 'certain statements' made to him at the hearing by Officer Henderson.

At this June 15 hearing a 'referral report' made by the probation officers was filed with the court, although not disclosed to Gerald or his parents. This listed the charge as 'Lewd Phone Calls.' At the conclusion of the hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School 'for the period of his minority (that is, until 21), unless sooner discharged***8** by due process of law.' An order to that effect was entered. It recites that 'after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years.'

No appeal is permitted by Arizona law in juvenile cases. On August 3, 1964, a petition for a writ of habeas corpus was filed with the Supreme Court of Arizona and referred by it to the Superior Court for hearing.

At the habeas corpus hearing on August 17, Judge McGhee was vigorously cross-examined as to the basis for his actions. He testified that he had taken into account the fact that Gerald was on probation. He was asked 'under what section of * * * the code you found the boy delinquent?'

His answer is set forth in the margin.[FN5] In substance, he concluded that Gerald came within ARS s 8—201, subsec. 6(a), which specifies that a 'delinquent child' ****1434** includes one 'who has violated a law of the state or an ordinance or regulation of a political subdivision thereof.' The law which Gerald was found to have violated is ARS s 13—377. This section of the Arizona Criminal Code provides that a person who 'in the presence or hearing of any woman or child * * * uses vulgar, abusive or obscene language, is guilty of a misdemeanor * * *.' The penalty specified in the Criminal Code, which would ***9** apply to an adult, is $5 to $50, or imprisonment for not more than two months. The judge also testified that he acted under ARS s 8—201, subsec. 6(d) which includes in the definition of a 'delinquent child' one who, as the judge phrased it, is 'habitually involved in immoral matters.'[FN6]

FN5. 'Q. All right. Now, Judge, would you tell me under what section of the law or tell me under what section of—of the code you found the boy delinquent?

'A. Well, there is a—I think it amounts to disturbing the peace. I can't give you the section, but I can tell you the law, that when one person uses lewd language in the presence of another person, that it can amount to—and I consider that when a person makes it over the phone, that it is considered in the presence, I might be wrong, that is one section. The other section upon which I consider the boy delinquent is Section 8—201, Subsection (d), habitually involved in immoral matters.'

FN6. ARS s 8—201, subsec. 6, the section of the Arizona Juvenile Code which defines a delinquent child, reads:

"Delinquent child' includes:

'(a) A child who has violated a law of the state or an ordinance or regulation of a political subdivision thereof.

> '(b) A child who, by reason of being incorrigible, wayward or habitually disobedient, is uncontrolled by his parent, guardian or custodian.
>
> '(c) A child who is habitually truant from school or home.
>
> '(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or others.'

Asked about the basis for his conclusion that Gerald was 'habitually involved in immoral matters,' the judge testified, somewhat vaguely, that two years earlier, on July 2, 1962, a 'referral' was made concerning Gerald, 'where the boy had stolen a baseball glove from another boy and lied to the Police Department about it.' The judge said there was 'no hearing,' and 'no accusation' relating to this incident, 'because of lack of material foundation.' But it seems to have remained in his mind as a relevant factor. The judge also testified that Gerald had admitted making other nuisance phone calls in the past which, as the judge recalled the boy's testimony, were 'silly calls, or funny calls, or something like that.'

The Superior Court dismissed the writ, and appellants sought review in the Arizona Supreme Court. That court stated that it considered appellants' assignments of error as urging (1) that the Juvenile Code, ARS s 8—201 to s 8—239, is unconstitutional because it does not require that parents and children be apprised of the specific charges, does not require proper notice of a hearing, and does not provide for an appeal; and (2) that the proceedings***10** and order relating to Gerald constituted a denial of due process of law because of the absence of adequate notice of the charge and the hearing; failure to notify appellants of certain constitutional rights including the rights to counsel and to confrontation, and the privilege against self-incrimination; the use of unsworn hearsay testimony; and the failure to make a record of the proceedings. Appellants further asserted that it was error for the Juvenile Court to remove Gerald from the custody of his parents without a showing and finding of their unsuitability, and alleged a miscellany of other errors under state law.

The Supreme Court handed down an elaborate and wide-ranging opinion affirming dismissal of the writ and stating the court's conclusions as to the issues raised by appellants and other aspects of the juvenile process. In their jurisdictional statement and brief in this Court, appellants do not urge upon us all of the points passed upon by the Supreme Court of Arizona. They urge that we hold the Juvenile Code of Arizona invalid on its face or as applied in this case because, contrary to the Due Process Clause of the Fourteenth Amendment, the juvenile is taken from the custody of his parents and committed to a state institution pursuant to proceedings in which the Juvenile Court has virtually unlimited discretion, and ****1435** in which the following basic rights are denied:

1. Notice of the charges;

2. Right to counsel;

3. Right to confrontation and cross-examination;

4. Privilege against self-incrimination;

5. Right to a transcript of the proceedings; and

6. Right to appellate review.

We shall not consider other issues which were passed upon by the Supreme Court of Arizona. We emphasize ***11** that we indicate no opinion as to whether the decision of that court with respect to such other issues does or does not conflict with requirements of the Federal Constitution.[FN7]

> FN7. For example, the laws of Arizona allow arrest for a misdemeanor only if a warrant is obtained or if it is committed in the presence of the officer. ARS s 13—1403. The Supreme Court of Arizona held that this is inapplicable in the case of juveniles. See ARS s 8—221 which relates specifically to juveniles. But compare Two Brothers and a Case of Liquor, Juv.Ct.D.C., Nos. 66—2652—J, 66—2653—J, December 28, 1966 (opinion of Judge Ketcham); Standards for Juvenile and Family Courts, Children's Bureau Pub. No. 437—1966, p. 47 (hereinafter cited as Standards); New York Family Court Act s 721 (1963) (hereinafter cited as N.Y.Family Court Act).

The court also held that the judge may consider hearsay if it is 'of a kind on which reasonable men are accustomed to rely in serious affairs.' But compare Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice, 79 Harv.L.Rev. 775, 794—795 (1966) (hereinafter cited as Harvard Law Review Note):

'The informality of juvenile court hearings frequently leads to the admission of hearsay and unsworn testimony. It is said that 'close adherence to the strict rules of evidence might prevent the court from obtaining important facts as to the child's character and condition which could only be to the child's detriment.' The assumption is that the judge will give normally inadmissible evidence only its proper weight. It is also declared in support of these evidentiary practices that the juvenile court is not a criminal court, that the importance of the hearsay rule has been overestimated, and that allowing an attorney to make 'technical objections' would disrupt the desired informality of the proceedings. But to the extent that the rules of evidence are not merely technical or historical, but like the hearsay rule have a sound basis in human experience, they should not be rejected in any judicial inquiry. Juvenile court judges in Los Angeles, Tucson, and Wisconsin Rapids, Wisconsin report that they are satisfied with the operation of their courts despite application of unrelaxed rules of evidence.' (Footnote omitted.)

It ruled that the correct burden of proof is that 'the juvenile judge must be persuaded by clear and convincing evidence that the infant has committed the alleged delinquent act.' Compare the 'preponderance of the evidence' test, N.Y.Family Court Act s 744 (where maximum commitment is three years, ss 753, 758). Cf. Harvard Law Review Note, p. 795.

***12** II.

The Supreme Court of Arizona held that due process of law is requisite to the constitutional validity of proceedings in which a court reaches the conclusion that a juvenile has been at fault, has engaged in conduct prohibited by law, or has otherwise misbehaved with the consequence that he is committed to an institution in which his freedom is curtailed. This conclusion is in accord with the decisions of a number of courts under both federal and state constitutions.[FN8]

FN8. See, e.g., In Matters of W. and S., 19 N.Y.2d 55, 277 N.Y.S.2d 675, 224 N.E.2d 102 (1966); In Interests of Carlo and Stasilowicz, 48 N.J. 224, 225 A.2d 110 (1966); People v. Dotson, 46 Cal.2d 891, 299 P.2d 875 (1956); Pee v. United States, 107 U.S.App.D.C., 47, 274 F.2d 556 (1959); Wissenburg v. Bradley, 209 Iowa 813, 229 N.W. 205, 67 A.L.R. 1075 (1930); Bryant v. Brown, 151 Miss. 398, 118 So. 184, 60 A.L.R. 1325 (1928); Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269, 151 A.L.R. 1217 (1944); Application of Johnson, 178 F.Supp. 155 (D.C.N.J.1957).

****1436** [1] This Court has not heretofore decided the precise question. In Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), we considered the requirements for a valid waiver of the 'exclusive' jurisdiction of the Juvenile Court of the District of Columbia so that a juvenile could be tried in the adult criminal court of the District. Although our decision turned upon the language of the statute, we emphasized the necessity that 'the basic requirements of due process and fairness' he satisfied in such proceedings. [FN9] Haley v. State of Ohio, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224 (1948), involved the admissibility, in a state criminal court of general jurisdiction, of a confession by a 15-year-old boy. The Court held that the Fourteenth Amendment applied to ***13** prohibit the use of the coerced confession. Mr. Justice Douglas said, 'Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.'[FN10] To the same effect is Gallegos v. State of Colorado, 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962). Accordingly, while these cases relate only to restricted aspects of the subject, they unmistakably indicate that, whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.

FN9. 383 U.S., at 553, 86 S.Ct., at 1053.

FN10. 332 U.S., at 601, 68 S.Ct., at 304 (opinion for four Justices).

We do not in this opinion consider the impact of these constitutional provisions upon the totality of the relationship of the juvenile and the state. We do not even consider the entire process relating to juvenile 'delinquents.' For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process. See note 48, infra. We consider only the problems presented to us by this case. These relate to the proceedings by which a determination is made as to whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution. As to these proceedings, there appears to be little current dissent from the proposition that the Due Process Clause has a role to play.[FN11] The problem is to ascertain ***14** the precise impact of the due process requirement upon such proceedings.

FN11. See Report by the President's Commission on Law Enforcement and Administration of Justice, 'The Challenge of Crime in a Free Society' (1967) (hereinafter cited as Nat'l Crime Comm'n Report), pp. 81, 85—86; Standards, p. 71; Gardner, The Kent Case and the Juvenile Court: A Challenge to Lawyers, 52 A.B.A.J. 923 (1966); Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547 (1957); Ketcham, The Legal Renaissance in the Juvenile Court, 60 Nw.U.L.Rev. 585 (1965); Allen, The Borderland of Criminal Justice (1964), pp. 19—23; Harvard Law Review Note, p. 791; Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281 (1967); Comment, Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal, 114 U.Pa.L.Rev. 1171 (1966).

From the inception of the juvenile court system, wide differences have been tolerated—indeed insisted upon—between the procedural rights accorded to adults and those of juveniles. In practically all jurisdictions, there are rights granted to adults which are withheld from juveniles. In addition to the specific problems involved in the present case, for example, it has been held that the juvenile is not entitled to bail, to indictment by grand jury, to a public trial or to trial by jury.[FN12] It is frequent practice that rules governing the arrest and interrogation of adults ****1437** by the police are not observed in the case of juveniles.[FN13]

FN12. See Kent v. United States, 383 U.S. 541, 555, 86 S.Ct. 1045, 1054 and n. 22 (1966).

FN13. See n. 7, supra.

The history and theory underlying this development are well-known, but a recapitulation is necessary for purposes of this opinion. The Juvenile Court movement began in this country at the end of the last century. From the juvenile court statute adopted in Illinois in 1899, the system has spread to every State in the Union, the District of Columbia, and Puerto Rico.[FN14] The constitutionality***15** of juvenile court laws has been sustained in over 40 jurisdictions against a variety of attacks.[FN15]

FN14. See National Council of Juvenile Court Judges, Directory and Manual (1964), p. 1. The number of Juvenile Judges as of 1964 is listed as 2,987, of whom 213 are full-time Juvenile Court Judges. Id., at 305. The Nat'l Crime Comm'n Report indicates that half of these judges have no undergraduate degree, a fifth have no college education at all, a fifth are not members of the bar, and three-quarters devote less than one-quarter of their time to juvenile matters. See also McCune, Profile of the Nation's Juvenile Court Judges (monograph, George Washington University, Center for the Behavioral Sciences, 1965), which is a detailed statistical study of Juvenile Court Judges, and indicates additionally that about a quarter of these judges have no law school training at all. About one-third of all judges have no probation and social work staff available to them; between eighty and ninety percent have no available psychologist or psychiatrist. Ibid. It has been observed that while 'good will, compassion, and similar virtues are * * * admirably prevalent throughout the system * * * expertise, the keystone of the whole venture, is lacking.' Harvard Law Review Note, p. 809. In 1965, over 697,000 delinquency cases (excluding

traffic) were disposed of in these courts, involving some 601,000 children, or 2% of all children between 10 and 17. Juvenile Court Statistics—1965, Children's Bureau Statistical Series No. 85 (1966), p. 2.

FN15. See Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup.Ct.Review 167, 174.

The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was 'guilty' or 'innocent,' but 'What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.'[FN16] The child—essentially good, as they saw it—was to be made 'to feel that he is the object of (the state's) care and solicitude,' [FN17] not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was ***16** to be 'treated' and 'rehabilitated' and the procedures, from apprehension through institutionalization, were to be 'clinical' rather than punitive.

FN16. Julian Mack, The Juvenile Court, 23 Harv.L.Rev. 104, 119—120 (1909).

FN17. Id., at 120.

These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as parens patriae.[FN18] The Latin phrase proved to be ****1438** a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where, however, it was used to describe the power of the state to act in loco parentis for the purpose of protecting the property interests and the person of the child.[FN19] But there is no trace of the doctrine in the history of criminal jurisprudence. At common law, children under seven were considered incapable of possessing criminal intent. Beyond that age, they were subjected to arrest, trial, and in theory to punishment like adult offenders.[FN20] In these old days, ***17** the state was not deemed to have authority to accord them fewer procedural rights than adults.

FN18. Id., at 109; Paulsen, op. cit. supra, n. 15, at 173—174. There seems to have been little early constitutional objection to the special procedures of juvenile courts. But see Waite, How Far Can Court Procedure Be Socialized Without Impairing Individual Rights, 12 J.Crim.L. & Criminology 339, 340 (1922): 'The court which must direct its procedure even apparently to do something to a child because of what he has done, is parted from the court which is avowedly concerned only with doing something for a child because of what he is and needs, by a gulf too wide to be bridged by any humanity which the judge may introduce into his hearings, or by the habitual use of corrective rather than punitive methods after conviction.'

FN19. Paulsen, op. cit. supra, n. 15, at 173; Hurley, Origin of the Illinois Juvenile Court Law, in The Child, The Clinic, and the Court (1925), pp. 320, 328.

FN20. Julian Mack, The Chancery Procedure in the Juvenile Court, in The Child, The Clinic, and the Court (1925), p. 310.

The right of the state, as parens patriae, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right 'not to liberty but to custody.' He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions—that is, if the child is 'delinquent'—the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the 'custody' to which the child is entitled.[FN21] On this basis, proceedings involving juveniles were described as 'civil' not 'criminal' and therefore not subject to the requirements which restrict the state when it seeks to deprive a

person of his liberty.[FN22]

FN21. See, e.g., Shears, Legal Problems Peculiar to Children's Courts, 48 A.B.A.J. 719, 720 (1962) ('The basic right of a juvenile is not to liberty but to custody. He has the right to have someone take care of him, and if his parents do not afford him this custodial privilege, the law must do so.'); Ex parte Crouse, 4 Whart. 9, 11 (Sup.Ct.Pa.1839); Petition of Ferrier, 103 Ill. 367, 371—373 (1882).

FN22. The Appendix to the opinion of Judge Prettyman in Pee v. United States, 107 U.S.App.D.C. 47, 274 F.2d 556 (1959), lists authority in 51 jurisdictions to this effect. Even rules required by due process in civil proceedings, however, have not generally been deemed compulsory as to proceedings affecting juveniles. For example, constitutional requirements as to notice of issues, which would commonly apply in civil cases, are commonly disregarded in juvenile proceedings, as this case illustrates.

Accordingly, the highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context. The constitutional and theoretical basis for this peculiar system is—to say the least—debatable. And in practice, as we remarked in the Kent case, supra, the results have ***18** not been entirely satisfactory.[FN23] Juvenile Court history has again ****1439** demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. In 1937, Dean Pound wrote: 'The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts * * *.' [FN24] The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently***19** resulted not in enlightened procedure, but in arbitrariness. The Chairman of the Pennsylvania Council of Juvenile Court Judges has recently observed: 'Unfortunately, loose procedures, high-handed methods and crowded court calendars, either singly or in combination, all too often, have resulted in depriving some juveniles of fundamental rights that have resulted in a denial of due process.'[FN25]

FN23. 'There is evidence * * * that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.' 383 U.S., at 556, 86 S.Ct., at 1054, citing Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis.L.Rev. 7; Harvard Law Review Note; and various congressional materials set forth in 383 U.S., at 546, 86 S.Ct., at 1050, n. 5.

On the other hand, while this opinion and much recent writing concentrate upon the failures of the Juvenile Court system to live up to the expectations of its founders, the observation of the Nat'l Crime Comm'n Report should be kept in mind:

'Although its shortcomings are many and its results too often disappointing, the juvenile justice system in many cities is operated by people who are better educated and more highly skilled, can call on more and better facilities and services, and has more ancillary agencies to which to refer its clientele than its adult counterpart.' Id., at 78.

FN24. Foreword to Young, Social Treatment in Probation and Delinquency (1937), p. xxvii. The 1965 Report of the United States Commission on Civil Rights, 'Law Enforcement—A Report on Equal Protection in the South,' pp. 80—83, documents numerous instances in which 'local authorities used the broad discretion afforded them by the absence of safeguards (in the juvenile process)' to punish, intimidate, and obstruct youthful participants in civil rights demonstrations. See also Paulsen, Juvenile Courts, Family Courts, and the Poor Man, 54 Calif.L.Rev. 694, 707—709 (1966).

FN25. Lehman, A Juvenile's Right to Counsel in a Delinquency Hearing, 17 Juvenile Court Judges Journal 53, 54 (1966).

> Compare the observation of the late Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, in a foreword to Virtue, Basic Structure for Children's Services in Michigan (1953), p. x:
>
> 'In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, especially the constitutional provisions as to due process that are involved in moving a child from its home. The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as a chattel.'
>
> We are warned that the system must not 'degenerate into a star chamber proceeding with the judge imposing his own particular brand of culture and morals on indigent people * * *.' Judge Marion G. Woodward, letter reproduced in 18 Social Service Review 366, 368 (1944). Doctor Bovet, the Swiss psychiatrist, in his monograph for the World Health Organization, Psychiatric Aspects of Juvenile Delinquency (1951), p. 79, stated that: 'One of the most definite conclusions of this investigation is that few fields exist in which more serious coercive measures are applied, on such flimsy objective evidence, than in that of juvenile delinquency.' We are told that 'The judge as amateur psychologist, experimenting upon the unfortunate children who must appear before him, is neither an attractive nor a convincing figure.' Harvard Law Review Note, at 808.

[2] Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate ***20** or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may ****1440** exercise.[FN26] As Mr. Justice ***21** Frankfurter has said: 'The history of American freedom is, in no small measure, the history of procedure.'[FN27] But, in addition, the procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data. 'Procedure is to law what 'scientific method' is to science.'[FN28]

> FN26. The impact of denying fundamental procedural due process to juveniles involved in 'delinquency' charges is dramatized by the following considerations: (1) In 1965, persons under 18 accounted for about one-fifth of all arrests for serious crimes (Nat'l Crime Comm'n, Report, p. 55) and over half of all arrests for serious property offenses (id., at 56), and in the same year some 601,000 children under 18, or 2% of all children between 10 and 17, came before juvenile courts (Juvenile Court Statistics—1965, Children's Bureau Statistical Series No. 85 (1966) p. 2). About one out of nine youths will be referred to juvenile court in connection with a delinquent act (excluding traffic offenses) before he is 18 (Nat'l Crime Comm'n Report, p. 55). Cf. also Wheeler & Cottrell, Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1965), p. 2; Report of the President's Commission on Crime in the District of Columbia (1966) (hereinafter cited as D.C.Crime Comm'n Report), p. 773. Furthermore, most juvenile crime apparently goes undetected or not formally punished. Wheeler & Cottrell, supra, observe that '(A)lmost all youngsters have committed at least one of the petty forms of theft and vandalism in the course of their adolescence.' Id., at 28—29. See also Nat'l Crime Comm'n Report, p. 55, where it is stated that 'self-report studies reveal that perhaps 90 percent of all young people have committed at least one act for which they could have been brought to juvenile court.' It seems that the rate of juvenile delinquency is also steadily rising. See Nat'l Crime Comm'n Report, p. 56; Juvenile Court Statistics, supra, pp.

2—3. (2) In New York, where most juveniles are represented by counsel (see n. 69, infra) and substantial procedural rights are afforded (see, e.g., nn. 80, 81, 99, infra), out of a fiscal year 1965—1966 total of 10,755 juvenile proceedings involving boys, 2,242 were dismissed for failure of proof at the fact-finding hearing; for girls, the figures were 306 out of a total of 1,051. New York Judicial Conference, Twelfth Annual Report, pp. 314, 316 (1967). (3) In about one-half of the States, a juvenile may be transferred to an adult penal institution after a juvenile court has found him 'delinquent' (Delinquent Children in Penal Institutions, Children's Bureau Pub. No. 415—1964, p. 1). (4) In some jurisdictions a juvenile may be subjected to criminal prosecution for the same offense for which he has served under a juvenile court commitment. However, the Texas procedure to this effect has recently been held unconstitutional by a federal district court judge, in a habeas corpus action. Sawyer v. Hauck, 245 F.Supp. 55 (D.C.W.D.Tex.1965). (5) In most of the States the juvenile may end in criminal court through waiver (Harvard Law Review Note, p. 793).

FN27. Malinski v. People of State of New York, 324 U.S. 401, 414, 65 S.Ct. 781, 787, 89 L.Ed. 1029 (1945) (separate opinion).

FN28. Foster, Social Work, the Law, and Social Action, in Social Casework, July 1964, pp. 383, 386.

It is claimed that juveniles obtain benefits from the special procedures applicable to them which more than offset the disadvantages of denial of the substance of normal due process. As we shall discuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process.[FN29] But it is important, we think, that the claimed benefits of the juvenile process should be candidly appraised. Neither sentiment nor folklore should cause us to shut our eyes, for example, to such startling findings ***22** as that reported in an exceptionally reliable study of repeaters ****1441** or recidivism conducted by the Standford Research Institute for the President's Commission on Crime in the District of Columbia. This Commission's Report states:

FN29. See Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 321, and passim (1967).

'In fiscal 1966 approximately 66 percent of the 16- and 17-year-old juveniles referred to the court by the Youth Aid Division had been before the court previously. In 1965, 56 percent of those in the Receiving Home were repeaters. The SRI study revealed that 61 percent of the sample Juvenile Court referrals in 1965 had been previously referred at least once and that 42 percent had been referred at least twice before.' Id., at 773.

Certainly, these figures and the high crime rates among juveniles to which we have referred (supra, n. 26), could not lead us to conclude that the absence of constitutional protections reduces crime, or that the juvenile system, functioning free of constitutional inhibitions as it has largely done, is effective to reduce crime or rehabilitate offenders. We do not mean by this to denigrate the juvenile court process or to suggest that there are not aspects of the juvenile system relating to offenders which are valuable. But the features of the juvenile system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication. For example, the commendable principles relating to the processing and treatment of juveniles separately from adults are in no way involved or affected by the procedural issues under discussion.[FN30] Further, we are ***23** told that one of the important benefits of the special juvenile court procedures is that they avoid classifying the juvenile as a 'criminal.' The juvenile offender is now classed as a 'delinquent.' There is, of course, no reason why this should not continue. It is disconcerting, ***24** however, that this term has come to involve only slightly less ****1442** stigma than the term 'criminal' applied to adults.[FN31] It is also emphasized that in practically all jurisdictions, statutes provide that an adjudication of the child as a delinquent shall not operate as a civil disability or disqualify him for civil service appointment. [FN32] There is no reason why the application of due process requirements should interfere with such provisions.

FN30. Here again, however, there is sub-

stantial question as to whether fact and pretension, with respect to the separate handling and treatment of children, coincide. See generally infra.

While we are concerned only with procedure before the juvenile court in this case, it should be noted that to the extent that the special procedures for juveniles are thought to be justified by the special consideration and treatment afforded them, there is reason to doubt that juveniles always receive the benefits of such a quid pro quo. As to the problem and importance of special care at the adjudicatory stage, cf. nn. 14 and 26, supra.

As to treatment, see Nat'l Crime Comm'n Report, pp. 80, 87; D.C.Crime Comm'n Report, pp. 665—676, 686—687 (at p. 687 the Report refers to the District's 'bankruptcy of dispositional resources'), 692—695, 700-718 (at p. 701 the Report observes that 'The Department of Public Welfare currently lacks even the rudiments of essential diagnostic and clinical services'); Wheeler & Cottrell, Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1965), pp. 32—35; Harvard Law Review Note, p. 809; Paulsen, Juvenile Courts, Family Courts, and the Poor Man, 54 Calif.L.Rev. 694, 709—712 (1966); Polier, A View From the Bench (1964). Cf. Also, In the Matter of the Youth House, Inc., Report of the July 1966 'A' Term of the Bronx County Grand Jury, Supreme Court of New York, County of Bronx, Trial Term, Part XII, March 21, 1967 (cf. New York Times, March 23, 1967, p. 1, col. 8). The high rate of juvenile recidivism casts some doubt upon the adequacy of treatment afforded juveniles. See D.C.Crime Comm'n Report, p. 773; Nat'l Crime Comm'n Report, pp. 55, 78.

In fact, some courts have recently indicated that appropriate treatment is essential to the validity of juvenile custody, and therefore that a juvenile may challenge the validity of his custody on the ground that he is not in fact receiving any special treatment. See Creek v. Stone, 379 F.2d 106 (D.C.Cir. 1967); Kautter v. Reid, 183 F.Supp. 352 (D.C.D.C.1960); White v. Reid, 125 F.Supp. 647 (D.C.D.C.1954). See also Elmore v. Stone, 122 U.S.App.D.C. 416, 355 F.2d 841 (1966) (separate statement of Bazelon, C.J.); Clayton v. Stone, 123 U.S.App.D.C. 181, 358 F.2d 548 (1966) (separate statement of Bazelon, C.J.). Cf. Wheeler & Cottrell, supra, pp. 32, 35; In re Rich, 125 Vt. 373, 216 A.2d 266 (1966). Cf. also Rouse v. Cameron, 125 U.S.App.D.C. 366, 373 F.2d 451 (1966); Millard v. Cameron, 125 U.S.App.D.C. 383, 373 F.2d 468 (1966).

FN31. '(T)he word 'delinquent' has today developed such invidious connotations that the terminology is in the process of being altered; the new descriptive phrase is 'persons in need of supervision,' usually shortened to 'pins.' Harvard Law Review Note, p. 799, n. 140. The N.Y. Family Court Act s 712 distinguishes between 'delinquents' and 'persons in need of supervision.'

FN32. See, e.g., the Arizona provision, ARS s 8—228.

Beyond this, it is frequently said that juveniles are protected by the process from disclosure of their deviational behavior. As the Supreme Court of Arizona phrased it in the present case, the summary procedures of Juvenile Courts are sometimes defended by a statement that it is the law's policy 'to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.' This claim of secrecy, however, is more rhetoric than reality. Disclosure of court records is discretionary with the judge in most jurisdictions. Statutory restrictions almost invariably apply only to the court records, and even as to those the evidence is that many courts routinely furnish information to the FBI and the military, and on request to government agencies and even to private employers.[FN33] Of more importance are police records. In most States the police keep a complete file of juvenile 'police contacts' and have complete discretion as to disclosure of ***25** juvenile records. Police departments receive requests for information from the FBI and other law-enforcement agencies, the Armed Forces, and social service agencies, and most of them generally comply.[FN34] Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some

jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies.[FN35]

FN33. Harvard Law Review Note, pp. 784—785, 800. Cf. Nat'l Crime Comm'n Report, pp. 87—88; Ketcham, The Unfulfilled Promise of the Juvenile Court, 7 Crime & Delin. 97, 102—103 (1961).

FN34. Harvard Law Review Note, pp. 785—787.

FN35. Id., at 785, 800. See also, with respect to the problem of confidentiality of records, Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 286—289 (1967). Even the privacy of the juvenile hearing itself is not always adequately protected. Id., at 285—286.

[3] In any event, there is no reason why, consistently with due process, a State cannot continue if it deems it appropriate, to provide and to improve provision for the confidentiality of records of police contacts and court action relating to juveniles. It is interesting to note, however, that the Arizona Supreme Court used the confidentiality argument as a justification for the type of notice which is here attacked as inadequate for due process purposes. The parents were given merely general notice that their child was charged with 'delinquency.' No facts were specified. The Arizona court held, however, as we shall discuss, that in addition to this general 'notice,' the child and his parents must be advised 'of the facts involved in the case' no later than the initial hearing by the judge. Obviously, this does not 'bury' the word about the child's transgressions. It merely defers the time of disclosure to a point when it is of limited use to the child or his parents in preparing his defense or explanation.

Further, it is urged that the juvenile benefits from informal proceedings in the court. The early conception ***26** of the ****1443** Juvenile Court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the State provided guidance and help 'to save him from downward career.'[FN36] Then, as now, goodwill and compassion were admirably prevalent. But recent studies have, with surprising unanimity, entered sharp dissent as to the validity of this gentle conception. They suggest that the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process—may be a more impressive and more therapeutic attitude so far as the juvenile is concerned. For example, in a recent study, the sociologists Wheeler and Cottrell observe that when the procedural laxness of the 'parens patriae' attitude is followed by stern disciplining, the contrast may have an adverse effect upon the child, who feels that he has been deceived or enticed. They conclude as follows: 'Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.'[FN37] Of course, it is not suggested that juvenile court judges should fail appropriately to take account, in their demeanor and conduct, of the emotional and psychological attitude of the juveniles with whom they ***27** are confronted. While due process requirements will, in some instances, introduce a degree of order and regularity to Juvenile Court proceedings to determine delinquency, and in contested cases will introduce some elements of the adversary system, nothing will require that the conception of the kindly juvenile judge be replaced by its opposite, nor do we here rule upon the question whether ordinary due process requirements must be observed with respect to hearings to determine the disposition of the delinquent child.

FN36. Mack, The Juvenile Court, 23 Harv.L.Rev. 104, 120 (1909).

FN37. Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966), p. 33. The conclusion of the Nat'l Crime Comm'n Report is similar: '(T)here is increasing evidence that the informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers.' Id., at 85. See also Allen, The Borderland of Criminal Justice (1964), p. 19.

Ultimately, however, we confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes 'a building with whitewashed walls, regimented routine and institutional hours * * *.'[FN38] Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness[FN39] to rape and homicide.

FN38. Holmes' Appeal, 379 Pa. 599, 616, 109 A.2d 523, 530 (1954) (Musmanno, J., dissenting). See also The State (Sheerin) v. Governor, (1966) I.R. 379 (Supreme Court of Ireland); Trimble v. Stone, 187 F.Supp. 483, 485—486 (D.C.D.C.1960); Allen, The Borderland of Criminal Justice (1964), pp. 18, 52—56.

FN39. Cf. the Juvenile Code of Arizona, ARS s 8—201, subsec. 6.

****1444** In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and ***28** the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court. The traditional ideas of Juvenile Court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did it—was it a prank of adolescence or a brutal act threatening serious consequences to himself or society unless corrected?[FN40] Under traditional notions, one would assume that in a case like that of Gerald Gault, where the juvenile appears to have a home, a working mother and father, and an older brother, the Juvenile Judge would have made a careful inquiry and judgment as to the possibility that the boy could be disciplined and dealt with at home, despite his previous transgressions.[FN41] Indeed, so far as appears in the record before us, except for some conversation with Gerald about his school work and his 'wanting to go to * * * Grand Canyon with his father,' the points to which the judge directed his attention were little different from those that would be involved***29** in determining any charge of violation of a penal statute. [FN42] The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure as well as the long commitment was possible because Gerald was 15 years of age instead of over 18.

FN40. Cf., however, the conclusions of the D.C. Crime Comm'n Report, pp. 692—693, concerning the inadequacy of the 'social study records' upon which the Juvenile Court Judge must make this determination and decide on appropriate treatment.

FN41. The Juvenile Judge's testimony at the habeas corpus proceeding is devoid of any meaningful discussion of this. He appears to have centered his attention upon whethed Gerald made the phone call and used lewd words. He was impressed by the fact that Gerald was on six months' probation because he was with another boy who allegedly stole a purse—a different sort of offense, sharing the feature that Gerald was 'along'. And he even referred to a report which he said was not investigated because 'there was no accusation' 'because of lack of material foundation.'

With respect to the possible duty of a trial court to explore alternatives to involuntary commitment in a civil proceeding, cf. Lake v. Cameron, 124 U.S.App.D.C. 264, 364 F.2d 657 (1966), which arose under statutes relating to treatment of the mentally ill.

FN42. While appellee's brief suggests that the probation officer made some investigation of Gerald's home life, etc., there is not even a claim that the judge went beyond the point stated in the text.

If Gerald had been over 18, he would not have been subject to Juvenile Court proceedings.[FN43] For the particular offense immediately involved, the maximum punishment would have been a fine of $5 to

$50, or imprisonment in jail for not more than two months. Instead, he was committed to custody for a maximum of six years. If he had been over 18 and had committed an offense to which such a sentence might apply, he would have been entitled to substantial rights under the Constitution of the United States as well as under Arizona's laws and constitution. The United States Constitution would guarantee him rights and protections with respect to arrest, search, and seizure, and pretrial interrogation. It would assure him of specific notice of the charges and adequate time to decide his course of action and to prepare his defense. He would be entitled to clear advice that he could be represented by counsel, and, at least if a felony were involved, the State would be required to provide counsel if his parents were unable to afford it. If the court acted on the basis of his confession, careful procedures would be required to assure its voluntariness. If the case went to trial, ****1445** confrontation and opportunity for cross-examination would be guaranteed. So wide a gulf between the State's treatment of the adult and of the child requires a bridge sturdier than mere ***30** verbiage, and reasons more persuasive than cliche can provide. As Wheeler and Cottrell have put it, 'The rhetoric of the juvenile court movement has developed without any necessarily close correspondence to the realities of court and institutional routines.'[FN44]

FN43. ARS ss 8—201, 8—202.

FN44. Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966), p. 35. The gap between rhetoric and reality is also emphasized in the Nat'l Crime Comm'n Report, pp. 80—81.

[4] In Kent v. United States, supra, we stated that the Juvenile Court Judge's exercise of the power of the state as parens patriae was not unlimited. We said that 'the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness.'[FN45] With respect to the waiver by the Juvenile Court to the adult court of jurisdiction over an offense committed by a youth, we said that 'there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.' [FN46] We announced with respect to such waiver proceedings that while 'We do not mean * * * to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment.'[FN47] We reiterate this view, here in connection with a juvenile court adjudication of 'delinquency,' as a requirement ***31** which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution.[FN48]

FN45. 383 U.S., at 555, 86 S.Ct., at 1054.

FN46. 383 U.S., at 554, 86 S.Ct., at 1053. The Chief Justice stated in a recent speech to a conference of the National Council of Juvenile Court Judges, that a juvenile court 'must function within the framework of law and * * * in the attainment of its objectives it cannot act with unbridled caprice.' Equal Justice for Juveniles, 15 Juvenile Court Judges Journal, No. 3, pp. 14, 15 (1964).

FN47. 383 U.S., at 562, 86 S.Ct., at 1057.

FN48. The Nat'l Crime Comm'n Report recommends that 'Juvenile courts should make fullest feasible use of preliminary conferences to dispose of cases short of adjudication.' Id., at 84. See also D.C.Crime Comm'n Report, pp. 662—665. Since this 'consent decree' procedure would involve neither adjudication of delinquency nor institutionalization, nothing we say in this opinion should be construed as expressing any views with respect to such procedure. The problems of pre-adjudication treatment of juveniles, and of post-adjudication disposition, are unique to the juvenile process; hence what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process.

We now turn to the specific issues which are presented to us in the present case.

III.

NOTICE OF CHARGES.

Appellants allege that the Arizona Juvenile Code is unconstitutional or alternatively that the proceedings before the Juvenile Court were constitutionally defective because of failure to provide adequate notice

of the hearings. No notice was given to Gerald's parents when he was taken into custody on Monday, June 8. On that night, when Mrs. Gault went to the Detention Home, she was orally informed that there would be a hearing the next afternoon and was told the reason why Gerald was in custody. The only written notice Gerald's parents received at any time was a note on plain paper from Officer Flagg delivered on Thursday or Friday, June 11 or 12, to the effect that the judge had set Monday, June 15, 'for further Hearings on Gerald's delinquency.'

****1446** A 'petition' was filed with the court on June 9 by Officer Flagg, reciting only that he was informed and believed that 'said minor is a delinquent minor and that it is necessary that some order be made by the Honorable Court for said minor's welfare.' The applicable Arizona ***32** statute provides for a petition to be filed in Juvenile Court, alleging in general terms that the child is 'neglected, dependent or delinquent.' The statute explicitly states that such a general allegation is sufficient, 'without alleging the facts.'[FN49] There is no requirement that the petition be served and it was not served upon, given to, or shown to Gerald or his parents.[FN50]

FN49. ARS s 8—222, subsec. B.

FN50. Arizona's Juvenile Code does not provide for notice of any sort to be given at the commencement of the proceedings to the child or his parents. Its only notice provision is to the effect that if a person other than the parent or guardian is cited to appear, the parent or guardian shall be notified 'by personal service' of the time and place of hearing. ARS s 8—224. The procedure for initiating a proceeding, as specified by the statute, seems to require that after a preliminary inquiry by the court, a determination may be made 'that formal jurisdiction should be acquired.' Thereupon the court may authorize a petition to be filed. ARS s 8—222. It does not appear that this procedure was followed in the present case.

The Supreme Court of Arizona rejected appellants' claim that due process was denied because of inadequate notice. It stated that 'Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home.' The court also pointed out that the Gaults appeared at the two hearings 'without objection.' The court held that because 'the policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past,' advance notice of the specific charges or basis for taking the juvenile into custody and for the hearing is not necessary. It held that the appropriate rule is that 'the infant and his parents or guardian will receive a petition only reciting a conclusion of delinquency.[FN51] But no later than the initial hearing by the judge, they must be advised of the facts involved in the ***33** case. If the charges are denied, they must be given a reasonable period of time to prepare.'

FN51. No such petition we served or supplied in the present case.

[5][6][7][8][9][10][11] We cannot agree with the court's conclusion that adequate notice was given in this case. Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.'[FN52] It is obvious, as we have discussed above, that no purpose of shielding the child from the public stigma of knowledge of his having been taken into custody and scheduled for hearing is served by the procedure approved by the court below. The 'initial hearing' in the present case was a hearing on the merits. Notice at that time is not timely; and even if there were a conceivable purpose served by the deferral proposed by the court below, it would have to yield to the requirements that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a ****1447** civil or criminal proceeding.[FN53] It does ***34** not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet. Nor, in the circumstances of this case, can it reasonably be said that the requirement of notice was waived.[FN54]

FN52. Nat'l Crime Comm'n Report, p. 87. The Commission observed that 'The unfairness of too much informality is * * * reflected in the inadequacy of notice to parents and juveniles about charges and hearings.' Ibid.

FN53. For application of the due process requirement of adequate notice in a criminal context, see, e.g., Cole v. State of Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948); In re Oliver, 333 U.S. 257, 273—278, 68 S.Ct. 499, 507—510, 92 L.Ed. 682 (1948). For application in a civil context, see, e.g., Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965); Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Cf. also Chaloner v. Sherman, 242 U.S. 455, 37 S.Ct. 136, 61 L.Ed. 427 (1917). The Court's discussion in these cases of the right to timely and adequate notice forecloses any contention that the notice approved by the Arizona Supreme Court, or the notice actually given the Gaults, was constitutionally adequate. See also Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L.Q. 387, 395 (1961); Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547, 557 (1957). Cf. Standards, pp. 63—65; Procedures and Evidence in the Juvenile Court, A Guidebook for Judges, prepared by the Advisory Council of Judges of the National Council on Crime and Delinquency (1962), pp. 9—23 (and see cases discussed therein).

FN54. Mrs. Gault's 'knowledge' of the charge against Gerald, and/or the asserted failure to object, does not excuse the lack of adequate notice. Indeed, one of the purposes of notice is to clarify the issues to be considered, and as our discussion of the facts, supra, shows, even the Juvenile Court Judge was uncertain as to the precise issues determined at the two 'hearings.' Since the Gaults had no counsel and were not told of their right to counsel, we cannot consider their failure to object to the lack of constitutionally adequate notice as a waiver of their rights. Because of our conclusion that notice given only at the first hearing is inadequate, we need not reach the question whether the Gaults ever received adequately specific notice even at the June 9 hearing, in light of the fact they were never apprised of the charge of being habitually involved in immoral matters.

IV.
RIGHT TO COUNSEL

[12][13][14][15][16][17] Appellants charge that the Juvenile Court proceedings were fatally defective because the court did not advise Gerald or his parents of their right to counsel, and proceeded with the hearing, the adjudication of delinquency and the order of commitment in the absence of counsel for the child and his parents or an express waiver of the right thereto. The Supreme Court of Arizona pointed out that '(t)here is disagreement (among the various jurisdictions) as to whether the court must advise the infant ***35** that he has a right to counsel.' [FN55] It noted its own decision in Arizona State Dept. of Public Welfare v. Barlow, 80 Ariz. 249, 296 P.2d 298 (1956), to the effect 'that the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing.' (Emphasis added.) It referred to a provision of the Juvenile Code which it characterized as requiring 'that the probation officer shall look after the interests of neglected, delinquent and dependent children,' including representing their interests in ****1448** court.[FN56] The court argued that 'The parent and the probation officer may be relied upon to protect the infant's interests.' Accordingly it rejected the proposition that 'due process requires that an infant have a right to counsel.' It said that juvenile courts have the discretion, but not the duty, to allow such representation; it referred specifically to the situation in which the Juvenile Court discerns conflict between the child and his parents as an instance in which this discretion might be exercised. We do not agree. Probation***36** officers, in the Arizona scheme, are also arresting officers. They initiate proceedings and file petitions which they verify, as here, alleging the delinquency of the child; and they testify, as here, against the child. And here the probation officer was also superintendent of the Detention Home. The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and in fact, is as arresting officer and witness against the child. Nor can the judge represent the child. There is no material difference in this respect between adult and juvenile proceedings of the sort here involved. In adult proceedings, this contention has been foreclosed by

decisions of this Court.[FN57] A proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, [FN58] to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him.'[FN59] Just as in Kent v. United States, supra, 383 U.S., at 561—562, 86 S.Ct., at 1057—1058, we indicated our agreement with the United States Court of Appeals for the District of Columbia Circuit that the assistance of counsel is essential for purposes of waiver proceedings, so we hold now that it is equally essential for the determination of delinquency, carrying with it the awesome prospect of incarceration ***37** in a state institution until the juvenile reaches the age of 21.[FN60]

FN55. For recent cases in the District of Columbia holding that there must be advice of the right to counsel, and to have counsel appointed if necessary, see, e.g., Shioutakon v. District of Columbia, 98 U.S.App.D.C. 371, 236 F.2d 666, 60 A.L.R.2d 686 (1956); Black v. United States, 122 U.S.App.D.C. 393, 355 F.2d 104 (1965); In re Poff, 135 F.Supp. 224 (D.C.D.C.1955). Cf. also In re Long, 184 So.2d 861, 862 (Sup.Ct.Miss., 1966); People v. Dotson, 46 Cal.2d 891, 299 P.2d 875 (1956).

FN56. The section cited by the court, ARS s 8—204, subsec. C, reads as follows:

'The probation officer shall have the authority of a peace officer. He shall:

'1. Look after the interests of neglected, delinquent and dependent children of the county.

'2. Make investigations and file petitions.

'3. Be present in court when cases are heard concerning children and represent their interests.

'4. Furnish the court information and assistance as it may require.

'5. Assist in the collection of sums ordered paid for the support of children.

'6. Perform other acts ordered by the court.'

FN57. Powell v. State of Alabama, 287 U.S. 45, 61, 53 S.Ct. 55, 61, 77 L.Ed. 158 (1932); Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

FN58. In the present proceeding, for example, although the Juvenile Judge believed that Gerald's telephone conversation was within the condemnation of ARS s 13—377, he suggested some uncertainty because the statute prohibits the use of vulgar language 'in the presence or hearing of' a woman or child.

FN59. Powell v. State of Alabama, 287 U.S. 45, 69, 53 S.Ct. 55, 64 (1932).

FN60. This means that the commitment, in virtually all cases, is for a minimum of three years since jurisdiction of juvenile courts is usually limited to age 18 and under.

During the last decade, court decisions,[FN61] experts,[FN62] and legislatures [FN63] ****1449** have demonstrated increasing recognition of this view. In at least one-third of the States, statutes ***38** now provide for the right of representation by retained counsel in juvenile delinquency proceedings, notice of the right, or assignment of counsel, or a combination of these. In other States, court rules have similar provisions.[FN64]

FN61. See cases cited in n. 55, supra.

FN62. See, e.g., Schinitsky, 17 The Record 10 (N.Y. City Bar Assn. 1962); Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547, 568—573 (1957); Anteau, Constitutional Rights in Juvenile Courts, 46 Cornell L.Q. 387, 404—407 (1961); Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup.Ct.Rev. 167, 187—189; Ketcham, The Legal Renaissance in the Juvenile Court, 60

Nw.U.L.Rev. 585 (1965); Elson, Juvenile Courts & Due Process, in Justice for the Child (Rosenheim ed.) 95, 103—105 (1962); Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 321—327 (1967). See also Nat'l Probation and Parole Assn., Standard Family Court Act (1959) s 19, and Standard Juvenile Court Act (1959) s 19, in 5 NPPA Journal 99, 137, 323, 367 (1959) (hereinafter cited as Standard Family Court Act and Standard Juvenile Court Act, respectively).

FN63. Only a few state statutes require advice of the right to counsel and to have counsel appointed. See N. Y. Family Court Act ss 241, 249, 728, 741; Calif.Welf. & Inst'ns Code ss 633, 634, 659, 700 (1966) (appointment is mandatory only if conduct would be a felony in the case of an adult); Minn.Stat.Ann. s 260.155(2) (1966 Supp.) (see Comment of Legislative Commission accompanying this section); District of Columbia Legal Aid Act, D.C.Code Ann. s 2—2202 (1961) (Legal Aid Agency 'shall make attorneys available to represent indigents * * * in proceedings before the juvenile court * * *.' See Black v. United States, 122 U.S.App.D.C. 393, 395—396, 355 F.2d 104, 106—107 (1965), construing this Act as providing a right to appointed counsel and to be informed of that right). Other state statutes allow appointment on request, or in some classes of cases, or in the discretion of the court, etc. The state statutes are collected and classified in Riederer, The Role of Counsel in the Juvenile Court, 2 J.Fam.Law 16, 19—20 (1962), which, however, does not treat the statutes cited above. See also Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 321—322 (1967).

FN64. Skoler & Tenney, Attorney Representation in Juvenile Court, 4 J.Fam.Law 77, 95—96 (1964); Riederer, The Role of Counsel in the Juvenile Court, 2 J.Fam.Law 16 (1962).

Recognition of the right to counsel involves no necessary interference with the special purposes of juvenile court procedures; indeed, it seems that counsel can play an important role in the process of rehabilitation. See Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 324—327 (1967).

[18] The President's Crime Commission has recently recommended that in order to assure 'procedural justice for the child,' it is necessary that 'Counsel * * * be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent.' [FN65] As stated by the authoritative ****1450** 'Standards ***39** for Juvenile and Family Courts,' published by the Children's Bureau of the United States Department of Health, Education, and Welfare:

FN65. Nat'l Crime Comm'n Report, pp. 86—87. The Commission's statement of its position is very forceful:

'The Commission believes that no single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires. The rights to confront one's accusers, to cross-examine witnesses, to present evidence and testimony of one's own, to be unaffected by prejudicial and unreliable evidence, to participate meaningfully in the dispositional decision, to take an appeal have substantial meaning for the overwhelming majority of persons brought before the juvenile court only if they are provided with competent lawyers who can invoke those rights effectively. The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot. Papers are drawn and charges expressed in legal language. Events follow one another in a manner that appears arbitrary and confusing to the uninitiated. Decisions, unexplained, appear too official to challenge. But with lawyers come records of proceedings; records make possible appeals which, even if they do not occur, impart by

their possibility a healthy atmosphere of accountability.

'Fears have been expressed that lawyers would make juvenile court proceedings adversary. No doubt this is partly true, but it is partly desirable. Informality is often abused. The juvenile courts deal with cases in which facts are disputed and in which, therefore, rules of evidence, confrontation of witnesses, and other adversary procedures are called for. They deal with many cases involving conduct that can lead to incarceration or close supervision for long periods, and therefore juveniles often need the same safeguards that are granted to adults. And in all cases children need advocates to speak for them and guard their interests, particularly when disposition decisions are made. It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger inheres that the court's coercive power will be applied without adequate knowledge of the circumstances.

'Fears also have been expressed that the formality lawyers would bring into juvenile court would defeat the therapeutic aims of the court. But informality has no necessary connection with therapy; it is a devide that has been used to approach therapy, and it is not the only possible device. It is quite possible that in many instances lawyers, for all their commitment to formality, could do more to further therapy for their clients than can the small, overworked social staffs of the courts. * * *

'The Commission believes it is essential that counsel be appointed by the juvenile court for those who are unable to provide their own. Experience under the prevailing systems in which children are free to seek counsel of their choice reveals how empty of meaning the right is for those typically the subjects of juvenile court proceedings. Moreover, providing counsel only when the child is sophisticated enough to be aware of his need and to ask for one or when he fails to waive his announced right (is) not enough, as experience in numerous jurisdictions reveals.

'The Commission recommends:

'COUNSEL SHOULD BE APPOINTED AS A MATTER OF COURSE WHEREVER COERCIVE ACTION IS A POSSIBILITY, WITHOUT REQUIRING ANY AFFIRMATIVE CHOICE BY CHILD OR PARENT.'

'As a component part of a fair hearing required by due process guaranteed under the 14th amendment, notice of the right to counsel should be required at all hearings and counsel provided upon request when the family is financially unable to employ counsel.' Standards, p. 57.

***40** This statement was 'reviewed' by the National Council of Juvenile Court Judges at its 1965 Convention and they 'found no fault' with it. [FN66] The New York Family Court Act contains the following statement:

FN66. Lehman, A Juvenile's Right to Counsel in A Delinquency Hearing, 17 Juvenile Court Judge's Journal 53 (1966). In an interesting review of the 1966 edition of the Children's Bureau's 'Standards,' Rosenheim, Standards for Juvenile and Family Courts: Old Wine in a New Bottle, 1 Fam.L.Q. 25, 29 (1967), the author observes that 'The 'Standards' of 1966, just like the 'Standards' of 1954, are valuable precisely because they represent a diligent and thoughtful search for an accommodation between the aspirations of the founders of the juvenile court and the grim realities of life against which, in part, the due process of criminal and civil law offers us protection.'

'This act declares that minors have a right to the assistance of counsel of their own choosing or of law guardians[FN67] in neglect proceedings under article three and in proceedings to determine juvenile delinquency and whether a person is in need of supervision under article seven. This declaration is based on a finding that counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition.'[FN68]

FN67. These are lawyers designated, as pro-

vided by the statute, to represent minors. N.Y.Family Court Act s 242.

FN68. N.Y.Family Court Act s 241.

The Act provides that 'At the commencement of any hearing' under the ****1451** delinquency article of the statute, the juvenile and his parent shall be advised of the juvenile's ***41** 'right to be represented by counsel chosen by him or his parent * * * or by a law guardian assigned by the court * * *.' [FN69] The California Act (1961) also requires appointment of counsel. [FN70]

FN69. N.Y.Family Court Act s 741. For accounts of New York practice under the new procedures, see Isaacs, The Role of the Lawyer in Representing Minors in the New Family Court, 12 Buffalo L.Rev. 501 (1963); Dembitz, Ferment and Experiment in New York: Juvenile Cases in the New Family Court, 48 Cornell L.Q. 499, 508—512 (1963). Since introduction of the law guardian system in September of 1962, it is stated that attorneys are present in the great majority of cases. Harvard Law Review Note, p. 796. See New York Judicial Conference, Twelfth Annual Report, pp. 288—291 (1967), for detailed statistics on representation of juveniles in New York. For the situation before 1962, see Schinitsky, The Role of the Lawyer in Children's Court, 17 The Record 10 (N.Y. City Bar Assn. 1962). In the District of Columbia, where statute and court decisions require that a lawyer be appointed if the family is unable to retain counsel, see n. 63, supra, and where the juvenile and his parents are so informed at the initial hearing, about 85% to 90% do not choose to be represented and sign a written waiver form. D.C. Crime Comm'n Report, p. 646. The Commission recommends adoption in the District of Columbia of a 'law guardian' system similar to that of New York, with more effective notification of the right to appointed counsel, in order to eliminate the problems of procedural fairness, accuracy of factfinding, and appropriateness of disposition which the absence of counsel in so many juvenile court proceedings involves. Id., at 681—685.

FN70. See n. 63, supra.

[19] We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

[20][21] At the habeas corpus proceeding, Mrs. Gault testified that she knew that she could have appeared with counsel ***42** at the juvenile hearing. This knowledge is not a waiver of the right to counsel which she and her juvenile son had, as we have defined it. They had a right expressly to be advised that they might retain counsel and to be confronted with the need for specific consideration of whether they did or did not choose to waive the right. If they were unable to afford to employ counsel, they were entitled in view of the seriousness of the charge and the potential commitment, to appointed counsel, unless they chose waiver. Mrs. Gault's knowledge that she could employ counsel was not an 'intentional relinquishment or abandonment' of a fully known right.[FN71]

FN71. Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 (1938); Carnley v. Cochran, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d 70 (1962); United States ex rel. Brown v. Fay, 242 F.Supp. 273 (D.C.S.D.N.Y.1965).

V.
CONFRONTATION, SELF-INCRIMINATION, CROSS-EXAMINATION

[22] Appellants urge that the writ of habeas corpus should have been granted because of the denial of the rights of confrontation and cross-examination in the Juvenile Court hearings, and because the privilege against self-incrimination was not observed. The Juvenile Court Judge testified at the habeas corpus hearing that he had proceeded on the basis of Gerald's admissions at the two hearings. Appellants attack this on the ground that the admissions were obtained in disregard of the privilege against self-incrimination. [FN72] ****1452** If the confession is disregarded, appellants argue that the delinquency conclusion, since it

was fundamentally based on a finding that Gerald had made lewd remarks during the phone call to Mrs. Cook, is fatally defective for failure to accord the rights of confrontation and cross-examination which the Due Process Clause of the Fourteenth Amendment of the ***43** Federal Constitution guarantees in state proceedings generally. [FN73]

FN72. The privilege is applicable to state proceedings. Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).

FN73. Pointer v. State of Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965); Douglas v. State of Alabama, 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965).

Our first question, then, is whether Gerald's admission was improperly obtained and relied on as the basis of decision, in conflict with the Federal Constitution. For this purpose, it is necessary briefly to recall the relevant facts.

Mrs. Cook, the complainant, and the recipient of the alleged telephone call, was not called as a witness. Gerald's mother asked the Juvenile Court Judge why Mrs. Cook was not present and the judge replied that 'she didn't have to be present.' So far as appears, Mrs. Cook was spoken to only once, by Officer Flagg, and this was by telephone. The judge did not speak with her on any occasion. Gerald had been questioned by the probation officer after having been taken into custody. The exact circumstances of this questioning do not appear but any admissions Gerald may have made at this time do not appear in the record.[FN74] Gerald was also questioned by the Juvenile Court Judge at each of the two hearings. The judge testified in the habeas corpus proceeding that Gerald admitted making 'some of the lewd statements * * * (but not) any of the more serious lewd statements.' There was conflict and uncertainty among the witnesses at the habeas corpus proceeding—the Juvenile Court Judge, Mr. and Mrs. Gault, and the probation officer—as to what Gerald did or did not admit.

FN74. For this reason, we cannot consider the status of Gerald's alleged admissions to the probation officers. Cf., however, Comment, Miranda Guarantees in the California Juvenile Court, 7 Santa Clara Lawyer 114 (1966).

We shall assume that Gerald made admissions of the sort described by the Juvenile Court Judge, as quoted avove. Neither Gerald nor his parents were advised that ***44** he did not have to testify or make a statement, or that an incriminating statement might result in his commitment as a 'delinquent.'

The Arizona Supreme Court rejected appellants' contention that Gerald had a right to be advised that he need not incriminate himself. It said: 'We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination.'

In reviewing this conclusion of Arizona's Supreme Court, we emphasize again that we are here concerned only with a proceeding to determine whether a minor is a 'delinquent' and which may result in commitment to a state institution. Specifically, the question is whether, in such a proceeding, an admission by the juvenile may be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent. In light of Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), we must also consider whether, if the privilege against self-incrimination is available, it can effectively be waived unless counsel is present or the right to counsel has been waived.

****1453** It has long been recognized that the eliciting and use of confessions or admissions require careful scrutiny. Dean Wigmore states:

'The ground of distruct of confessions made in certain situations is, in a rough and indefinite way, judicial experience. There has been no careful collection of statistics of untrue confessions, nor has any great number of instances been even loosely reported * * * but enough have been verified to fortify the conclusion, based on ordinary observation of human conduct, that under certain stresses a person, especially one of defective mentality or peculiar ***45** temperament, may falsely acknowledge guilt. This possibility arises wherever the innocent person is placed in such a situation that the untrue acknowledgment of guilt is at the time the more promising of two alternatives between which he is obliged to

choose; that is, he chooses any risk that may be in falsely acknowledging guilt, in preference to some worse alternative associated with silence.

'The principle, then, upon which a confession may be excluded is that it is, under certain conditions, testimonially untrustworthy * * *. (T)he essential feature is that the principle of exclusion is a testimonial one, analogous to the other principles which exclude narrations as untrustworthy * * *.' [FN75]

FN75. 3 Wigmore, Evidence s 822 (3d ed. 1940).

This Court has emphasized that admissions and confessions of juveniles require special caution. In Haley v. State of Ohio, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224, where this Court reversed the conviction of a 15-year-old boy for murder, Mr. Justice Douglas said:

'What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man could and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight ***46** to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. No friend stood at the side of this 15-year-old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning.' [FN76]

FN76. 332 U.S., at 599—600, 68 S.Ct., at 303 (opinion of Mr. Justice Douglas, joined by Justices Black, Murphy and Rutledge; Justice Frankfurter concurred in a separate opinion).

In Haley, as we have discussed, the boy was convicted in an adult court, and not a juvenile court. In notable decisions, the New York Court of Appeals and the Supreme Court of New Jersey have recently considered decisions of Juvenile Courts in which boys have been adjudged 'delinquent' on the basis of confessions obtained in circumstances comparable to those in Haley. In both instances, the ****1454** State contended before its highest tribunal that constitutional requirements governing inculpatory statements applicable in adult courts do not apply to juvenile proceedings. In each case, the State's contention was rejected, and the juvenile court's determination of delinquency was set aside on the grounds of inadmissibility of the confession. In Matters of W. and S., 19 N.Y.2d 55, 277 N.Y.S.2d 675, 224 N.E.2d 102 (1966) (opinion by Keating, J.), and In Interests of Carlo and Stasilowicz, 48 N.J. 224, 225 A.2d 110 (1966) (opinion by Proctor, J.).

***47** [23][24][25] The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. The roots of the privilege are, however, far deeper. They tap the basic stream of religious and political principle because the privilege reflects the limits of the individual's attornment to the state and—in a philosophical sense—insists upon the equality of the individual and the state. [FN77] In other words, the privilege has a broader and deeper thrust than the rule which prevents the use of confessions which are the product of coercion because coercion is thought to carry with it the danger of unreliability. One of its purposes is to prevent the state, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the state in securing his conviction. [FN78]

FN77. See Fortas, The Fifth Amendment, 25 Cleveland Bar Assn. Journal 91 (1954).

FN78. See Rogers v. Richmond, 365 U.S. 534, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961);

Culombe v. Connecticut, 367 U.S. 568, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961) (opinion of Mr. Justice Frankfurter, joined by Mr. Justice Stewart); Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

[26][27][28] It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children. The language of the Fifth Amendment, applicable to the States by operation of the Fourteenth Amendment, is unequivocal and without exception. And the scope of the privilege is comprehensive. As Mr. Justice White, concurring, stated in Murphy v. Waterfront Commission, 378 U.S. 52, 94, 84 S.Ct. 1594, 1611, 12 L.Ed.2d 678 (1964):

'The privilege can be claimed in any proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory. * * * it protects any disclosures***48** which the witness may reasonably apprehend could be used in a criminal prosecution or which could lead to other evidence that might be so used.'[FN79] (Emphasis added.)

FN79. See also Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964); McCarthy v. Arndstein, 266 U.S. 34, 40, 45 S.Ct. 16, 17, 69 L.Ed. 158 (1924).

With respect to juveniles, both common observation and expert opinion emphasize that the 'distrust of confessions made in certain situations' to which Dean Wigmore referred in the passage quoted supra, at 1453, is imperative in the case of children from an early age through adolescence. In New York, for example, the recently enacted Family Court Act provides that the juvenile and his parents must be advised at the start of the hearing of his right to remain silent.[FN80] The New York statute also provides that the police must attempt to communicate with the juvenile's parents before questioning him, [FN81] and that absent ****1455** 'special circumstances' a confession may not be obtained from a child prior to notifying his parents or relatives and releasing the child either to them or to the Family Court. [FN82] In In Matters of W. and S., referred to above, the New York Court of Appeals held that the privilege against self-incrimination applies in juvenile delinquency cases and requires the exclusion of involuntary confessions, and that People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001 ***49** (1932), holding the contrary, had been specifically overruled by statute.

FN80. N.Y.Family Court Act s 741.

FN81. N.Y.Family Court Act s 724(a). In In Matter of Williams, 49 Misc.2d 154, 267 N.Y.S.2d 91 (1966), the New York Family Court held that 'The failure of the police to notify this child's parents that he had been taken into custody, if not alone sufficient to render his confession inadmissible, is germane on the issue of its voluntary character * * *.' Id., at 165, 267 N.Y.S.2d, at 106. The confession was held involuntary and therefore inadmissible.

FN82. N.Y.Family Court Act s 724 (as amended 1963, see Supp.1966). See In Matter of Addison, 20 A.D.2d 90, 245 N.Y.S.2d 243 (1963).

The authoritative 'Standards for Juvenile and Family Courts' concludes that, 'Whether or not transfer to the criminal court is a possibility, certain procedures should always be followed. Before being interviewed (by the police), the child and his parents should be informed of his right to have legal counsel present and to refuse to answer questions or be fingerprinted [FN83] if he should so decide.'[FN84]

FN83. The issues relating to fingerprinting of juveniles are not presented here, and we express no opinion concerning them.

FN84. Standards, p. 49.

[29][30] Against the application to juveniles of the right to silence, it is argued that juvenile proceedings are 'civil' and not 'criminal,' and therefore the privilege should not apply. It is true that the statement of the privilege in the Fifth Amendment, which is applicable to the States by reason of the Fourteenth Amendment, is that no person 'shall be compelled in any criminal case to be a witness against himself.' However, it is also clear that the availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the ex-

posure which it invites. The privilege may, for example, be claimed in a civil or administrative proceeding, if the statement is or may be inculpatory.[FN85]

FN85. See n. 79, supra, and accompanying text.

[31][32] It would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to 'criminal' involvement. In the first place, juvenile proceedings to determine 'delinquency,' which may lead to commitment to a state institution, must be regarded as 'criminal' for purposes of the privilege against self-incrimination. To hold ***50** otherwise would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has been attached to juvenile proceedings. Indeed, in over half of the States, there is not even assurance that the juvenile will be kept in separate institutions, apart from adult 'criminals.' In those States juveniles may be placed in or transferred to adult penal institutions[FN86] after having been found 'delinquent' by a juvenile court. For this purpose, at least, commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil.' And our Constitution guarantees that no person shall be 'compelled' to be a witness against himself when he is threatened with deprivation of his liberty—a command which this Court has broadly applied and generously implemented in accordance with the teaching of the history of the privilege and its ****1456** great office in mankind's battle for freedom.[FN87]

FN86. Delinquent Children in Penal Institutions, Children's Bureau Pub. No. 415—1964, p. 1.

FN87. See, e.g., Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); Garrity v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967); Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625, 636, 17 L.Ed.2d 574 (1967); Haynes v. State of Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963); Culombe v. State of Connecticut, 367 U.S. 568, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961); Rogers v. Richmond, 365 U.S. 534, 84 S.Ct. 735, 5 L.Ed.2d 760 (1961); Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964); Griffin v. State of California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965).

In addition, apart from the equivalence for this purpose of exposure to commitment as a juvenile delinquent and exposure to imprisonment as an adult offender, the fact of the matter is that there is little or no assurance in Arizona, as in most if not all of the States, that a juvenile apprehended and interrogated by the police or even by the Juvenile Court itself will remain outside of the reach of adult courts as a consequence of the offense for which he has been taken into custody. In Arizona, as in other States, provision is made for Juvenile Courts to relinquish ***51** or waive jurisdiction to the ordinary criminal courts.[FN88] In the present case, when Gerald Gault was interrogated concerning violation of a section of the Arizona Criminal Code, it could not be certain that the Juvenile Court Judge would decide to 'suspend' criminal prosecution in court for adults by proceeding to an adjudication in Juvenile Court.[FN89]

FN88. Arizona Constitution, Art. 6. s 15 (as amended 1960); ARS ss 8—223, 8—228, subsec. A; Harvard Law Review Note, p. 793. Because of this possibility that criminal jurisdiction may attach it is urged that '* * * all of the procedural safeguards in the criminal law should be followed.' Standards, p. 49. Cf. Harling v. United States, 111 U.S.App.D.C. 174, 295 F.2d 161 (1961).

FN89. ARS s 8—228, subsec. A.

It is also urged, as the Supreme Court of Arizona here asserted, that the juvenile and presumably his parents should not be advised of the juvenile's right to silence because confession is good for the child as the commencement of the assumed therapy of the juvenile court process, and he should be encouraged to assume an attitude of trust and confidence toward the officials of the juvenile process. This proposition has been subjected to widespread challenge on the basis of current reappraisals of the rhetoric and realities of the handling of juvenile offenders.

In fact, evidence is accumulating that confessions by juveniles do not aid in 'individualized treatment,' as the court below put it, and that compelling the child to answer questions, without warning or advice as to

his right to remain silent, does not serve this or any other good purpose. In light of the observations of Wheeler and Cottrell,[FN90] and others, it seems probable that where children are induced to confess by 'paternal' urgings on the part of officials and the confession is then followed***52** by disciplinary action, the child's reaction is likely to be hostile and adverse—the child may well feel that he has been led or tricked into confession and that despite his confession, he is being punished.[FN91]

FN90. Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966).

FN91. Id., at 33. See also the other materials cited in n. 37, supra.

Further, authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children. This Court's observations in Haley v. State of Ohio are set forth above. The recent decision of the New York Court of Appeals referred to above, In Matters of W. and S. deals with a dramatic and, it is to be hoped, extreme example. Two 12-year-old Negro boys were ****1457** taken into custody for the brutal assault and rape of two aged domestics, one of whom died as the result of the attack. One of the boys was schizophrenic and had been locked in the security ward of a mental institution at the time of the attacks. By a process that may best be described as bizarre, his confession was obtained by the police. A psychiatrist testified that the boy would admit 'whatever he thought was expected so that he could get out of the immediate situation.' The other 12-year-old also 'confessed.' Both confessions were in specific detail, albeit they contained various inconsistencies. The Court of Appeals, in an opinion by Keating, J., concluded that the confessions were products of the will of the police instead of the boys. The confessions were therefore held involuntary and the order of the Appellate Division affirming the order of the Family Court adjudging the defendants to be juvenile delinquents was reversed.

A similar and equally instructive case has recently been decided by the Supreme Court of New Jersey. In Interests of Carlo and Stasilowicz, supra. The body of a 10-year-old girl was found. She had been strangled. Neighborhood boys who knew the girl were questioned. ***53** The two appellants, aged 13 and 15, confessed to the police, with vivid detail and some inconsistencies. At the Juvenile Court hearing, both denied any complicity in the killing. They testified that their confessions were the product of fear and fatigue due to extensive police grilling. The Juvenile Court Judge found that the confessions were voluntary and admissible. On appeal, in an extensive opinion by Proctor, J., the Supreme Court of New Jersey reversed. It rejected the State's argument that the constitutional safeguard of voluntariness governing the use of confessions does not apply in proceedings before the Juvenile Court. It pointed out that under New Jersey court rules, juveniles under the age of 16 accused of committing a homicide are tried in a proceeding which 'has all of the appurtenances of a criminal trial,' including participation by the county prosecutor, and requirements that the juvenile be provided with counsel, that a stenographic record be made, etc. It also pointed out that under New Jersey law, the confinement of the boys after reaching age 21 could be extended until they had served the maximum sentence which could have been imposed on an adult for such a homicide, here found to be second-degree murder carrying up to 30 years' imprisonment.[FN92] The court concluded that the confessions were involuntary, stressing that the boys, contrary to statute, were placed in the police station and there interrogated; [FN93] that the parents of both boys were not allowed to see them while they ***54** were being interrogated;[FN94] that inconsistencies appeared among the various statements of the boys and with the objective evidence of the crime; and that there were protracted periods of questioning. The court noted the State's contention that both boys were advised of their constitutional rights before they made their statements, but it held that this should not be given 'significant weight in our ****1458** determination of voluntariness.' [FN95] Accordingly, the judgment of the Juvenile Court was reversed.

FN92. N.J.Rev.Stat. s 2A:4—37(b)(2), N.J.S.A. (Supp.1966); N.J.Rev.Stat. 2A:113—4, N.J.S.A.

FN93. N.J.Rev.Stat. s 2A:4—32, 33, N.J.S.A. The court emphasized that the 'frightening atmosphere' of a police station is likely to have 'harmful effects on the mind and will of the boy,' citing In Matter of Rutane, 37 Misc.2d 234, 234 N.Y.S.2d 777 (Fam.Ct.Kings County, 1962).

FN94. The court held that this alone might be enough to show that the confessions were involuntary 'even though, as the police testified, the boys did not wish to see their parents' (citing Gallegos v. State of Colorado, 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962)).

FN95. The court quoted the following passage from Haley v. State of Ohio, supra, 332 U.S., at 601, 68 S.Ct., at 304:

'But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain.'

In a recent case before the Juvenile Court of the District of Columbia, Judge Ketcham rejected the proffer of evidence as to oral statements made at police headquarters by four juveniles who had been taken into custody for alleged involvement in an assault and attempted robbery. In the Matter of Four Youths, Nos. 28—776—J, 28—778—J, 28—783—J, 28—859—J, Juvenile Court of the District of Columbia, April 7, 1961. The court explicitly stated that it did not rest its decision on a showing that ***55** the statements were involuntary, but because they were untrustworthy. Judge Ketcham said:

'Simply stated, the Court's decision in this case rests upon the considered opinion—after nearly four busy years on the Juvenile Court bench during which the testimony of thousands of such juveniles has been heard—that the statements of adolescents under 18 years of age who are arrested and charged with violations of law are frequently untrustworthy and often distort the truth.'

[33][34] We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, Juvenile Courts and appellate tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.[FN96]

FN96. The N.Y.Family Court Act s 744(b) provides that 'an uncorroborated confession made out of court by a respondent is not sufficient' to constitute the required 'preponderance of the evidence.'

See United States v. Morales, 233 F.Supp. 160 (D.C.Mont.1964), holding a confession inadmissible in proceedings under the Federal Juvenile Delinquency Act (18 U.S.C. s 5031 et seq.) because, in the circumstances in which it was made, the District Court could not conclude that it 'was freely made while Morales was afforded all of the requisites of due process required in the case of a sixteen year old boy of his experience.' Id., at 170.

56** [35][36] The 'confession' of Gerald Gault was first obtained by Officer Flagg, out of the presence of Gerald's parents, without counsel and without advising him of his right to silence, as far as appears. The judgment of the Juvenile Court was stated by the judge to be based on Gerald's admissions in court. Neither 'admission' was reduced to writing, and, to say the least, the process by which the 'admissions,' were obtained and received must be characterized as lacking the certainty and order which are required of proceedings of such formidable*1459** consequences.[FN97] Apart from the 'admission,' there was nothing upon which a judgment or finding might be based. There was no sworn testimony. Mrs. Cook, the complainant, was not present. The Arizona Supreme

Court held that 'sworn testimony must be required of all witnesses including police officers, probation officers and others who are part of or officially related to the juvenile court structure.' We hold that this is not enough. No reason is suggested or appears for a different rule in respect of sworn testimony in juvenile courts than in adult tribunals. Absent a valid confession adequate to support the determination of the Juvenile Court, confrontation and sworn testimony by witnesses available for cross-examination were essential for a finding of 'delinquency' and an order committing Gerald to a state institution for a maximum of six years.

FN97. Cf. Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964); Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 694 (1966).

The recommendations in the Children's Bureau's 'Standards for Juvenile and Family Courts' are in general accord with our conclusions. They state that testimony should be under oath and that only competent, material and relevant evidence under rules applicable ***57** to civil cases should be admitted in evidence. [FN98] The New York Family Court Act contains a similar provision.[FN99]

FN98. Standards, pp. 72—73. The Nat'l Crime Comm'n Report concludes that 'the evidence admissible at the adjudicatory hearing should be so limited that findings are not dependent upon or influenced by hearsay, gossip, rumor, and other unreliable types of information. To minimize the danger that adjudication will be affected by inappropriate considerations, social investigation reports should not be made known to the judge in advance of adjudication.' Id., at 87 (bold face eliminated). See also Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col.L.Rev. 281, 336 (1967): 'At the adjudication stage, the use of clearly incompetent evidence in order to prove the youth's involvement in the alleged misconduct * * * is not justifiable. Particularly in delinquency cases, where the issue of fact is the commission of a crime, the introduction of hearsay—such as the report of a policeman who did not witness the events—contravenes the purposes underlying the sixth amendment right of confrontation.' (Footnote omitted.)

FN99. N.Y.Family Court Act s 744(a). See also Harvard Law Review Note, p. 795. Cf. Willner v. Committee on Character, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963).

[37] As we said in Kent v. United States, 383 U.S. 541, 554, 86 S.Ct. 1045, 1053, 16 L.Ed.2d 84 (1966), with respect to waiver proceedings, 'there is no place in our system of law of reaching a result of such tremendous consequences without ceremony * * *.' We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.

VI.
APPELLATE REVIEW AND TRANSCRIPT OF PROCEEDINGS.

Appellants urge that the Arizona statute is unconstitutional under the Due Process Clause because, as construed by its Supreme Court, 'there is no right of appeal ***58** from a juvenile court order * * *.' The court held that there is no right to a transcript because there is no right to appeal and because the proceedings are confidential and any record must be destroyed after a prescribed period of time.[FN100] Whether a transcript or other recording is made, it held, is a matter for the discretion of the juvenile court.

FN100. ARS s 8—238.

This Court has not held that a State is required by the Federal Constitution ****1460** 'to provide appellate courts or a right to appellate review at all.'[FN101] In view of the fact that we must reverse the Supreme Court of Arizona's affirmance of the dismissal of the writ of habeas corpus for other reasons, we need not rule on this question in the present case or upon the failure to provide a transcript or recording of the hearings—or, indeed, the failure of the Juvenile Judge to state the grounds for his conclusion. Cf. Kent v. United States, supra, 383 U.S., at 561, 86 S.Ct., at 1057, where we said, in the context of a decision of the juvenile court waiving jurisdiction to the adult court, which by local law, was permissible: '* * * it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor.'

As the present case illustrates, the consequences of failure to provide an appeal, to record the proceedings, or to make findings or state the grounds for the juvenile court's conclusion may be to throw a burden upon the machinery for habeas corpus, to saddle the reviewing process with the burden of attempting to reconstruct a record, and to impose upon the Juvenile Judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him.[FN102]

FN101. Griffin v. People of State of Illinois, 351 U.S. 12, 18, 76 S.Ct. 585, 590, 100 L.Ed. 891 (1956).

FN102. 'Standards for Juvenile and Family Courts' recommends 'written findings of fact, some form of record of the hearing' 'and the right to appeal.' Standards, p. 8. It recommends verbatim recording of the hearing by stenotypist or mechanical recording (p. 76) and urges that the judge make clear to the child and family their right to appeal (p. 78). See also, Standard Family Court Act ss 19, 24, 28; Standard Juvenile Court Act ss 19, 24, 28. The Harvard Law Review Note, p. 799, states that 'The result (of the infrequency of appeals due to absence of record, indigency, etc.) is that juvenile court proceedings are largely unsupervised.' The Nat'l Crime Comm'n Report observes, p. 86, that 'records make possible appeals which, even if they do not occur, impart by their possibility a healthy atmosphere of accountability.'

***59** For the reasons stated, the judgment of the Supreme Court of Arizona is reversed and the cause remanded for further proceedings not inconsistent with this opinion. It is so ordered.

Judgment reversed and cause remanded with directions.

Mr. Justice BLACK, concurring.

The juvenile court laws of Arizona and other States, as the Court points out, are the result of plans promoted by humane and forward-looking people to provide a system of courts, procedures, and sanctions deemed to be less harmful and more lenient to children than to adults. For this reason such state laws generally provide less formal and less public methods for the trial of children. In line with this policy, both courts and legislators have shrunk back from labeling these laws as 'criminal' and have preferred to call them 'civil.' This, in part, was to prevent the full application to juvenile court cases of the Bill of Rights safeguards, including notice as provided in the Sixth Amendment,[FN1] the right to counsel guaranteed by the Sixth, [FN2] the right against self-***60** incrimination guaranteed by the Fifth, [FN3] and the right to confrontation guaranteed****1461** by the Sixth. [FN4] The Court here holds, however, that these four Bill of Rights safeguards apply to protect a juvenile accused in a juvenile court on a charge under which he can be imprisoned for a term of years. This holding strikes a well-nigh fatal blow to much that is unique about the juvenile courts in the Nation. For this reason, there is much to be said for the position of my Brother STEWART that we should not pass on all these issues until they are more squarely presented. But since the majority of the Court chooses to decide all of these questions, I must either do the same or leave my views unexpressed on the important issues determined. In these circumstances, I feel impelled to express my views.

FN1. 'In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation * * *.' Also requiring notice is the Fifth Amendment's provision that 'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury * * *.'

FN2. 'In all criminal prosecutions, the accused shall * * * have the Assistance of Counsel in his defence.'

FN3. 'No person * * * shall be compelled in any criminal case to be a witness against himself * * *.'

FN4. 'In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him * * *.'

The juvenile court planners envisaged a system that would practically immunize juveniles from 'punishment' for 'crimes' in an effort to save them from

youthful indiscretions and stigmas due to criminal charges or convictions. I agree with the Court, however, that this exalted ideal has failed of achievement since the beginning of the system. Indeed, the state laws from the first one on contained provisions, written in emphatic terms, for arresting and charging juveniles with violations of state criminal laws, as well as for taking juveniles by force of law away from their parents and turning them over to different individuals or groups or for confinement within some state school or institution for a number of years. The latter occurred in this case. Young Gault was arrested and detained on a charge of violating an Arizona penal law by using vile and offensive language to a lady on the telephone. If an adult, he ***61** could only have been fined or imprisoned for two months for his conduct. As a juvenile, however, he was put through a more or less secret, informal hearing by the court, after which he was ordered, or more realistically, 'sentenced,' to confinement in Arizona's Industrial School until he reaches 21 years of age. Thus, in a juvenile system designed to lighten or avoid punishment for criminality, he was ordered by the State to six years' confinement in what is in all but name a penitentiary or jail.

Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws—an invidious discrimination—to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards. I consequently agree with the Court that the Arizona law as applied here denied to the parents and their son the right of notice, right to counsel, right against self-incrimination, and right to confront the witnesses against young Gault. Appellants are entitled to these rights, not because 'fairness, impartiality and orderliness—in short, the essentials of due process'—require them and not because they are 'the procedural rules which have been fashioned from the generality of due process,' but because they are specifically and unequivocally granted by provisions of the Fifth and Sixth Amendments which the Fourteenth Amendment makes applicable to the States.

A few words should be added because of the opinion of my Brother HARLAN who rests his concurrence and ***62** dissent on the Due Process Clause alone. He reads that clause alone as allowing this ****1462** Court 'to determine what forms of procedural protection are necessary to guarantee the fundamental fairness of juvenile proceedings' 'in a fashion consistent with the 'traditions and conscience of our people.'' Cf. Rochin v. People of California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183. He believes that the Due Process Clause gives this Court the power, upon weighing a 'compelling public interest,' to impose on the States only those specific constitutional rights which the Court deems 'imperative' and 'necessary' to comport with the Court's notions of 'fundamental fairness.'

I cannot subscribe to any such interpretation of the Due Process Clause. Nothing in its words or its history permits it, and 'fair distillations of relevant judicial history' are no substitute for the words and history of the clause itself. The phrase 'due process of law' has through the years evolved as the successor in purpose and meaning to the words 'law of the land' in Magna Charta which more plainly intended to call for a trial according to the existing law of the land in effect at the time an alleged offense had been committed. That provision in Magna Charta was designed to prevent defendants from being tried according to criminal laws or proclamations specifically promulgated to fit particular cases or to attach new consequences to old conduct. Nothing done since Magna Charta can be pointed to as intimating that the Due Process Clause gives courts power to fashion laws in order to meet new conditions, to fit the 'decencies' of changed conditions, or to keep their consciences from being shocked by legislation, state or federal.

And, of course, the existence of such awesome judicial power cannot be buttressed or created by relying on the word 'procedural.' Whether labeled as 'procedural' or 'substantive,' the Bill of Rights safeguards, far from ***63** being mere 'tools with which' other unspecified 'rights could be fully vindicated,' are the very vitals of a sound constitutional legal system designed to protect and safeguard the most cherished liberties of a free people. These safeguards were written into our Constitution not by judges but by Constitution makers. Freedom in this Nation will be far less secure the very moment that it is decided that

judges can determine which of these safeguards 'should' or 'should not be imposed' according to their notions of what constitutional provisions are consistent with the 'traditions and conscience of our people.' Judges with such power, even though they profess to 'proceed with restraint,' will be above the Constitution, with power to write it, not merely to interpret it, which I believe to be the only power constitutionally committed to judges.

There is one ominous sentence, if not more, in my Brother HARLAN's opinion which bodes ill, in my judgment, both for legislative programs and constitutional commands. Speaking of procedural safeguards in the Bill of Rights, he says:

'These factors in combination suggest that legislatures may properly expect only a cautious deference for their procedural judgments, but that, conversely, courts must exercise their special responsibility for procedural guarantees with care to permit ample scope for achieving the purposes of legislative programs. * * * (T)he court should necessarily proceed with restraint.'

It is to be noted here that this case concerns Bill of Rights Amendments; that the 'procedure' power my Brother HARLAN claims for the Court here relates solely to Bill of Rights safeguards; and that he is here claiming for the Court a supreme power to fashion new Bill of Rights safeguards according to the Court's notions of ***64** what fits tradition and conscience. I do not believe that the Constitution vests any ****1463** such power in judges, either in the Due Process Clause or anywhere else. Consequently, I do not vote to invalidate this Arizona law on the ground that it is 'unfair' but solely on the ground that it violates the Fifth and Sixth Amendments made obligatory on the States by the Fourteenth Amendment. Cf. Pointer v. State of Texas, 380 U.S. 400, 412, 85 S.Ct. 1065, 1072, 13 L.Ed.2d 923 (Goldberg, J., concurring). It is enough for me that the Arizona law as here applied collides head-on with the Fifth and Sixth Amendments in the four respects mentioned. The only relevance to me of the Due Process Clause is that it would, of course, violate due process or the 'law of the land' to enforce a law that collides with the Bill of Rights.

Mr. Justice WHITE, concurring.

I join the Court's opinion except for Part V. I also agree that the privilege against compelled self-incrimination applies at the adjudicatory stage of juvenile court proceedings. I do not, however, find an adequate basis in the record for determination whether that privilege was violated in this case. The Fifth Amendment protects a person from being 'compelled' in any criminal proceeding to be a witness against himself. Compulsion is essential to a violation. It may be that when a judge, armed with the authority he has or which people think he has, asks questions of a party or a witness in an adjudicatory hearing, that person, especially if a minor, would feel compelled to answer, absent a warning to the contrary or similar information from some other source. The difficulty is that the record made at the habeas corpus hearing, which is the only information we have concerning the proceedings in the juvenile court, does not directly inform us whether Gerald Gault or his parents were told of Gerald's right to remain silent; nor does it reveal whether the parties ***65** were aware of the privilege from some other source, just as they were already aware that they had the right to have the help of counsel and to have witnesses on their behalf. The petition for habeas corpus did not raise the Fifth Amendment issue nor did any of the witnesses focus on it.

I have previously recorded my views with respect to what I have deemed unsound applications of the Fifth Amendment. See, for example, Miranda v. State of Arizona, 384 U.S. 436, 526, 86 S.Ct. 1602, 1654, 16 L.Ed.2d 694, and Malloy v. Hogan, 378 U.S. 1, 33, 84 S.Ct. 1489, 1506, 12 L.Ed.2d 653, dissenting opinions. These views, of course, have not prevailed. But I do hope that the Court will proceed with some care in extending the privilege, with all its vigor, to proceedings in juvenile court, particularly the nonadjudicatory stages of those proceedings.

In any event, I would not reach the Fifth Amendment issue here. I think the Court is clearly ill-advised to review this case on the basis of Miranda v. State of Arizona, since the adjudication of delinquency took place in 1964, long before the Miranda decision. See Johnson v. State of New Jersey, 384 U.S. 719, 86 S.Ct. 1772, 16 L.Ed.2d 882. Under these circumstances, this case is a poor vehicle for resolving a difficult problem. Moreover, no prejudice to appellants is at stake in this regard. The judgment below must be reversed on other grounds and in the event further proceedings are to be had, Gerald Gault will have counsel available to advise him.

For somewhat similar reasons, I would not reach

the questions of confrontation and cross-examination which are also dealt with in Part V of the opinion.

Mr. Justice HARLAN, concurring in part and dissenting in part.

Each of the 50 States has created a system of juvenile or family courts, in which distinctive rules are employed and special consequences imposed. The jurisdiction of ***66** these courts commonly extends****1464** both to cases which the States have withdrawn from the ordinary processes of criminal justice, and to cases which involve acts that, if performed by an adult, would not be penalized as criminal. Such courts are denominated civil, not criminal, and are characteristically said not to administer criminal penalties. One consequence of these systems, at least as Arizona construes its own, is that certain of the rights guaranteed to criminal defendants by the Constitution are withheld from juveniles. This case brings before this Court for the first time the question of what limitations the the Constitution places upon the operation of such tribunals.[FN1] For reasons which follow, I have concluded that the Court has gone too far in some respects, and fallen short in others, in assessing the procedural requirements demanded by the Fourteenth Amendment.

FN1. Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84, decided at the 1965 Term, did not purport to rest on constitutional grounds.

I.

I must first acknowledge that I am unable to determine with any certainty by what standards the Court decides that Arizona's juvenile courts do not satisfy the obligations of due process. The Court's premise, itself the product of reasoning which is not described, is that the 'constitutional and theoretical basis' of state systems of juvenile and family courts is 'debatable'; it buttresses these doubts by marshaling a body of opinion which suggests that the accomplishments of these courts have often fallen short of expectations. [FN2] The Court does not ***67** indicate at what points or for what purposes such views, held either by it or by other observers, might be pertinent to the present issues. Its failure to provide any discernible standard for the measurement of due process in relation to juvenile proceedings unfortunately might be understood to mean that the Court is concerned principally with the wisdom of having such courts at all.

FN2. It is appropriate to observe that, whatever the relevance the Court may suppose that this criticism has to present issues, many of the critics have asserted that the deficiencies of juvenile courts have stemmed chiefly from the inadequacy of the personnel and resources available to those courts. See, e.g., Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup.Ct.Rev. 167, 191—192; Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis.L.Rev. 7, 46.

If this is the source of the Court's dissatisfaction, I cannot share it. I should have supposed that the constitutionality of juvenile courts was beyond proper question under the standards now employed to assess the substantive validity of state legislation under the Due Process Clause of the Fourteenth Amendment. It can scarcely be doubted that it is within the State's competence to adopt measures reasonably calculated to meet more effectively the persistent problems of juvenile delinquency; as the opinion for the Court makes abundantly plain, these are among the most vexing and ominous of the concerns which now face communities throughout the country.

The proper issue here is, however, not whether the State may constitutionally treat juvenile offenders through a system of specialized courts, but whether the proceedings in Arizona's juvenile courts include procedural guarantees which satisfy the requirements of the Fourteenth Amendment. Among the first premises of our constitutional system is the obligation to conduct any proceeding in which an individual may be deprived of liberty or property in a fashion consistent with the 'traditions and conscience of our people.' Snyder v. Commonwealth of Massachusetts, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674. The importance of these procedural guarantees is doubly intensified here. First, many of the problems with which Arizona is concerned ***68** are among those ****1465** traditionally confined to the processes of criminal justice; their disposition necessarily affects in the most direct and substantial manner the liberty of individual citizens. Quite obviously, systems of specialized penal justice might permit erosion, or even evasion, of the limitations placed by the Constitution upon state criminal proceedings. Second, we must

recognize that the character and consequences of many juvenile court proceedings have in fact closely resembled those of ordinary criminal trials. Nothing before us suggests that juvenile courts were intended as a device to escape constitutional constraints, but I entirely agree with the Court that we are nonetheless obliged to examine with circumspection the procedural guarantees the State has provided.

The central issue here, and the principal one upon which I am divided from the Court, is the method by which the procedural requirements of due process should be measured. It must at the outset be emphasized that the protections necessary here cannot be determined by resort to any classification of juvenile proceedings either as criminal or as civil, whether made by the State or by this Court. Both formulae are simply too imprecise to permit reasoned analysis of these difficult constitutional issues. The Court should instead measure the requirements of due process by reference both to the problems which confront the State and to the actual character of the procedural system which the State has created. The Court has for such purposes chiefly examined three connected sources: first, the 'settled usages and modes of proceeding,' Den ex dem. Murray v. Hoboken Land & Improvement Co., 18 How. 272, 277, 15 L.Ed. 372; second, the 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'. Hebert v. State of Louisiana, 272 U.S. 312, 316, 47 S.Ct. 103, 104, 71 L.Ed. 270 and third, the character and requirements of the circumstances presented in each situation. FCC v. WJR, The Goodwill Station, 337 U.S. 265, 277, 69 S.Ct. 1097, 1104, 93 L.Ed. 1353; Yakus v. ***69** United States, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834. See, further, my dissenting opinion in Poe v. Ullman, 367 U.S. 497, 522, 81 S.Ct. 1752, 1765, 6 L.Ed.2d 989, and compare my opinion concurring in the result in Pointer v. State of Texas, 380 U.S. 400, 408, 85 S.Ct. 1065, 1070. Each of these factors is relevant to the issues here, but it is the last which demands particular examination.

The Court has repeatedly emphasized that determination of the constitutionally required procedural safeguards in any situation requires recognition both of the 'interests affected' and of the 'circumstances involved.' FCC v. WJR, The Goodwill Station, supra, 337 U.S. at 277, 69 S.Ct. at 1104. In particular, a 'compelling public interest' must, under our cases, be taken fully into account in assessing the validity under the due process clauses of state or federal legislation and its application. See, e.g., Yakus v. United States, supra, 321 U.S. at 442, 64 S.Ct. at 675; Bowles v. Willingham, 321 U.S. 503, 520, 64 S.Ct. 641, 650, 88 L.Ed. 892; Miller v. Schoene, 276 U.S. 272, 279, 48 S.Ct. 246, 247, 72 L.Ed. 568. Such interests would never warrant arbitrariness or the diminution of any specifically assured constitutional right, Home Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398, 426, 54 S.Ct. 231, 235, 78 L.Ed. 413, but they are an essential element of the context through which the legislation and proceedings under it must be read and evaluated.

No more evidence of the importance of the public interests at stake here is required than that furnished by the opinion of the Court; it indicates that 'some 601,000 children under 18, or 2% of all children between 10 and 17, came before juvenile courts' in 1965, and that 'about one-fifth of all arrests for serious crimes' in 1965 were of juveniles. The Court adds that the rate of juvenile ****1466** crime is steadily rising. All this, as the Court suggests, indicates the importance of these due process issues, but it mirrors no less vividly that state authorities are confronted by formidable and immediate problems involving the most fundamental social values. The state legislatures have determined that the most hopeful solution for ***70** these problems is to be found in specialized courts, organized under their own rules and imposing distinctive consequences. The terms and limitations of these systems are not identical, nor are the procedural arrangements which they include, but the States are uniform in their insistence that the ordinary processes of criminal justice are inappropriate, and that relatively informal proceedings, dedicated to premises and purposes only imperfectly reflected in the criminal law, are instead necessary.

It is well settled that the Court must give the widest deference to legislative judgments that concern the character and urgency of the problems with which the State is confronted. Legislatures are, as this Court has often acknowledged, the 'main guardian' of the public interest, and, within their constitutional competence, their understanding of that interest must be accepted as 'wellnigh' conclusive. Berman v. Parker, 348 U.S. 26, 32, 75 S.Ct. 98, 102, 99 L.Ed. 27. This principle does not, however, reach all the questions essential to the resolution of this case. The legislative judgments at issue here embrace assessments of the necessity and wisdom of procedural guarantees; these

are questions which the Constitution has entrusted at least in part to courts, and upon which courts have been understood to possess particular competence. The fundamental issue here is, therefore, in what measure and fashion the Court must defer to legislative determinations which encompass constitutional issues of procedural protection.

It suffices for present purposes to summarize the factors which I believe to be pertinent. It must first be emphasized that the deference given to legislators upon substantive issues must realistically extend in part to ancillary procedural questions. Procedure at once reflects and creates substantive rights, and every effort of courts since the beginnings of the common law to separate the two has proved essentially futile. The distinction between them is particularly inadequate here, where the ***71** legislature's substantive preferences directly and unavoidably require judgments about procedural issues. The procedural framework is here a principal element of the substantive legislative system; meaningful deference to the latter must include a portion of deference to the former. The substantive-procedural dichotomy is, nonetheless, an indispensable tool of analysis, for it stems from fundamental limitations upon judicial authority under the Constitution. Its premise is ultimately that courts may not substitute for the judgments of legislators their own understanding of the public welfare, but must instead concern themselves with the validity under the Constitution of the methods which the legislature has selected. See e.g., McLean v. State of Arkansas, 211 U.S. 539, 547, 29 S.Ct. 206, 208, 53 L.Ed. 315; Olsen v. State of Nebraska, 313 U.S. 236, 246—247, 61 S.Ct. 862, 865, 85 L.Ed. 1305. The Constitution has in this manner created for courts and legislators areas of primary responsibility which are essentially congruent to their areas of special competence. Courts are thus obliged both by constitutional command and by their distinctive functions to bear particular responsibility for the measurement of procedural due process. These factors in combination suggest that legislatures may properly expect only a cautious deference for their procedural judgments, but that, conversely, courts must exercise their special responsibility for procedural guarantees with care to permit ample scope for ****1467** achieving the purposes of legislative programs. Plainly, courts can exercise such care only if they have in each case first studied thoroughly the objectives and implementation of the program at stake; if, upon completion of those studies, the effect of extensive procedural restrictions upon valid legislative purposes cannot be assessed with reasonable certainty, the court should necessarily proceed with restraint.

The foregoing considerations, which I believe to be fair distillations of relevant judicial history, suggest ***72** three criteria by which the procedural requirements of due process should be measured here: first, no more restrictions should be imposed than are imperative to assure the proceedings' fundamental fairness; second, the restrictions which are imposed should be those which preserve, so far as possible, the essential elements of the State's purpose; and finally, restrictions should be chosen which will later permit the orderly selection of any additional protections which may ultimately prove necessary. In this way, the Court may guarantee the fundamental fairness of the proceeding, and yet permit the State to continue development of an effective response to the problems of juvenile crime.

II.

Measured by these criteria, only three procedural requirements should, in my opinion, now be deemed required of state juvenile courts by the Due Process Clause of the Fourteenth Amendment: first, timely notice must be provided to parents and children of the nature and terms of any juvenile court proceeding in which a determination affecting their rights or interests may be made; second, unequivocal and timely notice must be given that counsel may appear in any such proceeding in behalf of the child and its parents, and that in cases in which the child may be confined in an institution, counsel may, in circumstances of indigency, be appointed for them; and third, the court must maintain a written record, or its equivalent, adequate to permit effective review on appeal or in collateral proceedings. These requirements would guarantee to juveniles the tools with which their rights could be fully vindicated, and yet permit the States to pursue without unnecessary hindrance the purposes which they believe imperative in this field. Further, their imposition now would later ***73** permit more intelligent assessment of the necessity under the Fourteenth Amendment of additional requirements, by creating suitable records from which the character and deficiencies of juvenile proceedings could be accurately judged. I turn to consider each of these three requirements.

The Court has consistently made plain that ade-

quate and timely notice is the fulcrum of due process, whatever the purposes of the proceeding. See, e.g., Roller v. Holly, 176 U.S. 398, 409, 20 S.Ct. 410, 413, 44 L.Ed. 520; Coe v. Armour Fertilizer Works, 237 U.S. 413, 424, 35 S.Ct. 625, 628, 59 L.Ed. 1027. Notice is ordinarily the prerequisite to effective assertion of any constitutional or other rights; without it, vindication of those rights must be essentially fortuitous. So fundamental a protection can neither be spared here nor left to the 'favor or grace' of state authorities. Central of Georgia Ry. v. Wright, 207 U.S. 127, 138, 28 S.Ct. 47, 51, 52 L.Ed. 134; Coe v. Armour Fertilizer Works, supra, 237 U.S. at 425, 35 S.Ct. at 628.

Provision of counsel and of a record, like adequate notice, would permit the juvenile to assert very much more effectively his rights and defenses, both in the juvenile proceedings and upon direct or collateral review. The Court has frequently emphasized their importance in proceedings in which an individual may be deprived of his liberty, see Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799, and Griffin v. People of State of Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891; this reasoning must include with special force those who are ****1468** commonly inexperienced and immature. See Powell v. State of Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158. The facts of this case illustrate poignantly the difficulties of review without either an adequate record or the participation of counsel in the proceeding's initial stages. At the same time, these requirements should not cause any substantial modification in the character of juvenile court proceedings: counsel, although now present in only a small percentage of juvenile cases, have apparently already appeared without ***74** incident in virtually all juvenile courts;[FN3] and the maintenance of a record should not appreciably alter the conduct of these proceedings.

> FN3. The statistical evidence here is incomplete, but see generally Skoler & Tenney, Attorney Representation in Juvenile Court, 4 J. Fam.Law 77. They indicate that some 91% of the juvenile court judges whom they polled favored representation by counsel in their courts. Id., at 88.

The question remains whether certain additional requirements, among them the privilege against self-incrimination, confrontation, and cross-examination, must now, as the Court holds, also be imposed. I share in part the views expressed in my Brother WHITE'S concurring opinion, but believe that there are other, and more deep-seated, reasons to defer, at least for the present, the imposition of such requirements.

Initially, I must vouchsafe that I cannot determine with certainty the reasoning by which the Court concludes that these further requirements are now imperative. The Court begins from the premise, to which it gives force at several points, that juvenile courts need not satisfy 'all of the requirements of a criminal trial.' It therefore scarcely suffices to explain the selection of these particular procedural requirements for the Court to declare that juvenile court proceedings are essentially criminal, and thereupon to recall that these are requisites for a criminal trial. Nor does the Court's voucher of 'authoritative opinion,' which consists of four extraordinary juvenile cases, contribute materially to the solution of these issues. The Court has, even under its own permises, asked the wrong questions: the problem here is to determine what forms of procedural protection are necessary to guarantee the fundamental fairness of juvenile proceedings, and not which of the procedures now employed in criminal trials should be transplanted intact to proceedings in these specialized courts.

***75** In my view, the Court should approach this question in terms of the criteria, described above, which emerge from the history of due process adjudication. Measured by them, there are compelling reasons at least to defer imposition of these additional requirements. First, quite unlike notice, counsel, and a record, these requirements might radically alter the character of juvenile court proceedings. The evidence from which the Court reasons that they would not is inconclusive,[FN4] and other available evidence suggests that they very likely would.[FN5] At ****1469** the least, it is plain that these additional requirements would contribute materially to the creation in these proceedings of the atmosphere of an ordinary criminal trial, and would, even if they do no more, thereby largely frustrate a central purpose of these specialized courts. Further, these are restrictions intended to conform to the demands of an intensely adversary system of criminal justice; the broad purposes which they represent might be served in juvenile courts with equal effectiveness by procedural devices more consistent with the premises of proceedings ***76** in those courts. As the Court apparently acknowledges, the

hazards of self-accusation, for example, might be avoided in juvenile proceedings without the imposition of all the requirements and limitations which surround the privilege against self-incrimination. The guarantee of adequate notice, counsel, and a record would create conditions in which suitable alternative procedures could be devised; but, unfortunately, the Court's haste to impose restrictions taken intact from criminal procedure may well seriously hamper the development of such alternatives. Surely this illustrates that prudence and the principles of the Fourteenth Amendment alike require that the Court should now impose no more procedural restrictions than are imperative to assure fundamental fairness, and that the States should instead be permitted additional opportunities to develop without unnecessary hindrance their systems of juvenile courts.

FN4. Indeed, my Brother BLACK candidly recognizes that such is apt to be the effect of today's decision, ante, p. 1460. The Court itself is content merely to rely upon inapposite language from the recommendations of the Children's Bureau, plus the terms of a single statute.

FN5. The most cogent evidence of course consists of the steady rejection of these requirements by state legislatures and courts. The wide disagreement and uncertainty upon this question are also reflected in Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup.Ct.Rev. 167, 186, 191. See also Paulsen, Fairness to the Juvenile Offender, 41 Minn.L.Rev. 547, 561—562; McLean, An Answer to the Challenge of Kent, 53 A.B.A.J. 456, 457; Alexander, Constitutional Rights in Juvenile Court, 46 A.B.A.J. 1206; Shears, Legal Problems Peculiar to Children's Courts, 48 A.B.A.J. 719; Siler, The Need for Defense Counsel in the Juvenile Court, 11 Crime & Delin. 45, 57—58. Compare Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis.L.Rev. 7, 32.

I find confirmation for these views in two ancillary considerations. First, it is clear that an uncertain, but very substantial number of the cases brought to juvenile courts involve children who are not in any sense guilty of criminal misconduct. Many of these children have simply the misfortune to be in some manner distressed; others have engaged in conduct, such as truancy, which is plainly not criminal.[FN6] Efforts are now being made to develop effective, and entirely noncriminal, methods of treatment for these children. [FN7] In such cases, the state authorities ***77** are in the most literal sense acting in loco parentis; they are, by any standard, concerned with the child's protection, and not with his punishment. I do not question that the methods employed in such cases must be consistent with the constitutional obligation to act in accordance with due process, but certainly the Fourteenth Amendment does not demand that they be constricted by the procedural guarantees devised for ordinary criminal prosecutions. Cf. State of Minnesota ex rel. Pearson v. Probate Court, 309 U.S. 270, 60 S.Ct. 523, 84 L.Ed. 744. It must be remembered that the various classifications of juvenile court proceedings are, as the vagaries of the available statistics illustrate, often arbitrary or ambiguous; it would therefore be imprudent, at the least, to build upon these classifications rigid systems of procedural requirements which would be applicable, or not, in accordance with the descriptive label given to the particular proceeding. It is better, it seems to me, to begin by now requiring the essential elements of fundamental fairness in juvenile courts, whatever the label given by the State to the proceedings; in this way the Court could avoid imposing unnecessarily rigid restrictions, and yet escape dependence upon classifications which may often prove to be illusory. Further, the provision of notice, counsel, ****1470** and a record would permit orderly efforts to determine later whether more satisfactory classifications can be devised, and if they can, whether additional procedural requirements are necessary for them under the Fourteenth Amendment.

FN6. Estimates of the number of children in this situation brought before juvenile courts range from 26% to some 48%; variation seems chiefly a product both of the inadequacy of records and of the difficulty of categorizing precisely the conduct with which juveniles are charged. See generally Sheridan, Juveniles Who Commit Noncriminal Acts: Why Treat in a Correctional System? 31 Fed.Probation 26, 27. By any standard, the number of juveniles involved is 'considerable.' Ibid.

FN7. Id., at 28—30.

Second, it should not be forgotten that juvenile crime and juvenile courts are both now under earnest study throughout the country. I very much fear that this Court, by imposing these rigid procedural requirements, may inadvertently have served to discourage these efforts to find more satisfactory solutions for the problems of juvenile crime, and may thus now hamper enlightened development of the systems of juvenile courts. It is ***78** appropriate to recall that the Fourteenth Amendment does not compel the law to remain passive in the midst of change; to demand otherwise denies 'every quality of the law but its age'. Hurtado v. People of State of California, 110 U.S. 516, 529, 4 S.Ct. 111, 117, 28 L.Ed. 232.

III.

Finally, I turn to assess the validity of this juvenile court proceeding under the criteria discussed in this opinion. Measured by them, the judgment below must, in my opinion, fall. Gerald Gault and his parents were not provided adequate notice of the terms and purposes of the proceedings in which he was adjudged delinquent; they were not advised of their rights to be represented by counsel; and no record in any form was maintained of the proceedings. It follows, for the reasons given in this opinion, that Gerald Gault was deprived of his liberty without due process of law, and I therefore concur in the judgment of the Court.

Mr. Justice STEWART, dissenting.

The Court today uses an obscure Arizona case as a vehicle to impose upon thousands of juvenile courts throughout the Nation restrictions that the Constitution made applicable to adversary criminal trials.[FN1] I believe the Court's decision is wholly unsound as a matter of constitutional law, and sadly unwise as a matter of judicial policy.

FN1. I find it strange that a Court so intent upon fastening an absolute right to counsel upon nonadversary juvenile proceedings has not been willing even to consider whether the Constitution requires a lawyer's help in a criminal prosecution upon a misdemeanor charge. See Winters v. Beck, 385 U.S. 907, 87 S.Ct. 207, 17 L.Ed.2d 137; DeJoseph v. Connecticut, 385 U.S. 982, 87 S.Ct. 526, 17 L.Ed.2d 443.

Juvenile proceedings are not criminal trials. They are not civil trials. They are simply not adversary proceedings. Whether treating with a delinquent child, a neglected***79** child, a defective child, or a dependent child, a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act.

In the last 70 years many dedicated men and women have devoted their professional lives to the enlightened task of bringing us out of the dark world of Charles Dickens in meeting our responsibilities to the child in our society. The result has been the creation in this century of a system of juvenile and family courts in each of the 50 States. There can be no denying that in many areas the performance of these agencies has fallen disappointingly short of the hopes and dreams of the courageous pioneers who first conceived them. For a variety of reasons, the reality has sometimes not even approached the ideal, and much remains to be accomplished in the administration of public juvenile and family agencies—in personnel, in planning, in financing, perhaps in the formulation of wholly new approaches.

****1471** I possess neither the specialized experience nor the expert knowledge to predict with any certainty where may lie the brightest hope for progress in dealing with the serious problems of juvenile delinquency. But I am certain that the answer does not lie in the Court's opinion in this case, which serves to convert a juvenile proceeding into a criminal prosecution.

The inflexible restrictions that the Constitution so wisely made applicable to adversary criminal trials have no inevitable place in the proceedings of those public social agencies known as juvenile or family courts. And to impose the Court's long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the nineteenth century. In that era there were no juvenile proceedings, and a ***80** child was tried in a conventional criminal court will all the trappings of a conventional criminal trial. So it was that a 12-year-old boy named James Guild was tried in New Jersey for killing Catharine Beakes. A jury found him guilty of murder, and he was sentenced to death by

hanging. The sentence was executed. It was all very constitutional.[FN2]

> FN2. State v. Guild, 5 Halst. 163, 10 N.J.L. 163, 18 Am.Dec. 404.
>
> 'Thus, also, in very modern times, a boy of ten years old was convicted on his own confession of murdering his bedfellow, there appearing in his whole behavior plain tokens of a mischievous discretion; and as the sparing this boy merely on account of his tender years might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject of capital punishment.' 4 Blackstone, stone, Commentaries 23 (Wendell ed. 1847).

A State in all its dealings must, of course, accord every person due process of law. And due process may require that some of the same restrictions which the Constitution has placed upon criminal trials must be imposed upon juvenile proceedings. For example, I suppose that all would agree that a brutally coerced confession could not constitutionally be considered in a juvenile court hearing. But it surely does not follow that the testimonial privilege against self-incrimination is applicable in all juvenile proceedings.[FN3] Similarly, due process clearly ***81** requires timely notice of the purpose and scope of any proceedings affecting the relationship of parent and child. Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62. But it certainly does not follow that notice of a juvenile hearing must be framed with all the technical niceties of a criminal indictment. See Russell v. United States, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 240.

> FN3. Until June 13, 1966, it was clear that the Fourteenth Amendment's ban upon the use of a coerced confession is constitutionally quite a different thing from the Fifth Amendment's testimonal privilege against self-incrimination. See, for example, the Court's unanimous opinion in Brown v. State of Mississippi, 297 U.S. 278, at 285—286, 56 S.Ct. 461, 464—465, 80 L.Ed. 682, written by Chief Justice Hughes and joined by such distinguished members of this Court as Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo. See also Tehan v. United States ex rel. Shott, 382 U.S. 406, 86 S.Ct. 459, 15 L.Ed.2d 453, decided January 19, 1966, where the Court emphasized the 'contrast' between 'the wrongful use of a coerced confession' and 'the Fifth Amendment's privilege against self-incrimination'. 382 U.S., at 416, 86 S.Ct., at 465. The complete confusion of these separate constitutional doctrines in Part V of the Court's opinion today stems, no doubt, from Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602, a decision which I continue to believe was constitutionally erroneous.

In any event, there is no reason to deal with issues such as these in the present****1472** case. The Supreme Court of Arizona found that the parents of Gerald Gault 'knew of their right to counsel, to subpoena and cross examine witnesses, of the right to confront the witnesses against Gerald and the possible consequences of a finding of delinquency.' 99 Ariz. 181, 185, 407 P.2d 760, 763. It further found that 'Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home.' 99 Ariz., at 193, 407 P.2d, at 768. And, as Mr. Justice WHITE correctly points out, p. 1463, ante, no issue of compulsory self-incrimination is presented by this case.

I would dismiss the appeal.

U.S.Ariz. 1967.
Application of Gault
387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527, 40 O.O.2d 378

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Supreme Court of the United States
Allen F. BREED, Etc., Petitioner,
v.
Gary Steven JONES.

No. 73—1995.
Argued Feb. 25 and 26, 1975.
Decided May 27, 1975.

State prisoner who had been prosecuted as an adult in California Superior Court after an adjudicatory finding in juvenile court that the he had violated a criminal statute and after being found unfit for treatment as a juvenile petitioned for habeas corpus. The United States District Court for the Central District of California, 343 F.Supp. 690, denied the petition and the Court of Appeals, 497 F.2d 1160, reversed and remanded and certiorari was granted. The Supreme Court Mr. Chief Justice Burger, held that prisoner was put in jeopardy at the juvenile court adjudicatory hearing; that prisoner's trial in Superior Court for the same offense as that for which he had been tried in juvenile court violated the policies of the double jeopardy clause; and that burdens on the juvenile court system were not qualitatively nor quantitatively sufficient to justify a departure from the fundamental prohibition against double jeopardy.

Judgment of Court of Appeals vacated and case remanded.

Opinion on remand, 519 F.2d 1314.

West Headnotes

[1] Double Jeopardy 135H 1

135H Double Jeopardy
135HI In General
135Hk1 k. In general. Most Cited Cases
(Formerly 110k161)

In the constitutional sense, "jeopardy" describes the risk that is traditionally associated with a criminal prosecution. U.S.C.A.Const. Amends. 5, 14.

[2] Double Jeopardy 135H 1

135H Double Jeopardy
135HI In General
135Hk1 k. In general. Most Cited Cases
(Formerly 110k161)

Although constitutional language "jeopardy of life or limb" suggests proceedings in which only the most serious penalties can be imposed, the double jeopardy clause means something far broader than its literal language. U.S.C.A.Const. Amends. 5, 14.

[3] Double Jeopardy 135H 23

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk23 k. Civil or criminal nature. Most Cited Cases
(Formerly 110k163)

The risk to which the double jeopardy clause refers is not present in proceedings that are not essentially criminal. U.S.C.A.Const. Amends. 5, 14.

[4] Infants 211 2445

211 Infants
211XV Juvenile Justice
211XV(A) In General
211k2444 Nature, Form, and Purpose of Proceedings
211k2445 k. In general. Most Cited Cases
(Formerly 211k194.1, 211k194, 211k16.5)

Determining the applicability of constitutional rights in juvenile proceedings requires that courts eschew the "civil" label-of-convenience which has been attached to juvenile proceedings.

[5] Double Jeopardy 135H 6

135H Double Jeopardy
135HI In General
135Hk5 Prohibition of Multiple Proceedings or Punishments
135Hk6 k. Multiple prosecutions. Most Cited Cases
(Formerly 110k161)

Purpose of the double jeopardy clause is to require that a person be subject to the experience of a criminal proceeding only once for the same offense. U.S.C.A.Const. Amends. 5, 14.

[6] Double Jeopardy 135H 33

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk33 k. Juvenile proceedings. Most Cited Cases
(Formerly 110k163)

State prisoner was put in jeopardy at juvenile court adjudicatory hearing, whose object was to determine whether he had committed acts that violated a criminal law and whose potential consequences included both the stigma inherent in that determination and the deprivation of liberty for many years, and prosecution of prisoner as an adult in superior court after prisoner had been found unfit for treatment as a juvenile violated the double jeopardy clause. U.S.C.A.Const. Amends. 5, 14; West's Ann.Cal.Welfare & Inst.Code, § 602.

[7] Double Jeopardy 135H 62

135H Double Jeopardy
135HIII Elements of Former Jeopardy
135Hk62 k. Juvenile proceedings. Most Cited Cases
(Formerly 110k173)

Jeopardy attached at adjudicatory hearing in juvenile court when the court as the trier of the facts, began to hear evidence. U.S.C.A.Const. Amends. 5, 14; West's Ann.Cal.Welfare & Inst.Code, § 602.

[8] Double Jeopardy 135H 33

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk33 k. Juvenile proceedings. Most Cited Cases
(Formerly 110k168)

Trial of state prisoner in superior court for the same offense for which prisoner had been tried in juvenile court violated the policies of the double jeopardy clause even if prisoner never faced the risk of more than one punishment. West's Ann.Cal.Welfare & Inst.Code, §§ 602, 701, 702; U.S.C.A.Const. Amends. 5, 14.

[9] Double Jeopardy 135H 28

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk28 k. Multiple sentences or punishments. Most Cited Cases
(Formerly 110k161)

Double jeopardy clause is written in terms of potential or risk of trial and conviction, not punishment. U.S.C.A.Const. Amends. 5, 14.

[10] Double Jeopardy 135H 33

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk33 k. Juvenile proceedings. Most Cited Cases
(Formerly 110k168)

Fact that proceedings against state prisoner in juvenile court had not run their full course when prisoner, after adjudicatory hearing, was transferred for trial as an adult in superior court after being found unfit for treatment as a juvenile did not satisfactorily explain why prisoner should be deprived of the constitutional protection against a second trial. West's Ann.Cal.Pen.Code, § 211a; West's Ann.Cal.Welfare & Inst.Code, §§ 707, 1731.5, 1771; U.S.C.A.Const. Amends. 5, 14.

[11] Double Jeopardy 135H 33

135H Double Jeopardy

135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk33 k. Juvenile proceedings. Most Cited Cases
(Formerly 110k163)

If there is to be an exception to constitutional protection against a second trial in the context of the juvenile court system, it must be justified by interests of society, reflected in that unique institution, or of juveniles themselves, of sufficient substance to render tolerable the costs and burdens which the exception will entail in individual cases. U.S.C.A.Const. Amends. 5, 14.

[12] Double Jeopardy 135H 33

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk33 k. Juvenile proceedings. Most Cited Cases
(Formerly 110k163)

Giving state prisoner, who was found in juvenile court adjudicatory hearing to have violated a criminal statute, the constitutional protection against trial as an adult for the same offense would not diminish the flexibility and informality of juvenile court proceedings to the extent that those qualities relate uniquely to the goals of the juvenile court system. West's Ann.Cal.Pen.Code, § 211; West's Ann.Cal.Welfare & Inst.Code, §§ 607, 632, 635, 636, 701, 731; U.S.C.A.Const. Amends. 5, 14.

[13] Courts 106 176

106 Courts
106IV Courts of Limited or Inferior Jurisdiction
106k174 Particular Courts of Special Civil Jurisdiction
106k176 k. Procedure. Most Cited Cases

Courts should be reluctant to impose on the juvenile court system any additional requirements which could so strain its resources as to endanger its unique functions.

[14] Double Jeopardy 135H 33

135H Double Jeopardy
135HII Proceedings, Offenses, Punishments, and Persons Involved or Affected
135Hk33 k. Juvenile proceedings. Most Cited Cases
(Formerly 110k163)

Burdens upon juvenile court system from giving juvenile found to have violated a criminal statute protection against trial as an adult for the same offense are neither qualitatively nor quantitatively sufficient to justify a departure from the fundamental prohibitions against double jeopardy. West's Ann.Cal.Pen.Code, § 211; West's Ann.Cal.Welfare & Inst.Code, §§ 632, 635, 636, 701; U.S.C.A.Const. Amends. 5, 14.

****1780 *519** Syllabus[FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

The prosecution of respondent as an adult in California Superior Court, after an adjudicatory finding in Juvenile Court that he had violated a criminal statute and a subsequent finding that he was unfit for treatment as a juvenile, violated the Double Jeopardy Clause of the Fifth Amendment, as applied to the States through the Fourteenth Amendment. Pp. 1785—1792.

(a) Respondent was put in jeopardy at the Juvenile Court adjudicatory hearing, whose object was to determine whether he had committed acts that violated a criminal law and whose potential consequences included both the stigma inherent in that determination and the deprivation of liberty for many years. Jeopardy attached when the Juvenile Court, as the trier of the facts, began to hear evidence. Pp. 1785—1787.

(b) Contrary to petitioner's contention, respondent's trial in Superior Court for the same offense as that for which he had been tried in Juvenile Court, violated the policies of the Double Jeopardy Clause, even if respondent 'never faced the risk of more than one punishment,' since the Clause 'is written****1781** in terms of potential or risk of trial and conviction, not punishment.' Price v. Georgia, 398 U.S. 323, 329, 90

S.Ct. 1757, 1761, 26 L.Ed.2d 300. Respondent was subjected to the burden of two trials for the same offense; he was twice put to the task of marshaling his resources against those of the State, twice subjected to the 'heavy personal strain' that such an experience represents. P. 1787.

(c) If there is to be an exception to the constitutional protection against a second trial in the context of the juvenile-court system, it must be justified by interests of society, reflected in that unique institution, or of juveniles themselves, of sufficient substance to render tolerable the costs and burdens that the exception will entail in individual cases. Pp. 1787—1788.

(d) Giving respondent the constitutional protection against multiple trials in this context will not, as petitioner claims, diminish the flexibility and informality of juvenile-court proceedings***520** to the extent that those qualities relate uniquely to the goals of the juvenilecourt system. A requirement that transfer hearings be held prior to adjudicatory hearings does not alter the nature of the latter proceedings. More significantly, such a requirement need not affect the quality of decisionmaking at transfer hearings themselves. The burdens petitioner envisions would not pose a significant problem for the administration of the juvenile-court system, and quite apart from that consideration, transfer hearings prior to adjudication will aid the objectives of that system. Pp. 1788—1792.

9 Cir., 497 F.2d 1160, vacated and remanded.

Russell Iungerich, Los Angeles, Cal., for petitioner.

Robert L. Walker, San Francisco, Cal., for respondent.

Mr. Chief Justice BURGER delivered the opinion for a unanimous Court.

We granted certiorari to decide whether the prosecution of respondent as an adult, after Juvenile Court proceedings which resulted in a finding that respondent had violated a criminal statute and a subsequent finding that he was unfit for treatment as a juvenile, violated the Fifth and Fourteenth Amendments to the United States Constitution.

***521** On February 9, 1971, a petition was filed in the Superior Court of California, County of Los Angeles, Juvenile Court, Alleging that respondent, then 17 years of age, was a person described by Cal.Welf. & Inst'ns Code s 602 (1966),[FN1] in that, on or about February 8, while armed with a deadly weapon, he had committed acts which, if committed by an adult, would constitute the crime of robbery in violation of Cal.Penal Code s 211 (1970). The following day, a detention hearing was held, at the conclusion of which respondent was ordered detained pending a hearing on the petition.[FN2]

FN1. As of the date of filing of the petition in this case, Cal.Welf. & Inst'ns Code s 602 (1966) provided:

'Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.'

An amendment in 1971, not relevant here, lowered the jurisdictional age from 21 to 18. 1971 Cal.States. 3766, c. 1748, s 66.

FN2. See Cal.Welf. & Inst'ns Code ss 632, 635, 636 (1966). The probation officer was required to present a prima facie case that respondent had committed the offense alleged in the petition. In re William M., 3 Cal.3d 16, 89 Cal.Rptr. 33, 473 P.2d 737 (1970). Respondent was represented by court-appointed counsel at the detention hearing and thereafter.

The jurisdictional or adjudicatory hearing was conducted on March 1, pursuant****1782** to Cal.Welf. & Inst'ns Code s 701 (1966).[FN3] After taking testimony from two ***522** prosecution witnesses and respondent, the Juvenile Court found that the allegations in the petition were true and that respondent was a person described by s 602, and it sustained the petition. The proceedings were continued for a dispositional hearing,[FN4] pending which the court ordered that respondent remain detained.

FN3. At the time of the hearing, Cal.Welf. & Inst'ns Code s 701 (1966) provided:

'At the hearing, the court shall first consider only the question whether the minor is a person described by Sections 600, 601, or 602, 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, a preponderance of evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described by Section 602, and 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 Sections 600 or 601. When it appears that the minor has made an extrajudicial admission or confession and denies the same at the hearing, the court may continue the hearing for not to exceed seven days to enable the probation officer to subpoena witnesses to attend the hearing to prove the allegations of the petition. If the minor is not represented by counsel at the hearing, it shall be deemed that objections that could have been made to the evidence were made.' (Emphasis added.)

A 1971 amendment substituted 'proof beyond a reasonable doubt supported by evidence' for the language in italics. 1971 Cal.Stats. 1832, c. 934, s 1. Respondent does not claim that the standard of proof at the hearing failed to satisfy due process. See In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); DeBacker v. Brainard, 396 U.S. 28, 31, 90 S.Ct. 163, 165, 24 L.Ed.2d 148 (1969).

Hereafter, the s 701 hearing will be referred to as the adjudicatory hearing.

FN4. At the time, Cal.Welf. & Inst'ns Code s 702 (Supp.1968) provided:

'After hearing such evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Sections 600, 601, or 602. If it finds that the minor is not such a person, it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered. If the court finds that the minor is such a person, it shall make and enter its findings and order accordingly and shall then proceed to hear evidence on the question of the proper disposition to be made of the minor. Prior to doing so, it may continue the hearing, if necessary, to receive the social study of the probation officer or to receive other evidence on its own motion or the motion of a parent or guardian for not to exceed 10 judicial days if the minor is detained during such continuance, and if the minor is not detained, it may continue the hearing to a date not later than 30 days after the date of filing of the petition. The court may, for good cause shown continue the hearing for an additional 15 days, if the minor is not detained. The court may make such order for detention of the minor or his release from detention, during the period of the continuance, as is appropriate.'

***523** At a hearing conducted on March 15, the Juvenile Court indicated its intention to find respondent 'not . . . amenable to the care, treatment and training program available through the facilities of the juvenile court' under Cal.Welf. & Inst'ns Code s 707 (Supp.1967).[FN5] Respondent's counsel orally ****1783** moved 'to continue the ***524** matter on the ground of surprise,' contending that respondent 'was not informed that it was going to be a fitness hearing.' The court continued the matter for one week, at which time, having considered the report of the probation officer assigned to the case and having heard her testimony, it declared respondent 'unfit for treatment as a juvenile,'[FN6] and ordered that he be prosecuted as an adult.[FN7]

FN5. At the time, Cal.Welf. & Inst'ns Code s 707 (Supp.1967) provided:

'At any time during a hearing upon a petition alleging that a minor is, by reason of violation of any criminal statute or ordinance, a person described in Section 602, when substantial evidence has been adduced to support a finding that the minor was 16 years of age or older at the time of the alleged commission

of such offense and that the minor would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, or if, at any time after such hearing, a minor who was 16 years of age or older at the time of the commission of an offense and who was committed therefor by the court to the Youth Authority, is returned to the court by the Youth Authority pursuant to Section 780 or 1737.1, the court may make a finding noted in the minutes of the court that the minor is not fit and proper subject to be dealt with under this chapter, and the court shall direct the district attorney or other appropriate prosecuting officer to prosecute the person under the applicable criminal statute or ordinance and thereafter dismiss the petition or, if a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are held, shall dismiss the petition and issue its order directing that the other court proceedings resume.

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

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

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

FN6. The Juvenile Court noted:

'This record I have read is one of the most threatening records I have read about any Minor who has come before me.

'We have, as a matter of simple fact, no less than three armed robberies, each with a loaded weapon. The degree of delinquency which that represents, the degree of sophistication which that represents and the degree of impossibility of assistance as a juvenile which that represents, I think is overwhelming . . .' App. 33.

FN7. In doing so, the Juvenile Court implicitly rejected respondent's double jeopardy argument, made at both the original s 702 hearing and in a memorandum submitted by counsel prior to the resumption of that hearing after the continuance.

Thereafter, respondent filed a petition for a writ of habeas corpus in Juvenile Court, raising the same double jeopardy claim now presented. Upon the denial of that petition, respondent sought habeas corpus relief in the California Court of Appeal, Second Appellate District. Although it initially stayed the criminal prosecution pending against respondent, that court denied the petition. In re Gary J., 17 Cal.App.3d 704, 95 Cal.Rptr.***525** 185 (1971). The Supreme Court of California denied respondent's petition for hearing.

After a preliminary hearing respondent was ordered held for trial in Superior Court, where an information was subsequently filed accusing him of having committed robbery, in violation of Cal.Penal Code s 211 (1970), while armed with a deadly weapon, on or about February 8, 1971. Respondent entered a plea of not guilty, and he also pleaded that he had 'already been placed once in jeopardy and convicted of the offense charged, by the judgment of the Superior Court of the County of Los Angeles, Juvenile Court, rendered . . . on the 1st day of March, 1971.' App. 47. By stipulation, the case was submitted to the court on the transcript of the preliminary hearing. The court found respondent guilty of robbery in the first degree under Cal.Penal Code s 211a (1970) and ordered that he be committed to the California Youth Authority. [FN8] No appeal was taken from the judgment of conviction.

FN8. The authority for the order of commitment derived from Cal.Welf. & Inst'ns Code s 1731.5 (Supp.1971). At the time of the order, Cal.Welf. & Inst'ns Code s 1771

(1966) provided:

> 'Every person convicted of a felony and committed to the authority shall be discharged when such person reaches his 25th birthday, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800) or unless a petition is filed under Article 5 of this chapter. In the event such a petition under Article 5 is filed, the authority shall retain control until the final disposition of the proceeding under Article 5.'

On December 10, 1971, respondent, through his mother as guardian ad litem, filed the instant petition for a writ of habeas corpus in the United States District Court for the Central District of California. In his petition he alleged ****1784** that his transfer to adult court pursuant to Cal.Welf. & Inst'ns Code s 707 and subsequent trial there ***526** 'placed him in double jeopardy.' App. 13. The District Court denied the petition, rejecting respondent's contention that jeopardy attached at his adjudicatory hearing. It concluded that the 'distinctions between the preliminary procedures and hearings provided by California law for juveniles and a criminal trial are many and apparent and the effort of (respondent) to relate them is unconvincing,' and that 'even assuming jeopardy attached during the preliminary juvenile proceedings . . . it is clear that no new jeopardy arose by the juvenile proceeding sending the case to the criminal court.' 343 F.Supp. 690, 692 (1972).

The Court of Appeals reversed, concluding that applying double jeopardy protection to juvenile proceedings would not 'impede the juvenile courts in carrying out their basic goal of rehabilitating the erring youth,' and that the contrary result might 'do irreparable harm to or destroy their confidence in our judicial system.' The court therefore held that the Double Jeopardy Clause 'is fully applicable to juvenile court proceedings.' 497 F.2d 1160, 1165 (CA9 1974).

Turning to the question whether there had been a constitutional violation in this case, the Court of Appeals pointed to the power of the Juvenile Court to 'impose severe restrictions upon the juvenile's liberty,' ibid., in support of its conclusion that jeopardy attached in respondent's adjudicatory hearing. [FN9] It rejected petitioner's contention that no new jeopardy attached when respondent was referred to Superior Court and subsequently tried and convicted, finding 'continuing jeopardy' principles ***527** advanced by petitioner inapplicable. Finally, the Court of Appeals observed that acceptance of petitioner's position would 'allow the prosecution to review in advance the accused's defense and, as here, hear him testify about the crime charged,' a procedure it found offensive to 'our concepts of basic, even-handed fairness.' The court therefore held that once jeopardy attached at the adjudicatory hearing, a minor could not be retried as an adult or a juvenile 'absent some exception to the double jeopardy prohibition,' and that there 'was none here.' Id., at 1168.

> FN9. In reaching this conclusion, the Court of Appeals also relied on Fain v. Duff, 488 F.2d 218 (CA5 1973), cert. pending, No. 73—1768, and Richard M. v. Superior Court, 4 Cal.3d 370, 93 Cal.Rptr. 752, 482 P.2d 664 (1971), and it noted that 'California concedes that jeopardy attaches when the juvenile is adjudicated a ward of the court.' 497 F.2d at 1166.

We granted certiorari because of a conflict between Courts of Appeals and the highest courts of a number of States on the issue presented in this case and similar issues and because of the importance of final resolution of the issue to the administration of the juvenile-court system.

I

The parties agree that, following his transfer from Juvenile Court, and as a defendant to a felony information, respondent was entitled to the full protection of the Double Jeopardy Clause of the Fifth Amendment, as applied to the States through the Fourteenth Amdment. See Benton v. Maryland, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969). In addition, they agree that respondent was put in jeopardy by the proceedings on that information, which resulted in an adjudication that he was guilty of robbery in the first degree and in a sentence of commitment. Finally, there is no dispute that the petition filed in Juvenile Court and the information filed in Superior Court related to the 'same offence' within the meaning of the constitutional prohibition. The point of disagreement between the parties, and the question for our decision, is

whether, by reason of the proceedings in Juvenile Court, respondent was 'twice put in jeopardy.'

***528 **1785** II

[1][2][3] Jeopardy denotes risk. In the constitutional sense, jeopardy describes the risk that is traditionally associated with a criminal prosecution. See Price v. Georgia, 398 U.S. 323, 326, 329, 90 S.Ct. 1757, 1759, 26 L.Ed.2d 300 (1970); Serfass v. United States, 420 U.S. 377, 387—389, 95 S.Ct. 1055, 1062—1063, 43 L.Ed.2d 265 (1975). Although the constitutional language, 'jeopardy of life or limb,' suggests proceedings in which only the most serious penalties can be imposed, the Clause has long been construed to mean something far broader than its literal language. Se Ex parte Lange, 18 Wall. 163, 170—173, 21 L.Ed. 872 (1874).[FN10] At the same time, however, we have held that the risk to which the Clause refers is not present in proceedings that are not 'essentially criminal.' Helvering v. Mitchell, 303 U.S. 391, 398, 58 S.Ct. 630, 632, 82 L.Ed. 917 (1938). See United States ex rel. Marcus v. Hess, 317 U.S. 537, 63 S.Ct. 379, 87 L.Ed.2d 443 (1943); One Lot Emerald Cut Stones v. United States, 409 U.S. 232, 93 S.Ct. 489, 34 L.Ed.2d 438 (1972). See also J. Sigler, Double Jeopardy 60—62 (1969).

> FN10. Distinctions which in other contexts have proved determinative of the constitutional rights of those charged with offenses against public order have not similarly confined the protection of the Double Jeopardy Clause. Compare Robinson v. Neil, 409 U.S. 505, 93 S.Ct. 876, 35 L.Ed.2d 29 (1973), with Baldwin v. New York, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970), and Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972). For the details of Robinson's trial for violating a city ordinance, see Robinson v. Henderson, 268 F.Supp. 349 (E.D.Tenn.1967), aff'd, 391 F.2d 933 (CA6 1968).

Although the juvenile-court system had its genesis in the desire to provide a distinctive procedure and setting to deal with the problems of youth, including those manifested by antisocial conduct, our decisions in recent years have recognized that there is a gap between the originally benign conception of the system and its realities. With the exception of McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971), the Court's response to that perception has been to make applicable in juvenile proceedings constitutional guarantees associated with traditional***529** criminal prosecutions. In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). In so doing the Court has evinced awareness of the threat which such a process represents to the efforts of the juvenilecourt system, functioning in a unique manner, to ameliorate the harshness of criminal justice when applied to youthful offenders. That the system has fallen short of the high expectations of its sponsors in no way detracts from the broad social benefits sought or from those benefits that can survive constitutional scrutiny.

[4] We believe it is simply too late in the day to conclude, as did the District Court in this case, that a juvenile is not put in jeopardy at a proceeding whose object is to determine whether he has committed acts that violate a criminal law and whose potential consequences include both the stigma inherent in such a determination and the deprivation of liberty for many years. [FN11] For it is clear under our cases that determining the relevance of constitutional policies, like determining the applicability of constitutional rights, in juvenile proceedings, requires that courts eschew 'the 'civil' label-of-convenience which has been attached to juvenile proceedings,' In re Gault, supra, 387 U.S. at 50, 87 S.Ct. at 1455, and that 'the juvenile process . . . be candidly appraised.' 387 U.S. at 21, 87 S.Ct. at 1440. See In re Winship, supra, 397 U.S. at 365—366, 90 S.Ct. at 1073.

> FN11. At the time of respondent's dispositional hearing, permissible dispositions included commitment to the California Youth Authority until he reached the age of 21 years. See Cal.Welf. & Inst'ns Code ss 607, 731 (1966). Petitioner has conceded that the 'adjudicatory hearing is, in every sense, a court trial.' Tr. of Oral Arg. 4.

****1786** [5] As we have observed, the risk to which the term jeopardy refers is that traditionally associated with 'actions intended to authorize criminal punishment to vindicate public jutice.' United States ex rel. Marcus v. Hess, supra, 317 U.S. at 548—549, 63 S.Ct. at 388. Because of its purpose and potential consequences, and the nature and resources of the State, ***530** such a proceeding imposes heavy pres-

sures and burdens—psychological, physical, and financial—on a person charged. The purpose of the Double Jeopardy Clause is to require that he be subject to the experience only once 'for the same offence.' See Green v. United States, 355 U.S. 184, 187, 78 S.Ct. 221, 223, 2 L.Ed.2d 199 (1957); Price v. Georgia, 398 U.S., at 331, 90 S.Ct. at 1762; United States v. Jorn, 400 U.S. 470, 479, 91 S.Ct. 547, 554, 27 L.Ed.2d 543 (1971) (opinion of Harlan, J.).

In In re Gault, supra, 387 U.S. at 36, 87 S.Ct. at 1448, this Court concluded that, for purposes of the right to counsel, a 'proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution.' See In re Winship, supra, 397 U.S. at 366, 90 S.Ct. at 1073. The Court stated that the term 'delinquent' had 'come to involve only slightly less stigma than the term 'criminal' applied to adults,' In re Gault, supra, 387 U.S. at 24, 87 S.Ct. at 1441; see In re Winship, supra, 397 U.S. at 367, 90 S.Ct. at 1074, and that, for purposes of the privilege against self-incrimination, 'commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called criminal' or 'civil.' In re Gault, supra, 387 U.S. at 50, 87 S.Ct. at 1455. See 387 U.S., at 27, 87 S.Ct. at 1443; In re Winship, supra, 397 U.S. at 367,[FN12] 90 S.Ct. at 1074.

> FN12. Nor does the fact 'that the purpose of the commitment is rehabilitative and not punitive . . . change its nature. . . . Regardless of the purposes for which the incarceration is imposed, the fact remains that it is incarceration. The rehabilitive goals of the system are admirable, but they do not change the drastic nature of the action taken. Incarceration of adults is also intended to produce rehabilitation.' Fain v. Duff, 488 F.2d, at 225. See President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 8—9 (1967).

Thus, in terms of potential consequences, there is little to distinguish an adjudicatory hearing such as was held in this case from a traditional criminal prosecution. For that reason, it engenders elements of canxiety and insecurity'***531** in a juvenile, and imposes a 'heavy personal strain.' See Green v. United States, supra, 355 U.S. at 187, 78 S.Ct. at 223; United States v. Jorn, supra, 400 U.S. at 479, 91 S.Ct. at 554; Snyder, The Impact of the Juvenile Court Hearing on the Child, 17 Crime & Delinquency 180 (1971). And we can expect that, since our decisions implementing fundamental fairness in the juvenilecourt system, hearings have been prolonged, and some ofthe burdens incident to a juvenile's defense increased, as the system has assimilated the process thereby imposed. See Note, Double Jeopardy and the Waiver of Jurisdiction in California's Juvenile Courts, 24 Stan.L.Rev. 874, 902 n. 138 (1972). Cf. Canon & Kolson, Rural Compliance with Gault; Kentucky, A Case Study, 10 J.Fam.L. 300, 320—326 (1971).

[6][7] We deal here, not with 'the formalities of the criminal adjudicative process,' McKeiver v. Pennsylvania, 403 U.S., at 551, 91 S.Ct. at 1989 (opinion of Blackmun, J.), but with an analysis of an aspect of the juvenile-court system in terms of the kind of risk to which jeopardy refers. Under our decisions we can find no persuasive distinction in that regard between the proceeding conducted in this case pursuant to Cal.Welf. & Inst'ns Code s 701 (1966) and a criminal prosecution, each of which is designed 'to vindicate (the) very vital interest in enforcement of criminal laws.' United States v. Jorn, supra, 400 U.S. at 479, 91 S.Ct. at 554. We therefore conclude ****1787** that respondent was put in jeopardy at the adjudicatory hearing. Jeopardy attached when respondent was 'put to trial before the trier of the facts,' 400 U.S., at 479, 91 S.Ct., at 554, that is, when the Juvenile Court, as the trier of the facts, began to hear evidence. See Serfass v. United States, 420 U.S., at 388, 95 S.Ct., at 1062. [FN13]

> FN13. The same conclusion was reached by the California Court of Appeal in denying respondent's petition for a writ of habeas corpus. In re Gary J., 17 Cal.App.3d 704, 710, 95 Cal.Rptr. 185, 189 (1971).

***532** III

Petitioner argues that, even assuming jeopardy attached at respondent's adjudicatory hearing, the procedures by which he was transferred from Juvenile Court and tried on a felony information in Superior Court did not violate the Double Jeopardy Clause. The argument is supported by two distinct, but in this case overlapping, lines of analysis. First, petitioner reasons that the procedure violated none of the policies of the Double Jeopardy Clause or that, alternatively, it

should be upheld by analogy to those cases which permit retrial of an accused who has obtained reversal of a conviction on appeal. Second, pointing to this Court's concern for 'the juvenile court's assumed ability to function in a unique manner,' McKeiver v.Pennsylvania, supra, 403 U.S., at 547, 91 S.Ct., at 1987, petitioner urges that, should we conclude traditional principles 'would otherwise bar a transfer to adult court after a delinquency adjudication,' we should avoid that result here because it 'would diminish the flexibility and informality of juvenile court proceedings without conferring any additional due process benefits upon juveniles charged with delinquent acts.'

A

[8][9] We cannot agree with petitioner that the trial of respondent in Superior Court on an information charging the same offense as that for which he had been tried in Juvenile Court violated none of the policies of the Double Jeopardy Clause. For, even accepting petitioner's premise that respondent 'never faced the risk of more than one punishment,' we have pointed out that 'the Double Jeopardy Clause . . . is written in terms of potential or risk of trial and conviction, not punishment.' Price v.Georgia, 398 U.S. at 329, 90 S.Ct. at 1761. (Emphasis added.) And we have recently noted:

'The policy of avoiding multiple trials has been ***533** regarded as so important that exceptions to the principle have been only grudgingly allowed. Initially, a new trial was thought to be unavailable after appeal, whether requested by the prosecution or the defendant. . . . It was not until 1896 that it was made clear that a defendant could seek a new trial after conviction, even though the Government enjoyed no similar right. . . . Following the same policy, the Court has granted the Government the right to retry a defendant after a mistrial only where 'there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated.' United States v. Perez, 9 Wheat 579, 580, 6 L.Ed. 165 (1824).' United States v. Wilson, 420 U.S. 332, 343, 344, 95 S.Ct. 1013, 1022, 43 L.Ed.2d 232 (1975). (Footnote omitted.)

Respondent was subjected to the burden of two trials for the same offense; he as twice put to the task of marshaling his resources against those of the State, twice subjected to the 'heavy personal strain' which such an experience represents. United States v. Jorn, 400 U.S., at 479, 91 S.Ct., at 554. We turn, therefore, to inquire whether either traditional principles or 'the juvenile court's assumed ability to function in a unique manner,' McKeiver v. Pennsylvania, supra, 403 U.S. at 547, 91 S.Ct. at 1987, supports an exception to the 'constitutional policy of finality' to which ****1788** respondent would otherwise be entitled. United States v. Jorn, supra, at 479, 91 S.Ct., at 554.

B

In denying respondent's petitions for writs of habeas corpus, the California Court of Appeal first, and the United States District Court later, concluded that no new jeopardy arose as a result of his transfer from Juvenile Court and trial in Superior Court. See In re Gary J., 17 Cal.App.3d, at 710, 95 Cal.Rptr. at 189; 343 F.Supp., at 692. In the view of those courts, the jeopardy that attaches at an adjudicatory hearing ***534** continues until there is a final disposition of the case under the adult charge. See also In re Juvenile, 364 Mass. 531, 306 N.E.2d 822 (1974). Cf. Bryan v. Superior Court, 7 Cal.3d 575, 102 Cal.Rptr. 831, 498 P.2d 1079 (1972), cert. denied, 410 U.S. 944, 93 S.Ct. 1380, 35 L.Ed.2d 610 (1973).

The phrase 'continuing jeopardy' describes both a concept and a conclusion. As originally articulated by Mr. Justice Holmes in his dissent in Kepner v. United States, 195 U.S. 100, 134—137, 24 S.Ct. 797, 806, 49 L.Ed. 114 (1904), the concept has proved an interesting model for comparison with the system of constitutional protection which the Court has in fact derived from the rather ambiguous language and history of the Double Jeopardy Clause. See United States v. Wilson, supra, at 351—352, 95 S.Ct. 1013. Holmes' view has 'never been adopted by a majority of this Court.' United States v. Jenkins, 420 U.S. 358, 369, 95 S.Ct. 1006, 1013, 43 L.Ed.2d 250 (1975).

[10][11] The conclusion, ccontinuing jeopardy,' as distinguished from the concept, has occasionally been used to explain why an accused who has secured the reversal of a conviction on appeal may be retried for the same offense. See Green v. United States, 355 U.S., at 189, 78 S.Ct. at 224; Price v. Georgia, 398 U.S., at 326, 90 S.Ct., at 1759; United States v. Wilson, supra, at 343—344 n. 11, 95 S.Ct., at 1022. Probably a more satisfactory explanation lies in analysis of the respective interests involved. See United States v. Tateo, 377 U.S. 463, 465—466, 84 S.Ct. 1587, 1589, 12 L.Ed.2d 448 (1964); Price v.

Georgia, supra, 398 U.S. at 329 n. 4, 90 S.Ct. at 1761; United States v. Wilson, supra. Similarly, the fact that the proceedings against respondent had not 'run their full course,' Price v. Georgia, supra, 398 U.S. at 326, 90 S.Ct. at 1759, within the contemplation of the California Welfare and Institutions Code, at the time of transfer, does not satisfactorily explain why respondent should be deprived of the constitutional protection against a second trial. If there is to be an exception to that protection in the context of the juvenile—court system, it must be justified by interests of society, reflected in that unique institution, ***535** or of juveniles themselves, of sufficient substance to render tolerable the costs and burdens, noted earlier, which the exception will entail in individual cases.

C

The possibility of transfer from juvenile court to a court of general criminal jurisdiction is a matter of great significance to the juvenile. See Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966). At the same time, there appears to be widely shared agreement that not all juveniles can benefit from the special features and programs of the juvenile-court system and that a procedure for transfer to an adult court should be available. See, e.g., National Advisory Commission on Criminal Justice Standards and Goals, Courts, Commentary to Standard 14.3, pp. 300—301 (1973). This general agreement is reflected in the fact that an overwhelming majority of jurisdictions permits transfer in certain circumstances.[FN14] As might be expected, the ****1789** statutory provisions differ in numerous details. Whatever their differences, however, such transfer provisions represent an attempt to impart to the juvenile-court system the flexibility needed to deal with youthful offenders who cannot benefit from the specialized guidance and treatment contemplated by the system.

FN14. See generally Task Force Report, supra, n. 12, at 24—25. See also Rudstein, Double Jeopardy in Juvenile Proceedings, 14 Wm. & Mary L.Rev. 266, 297—300 (1972); Carr, The Effect of the Double Jeopardy Clause on Juvenile Proceedings, 6 U.Tol.L.Rev. 1, 21—22 (1974).

[12] We do not agree with petitioner that giving respondent the constitutional protection against multiple trials in this context will diminish flexibility and informality to the extent that those qualities relate uniquely to the goals of the juvenile-court system.[FN15] We ***536** agree that such a holding will require, in most cases, that the transfer decision be made prior to an adjudicatory hearing. To the extent that evidence concerning the alleged offense is considered relevant,[FN16] it may be that, in those cases where transfer is considered and rejected, some added burden will be imposed on the juvenile courts by reason of duplicative proceedings. Finally, the nature of the evidence considered at a transfer hearing may in ***537** some States require that, if transfer is rejected, a different judge preside at the adjudicatory hearing. [FN17]

FN15. That the flexibility and informality of juvenile proceedings are diminished by the application of due process standards is not open to doubt. Due process standards inevitably produce such an effect, but that tells us no more than that the Constitution imposes burdens on the functioning of government and especially of law enforcement institutions.

FN16. Under Cal.Welf. & Inst'ns Code s 707 (1972), the governing criterion with respect to transfer, assuming the juvenile is 16 years of age is charged with a violation of a criminal statute or ordinance, is amenability 'to the care, treatment and training program available through the facilities of the juvenile court.' The section further provides that neither 'the offense, in itself' nor a denial by the juvenile of the facts or conclusions set forth in the petition shall be 'sufficient to support a finding that (he) is not a fit and proper subject to be dealt with under the provisions of the Juvenile Court law.' See n. 5, supra. The California Supreme Court has held that the only factor a juvenile court must consider is the juvenile's 'behavior pattern as described in the probation officer's report,' Jimmy H. v. Superior Court, 3 Cal.3d 709, 714, 478 P.2d 32, 35 (1970), but that it may also consider, inter alia, the nature and circumstances of the alleged offense. See id., at 716, 478 P.2d, at 36.

In contrast to California, which does not require any evidentiary showing with respect to the commission of the offense, a number of jurisdictions require a finding of probable

cause to believe the juvenile committed the offense before transfer is permitted. See Rudstein, supra, n. 14, at 298—299; Carr, supra, n. 14, at 21—22. In addition, two jurisdictions appear presently to require a finding of delinquency before the transfer of a juvenile to adult court. Ala.Code, Tit. 13, s 364 (1959). (See Rudolph v. State, 286 Ala. 189, 238 So.2d 542 (1970); W.Va.Code Ann. s 49—5—14 (1966).

FN17. See, e.g., Fla.Stat.Ann. s 39.09(2)(g) (1974); Tenn.Code Ann. s 37—234(c) (Supp.1974); Wyo.Stat. s 14—115.38(c) (Supp.1973); Uniform Juvenile Court Act, s 34(e), approved in July 1968 by the National Conference of Commissioners on Uniform State Laws. See also Donald L. v. Superior Court, 7 Cal.3d 592, 598, 498 P.2d 1098, 1101 (1972).

[13][14] We recognize that juvenile courts, perhaps even more than most courts, suffer from the problems created by spiraling caseloads unaccompanied by enlarged resources and manpower. See President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 7—8 (1967). And courts should be reluctant to impose on the juvenile-court system any additional requirements which could so strain its resources as to endanger its unique functions. However, the burdens that petitioner envisions appear to us neither qualitatively nor quantitatively sufficient to justify a departure in this context from the fundamental prohibition against double jeopardy.

A requirement that transfer hearings be held prior to adjudicatory hearings affects not at all the nature of the latter proceedings. More significantly, such a requirement need not affect the quality of decision-making at transfer hearings themselves. In Kent v. United States, ****1790** 383 U.S., at 562, 86 S.Ct. at 1057, the Court held that hearings under the statute there involved 'must measure up to the essentials of due process and fair treatment.' However, the Court has never attempted to prescribe criteria for, or the nature and quantum of evidence that must support, a decision to transfer a juvenile for trial in adult court. We require only that, whatever the relevant criteria, and whatever the evidence demanded, a State determine whether it wants to treat a juvenile within the juvenile-court***538** system before entering upon a proceeding that may result in an adjudication that he has violated a criminal law and in a substantial deprivation of liberty, rather than subject him to the expense, delay, strain, and embarrassment of two such proceedings.[FN18]

FN18. We note that nothing decided today forecloses States from requiring, as a prerequisite to the transfer of a juvenile, substantial evidence that he committed the offense charged, so long as the showing required is not made in an adjudicatory proceeding. See Collins v. Loisel, 262 U.S. 426, 429, 43 S.Ct. 618, 625, 67 L.Ed. 1062 (1923); Serfass v. United States, 420 U.S. 377, 391—392, 95 S.Ct. 1055, 43 L.Ed.2d 265 (1972). The instant case is not one in which the judicial determination was simply a finding of, e.g., probable cause. Rather, it was an adjudication that respondent had violated a criminal statute.

Moreover, we are not persuaded that the burdens petitioner envisions would pose a significant problem for the administration of the juvenile-court system. The large number of jurisdictions that presently require that the transfer decision be made prior to an adjudicatory hearing,[FN19] and the absence of any indication that the juvenile courts in those jurisdictions have not been able to perform their task within that framework, suggest the contrary. The likelihood that in many cases the lack of need or basis for a transfer hearing can be recognized promptly reduces the number of cases in which a commitment of resources is necessary. In addition, we have no reason to believe that the resources ***539** available to those who recommend transfer or participate in the process leading to transfer decisions are inadequate to enable them to gather the information relevant to informed decision prior to an adjudicatory hearing. See generally State v. Halverson, 192 N.W.2d 765, 769 (Iowa 1971); Rudstein, Double Jeopardy in Juvenile Proceedings, 14 Wm. & Mary L.Rev. 266, 305—306 (1972); Note, 24 Stan.L.Rev., at 897—899.[FN20]

FN19. See Rudstein, supra, n. 14, at 299—300; Carr, supra, n. 14, at 24, 57—58. See also Uniform Juvenile Court Act ss 34(a), (c); Council of Judges of the Nat.

Council on Crime and Delinquency, Model Rules for Juvenile Courts, Rule 9 (1969); W. Sheridan, Legislative Guide for Drafting Family and Juvenile Court Acts ss 27, 31(a) (Dept. of HEW, Children's Bureau Pub. No. 472—1969). In contrast, apparently only three States presently require that a hearing on the juvenile petition or complaint precede transfer. Ala.Code, Tit. 13, s 364 (1959) (see Rudolph v. State, supra); Mass.Gen.Laws Ann., c. 119, s 61 (1969) (see In re Juvenile, 364 Mass. 531, 542 and n. 10, 306 N.E.2d 822, 829—830 and n. 10 (1974)); W.Va.Code Ann. s 49—5—14 (1966).

FN20. We intimate no views concerning the constitutional validity of transfer following the attachment of jeopardy at an adjudicatory hearing where the information which forms the predicate for the transfer decision could not, by the exercise of due diligence, reasonably have been obtained previously. Cf., e.g., Illinois v. Somerville, 410 U.S. 458, 93 S.Ct. 1066, 35 L.Ed.2d 425 (1973).

To the extent that transfer hearings held prior to adjudication result in some duplication of evidence if transfer is rejected, the burden on juvenile courts will tend to be offset somewhat by the cases in which, because of transfer, no further proceedings in juvenile court are required. Moreover, when transfer has previously been rejected, juveniles may well be more likely to admit the commission of the offense charged, thereby obviating the need for adjudicatory hearings, than if fransfer remains a possibility. Finally, we note that those States which presently require a different judge to preside at an adjudicatory ****1791** hearing if transfer is rejected also permit waiver of that requirement.[FN21] Where the requirement is not waived, it is difficult to see a substantial strain on judicial resources. See Note, 24 Stan.L.Rev., at 900—901.

FN21. See the statutes cited in n. 16, supra. 'The reason for this waiver provision is clear. A juvenile will ordinarily not want to dismiss a judge who has refused to transfer him to a criminal court. There is a risk of having another judge assigned to the case who is not as sympathetic. Moreover, in many cases, a rapport has been established between the judge and the juvenile, and the goal of rehabilitation is well on its way to being met.' Brief for National Council of Juvenile Court Judges as Amicus Curiae 38.

***540** Quite apart from our conclusions with respect to the burdens on the juvenile-court system envisioned by petitioner, we are persuaded that transfer hearings prior to adjudication will aid the objectives of that system. What concerns us here is the dilemma that the possibility of transfer after an adjudicatory hearing presents for a juvenile, a dilemma to which the Court of Appeals alluded. See supra, at 1784. Because of that possibility, a juvenile, thought to be the beneficiary of special consideration, may in fact suffer substantial disadvantages. If he appears uncooperative, he runs the risk of an adverse adjudication, as well as of an unfavorable dispositional recommendation.[FN22] If, on the other hand, he is cooperative, he rund the risk of prejudicing his chances in adult court if transfer is ordered. We regard a procedure that results in such a dilemma as at odds with the goal that, to the extent fundamental fairness permits, adjudicatory hearings be informal and nonadversary. See In re Gault, 387 U.S., at 25—27, 87 S.Ct. at 1442; In re Winship, 397 U.S., at 366—367, 90 S.Ct. at 1074; McKeiver v. Pennsylvania, 403 U.S., at 534, 550, 91 S.Ct. at 1981. Knowledge of the risk of transfer after an adjudicatory hearing can only undermine the potential for informality and cooperation which was intended to be the hallmark of the juvenile-court system. Rather than concerning themselves with the matter at hand, establishing innocence or seeking a disposition best suited to individual ***541** correctional needs, the juvenile and his attorney are pressed into a posture of adversary wariness that is conductive to neither. Cf. Kay & Segal, The Role of the Attorney in Juvenile Court Proceedings: A Non-Polar Approach, 61 Geo.L.J. 1401 (1973); Carr, The Effect of the Double Jeopardy Clause on Juvenile Proceedings, 6 U.Tol.L.Rev. 1, 52—54 (1974).[FN23]

FN22. Although denying respondent's petition for a writ of habeas corpus, the judge of the Juvenile Court noted: 'If he doesn't open up with a probation officer there is of course the danger that the probation officer will find that he is so uncooperative that he cannot make a recommendation for the kind of treatment you think he really should have and, yet, as the attorney worrying about what might happen a(t) the disposition hearing,

you have to advise him to continue to more or less stand upon his constitutional right not to incriminate himself. . . .' App. 38. See note, Double Jeopardy and the Waiver of Jurisdiction in California's Juvenile Courts, 24 Stan.L.Rev. 842, 902 n. 137 (1972).

FN23. With respect to the possibility of 'making the juvenile proceedings confidential and not being able to be used against the minor,' the judge of the Juvenile Court observed: 'I must say that doesn't impress me because if the minor admitted something in the Juvenile Court and named his companions nobody is going to eradicate from the minds of the district attorney or other people the information they obtained.' App. 41—42.

IV

We hold that the prosecution of respondent in Superior Court, after an adjudicatory proceeding in Juvenile Court, violated the Double Jeopardy Clause of the Fifth Amendment, as applied to the States through the Fourteenth Amendment. The mandate of the Court of Appeals, which was stayed by that court pending our decision, directs the District Court 'to issue a writ of habeas corpus directing the state court, within 60 days, to vacate the adult conviction of Jones and either set him free or remand him to the juvenile court for disposition.' Since respondent is no longer subject to the jurisdiction of the California****1792** Juvenile Court, we vacate the judgment and remand the case to the Court of Appeals for such further proceedings consistent with this opinion as may be appropriate in the circumstances.

So ordered.

Judgment vacated and case remanded.

U.S.Cal. 1975.
Breed v. Jones
421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346

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230 Cal.App.2d 813, 41 Cal.Rptr. 379
(Cite as: 230 Cal.App.2d 813)

In re SYLVESTER COREY, a Person coming under the Juvenile Court Law.
LORENZO S. BUCKLEY, as Chief County Probation Officer, etc., Plaintiff and Respondent,
v.
SYLVESTER COREY, Defendant and Appellant.

Civ. Nos. 21248, 21906.

District Court of Appeal, First District, Division 1, California.
Nov. 19, 1964.

HEADNOTES

(1) Appeal and Error § 24--Decisions Appealable.

Generally, an order is not appealable unless declared to be so by the Constitution or by statute.
See **Cal.Jur.2d,** Appeal and Error, § 35; **Am.Jur.2d,** Appeal and Error, § 47 et seq.

(2) Delinquent Children § 12(16)(b)--Correction--Proceedings--Appeal.

Under the rule that a specific statute dealing expressly with a particular subject controls and takes priority over a general statute, Welf. & Inst. Code, § 800, which contains a specific provision for appeals, and not Code Civ. Proc., § 963, which provides for appeals in civil cases generally, must be looked to with respect to appeals under the Juvenile Court Law.
See **Cal.Jur.2d** Delinquent, Dependent, and Neglected Children, § 18; **Am. Jur.,** Juvenile Courts and Delinquent and Dependent Children (rev ed § 87).

(3) Delinquent Children § 12(6)(b)--Correction--Proceedings--Appeal.

It was the legislative intent of Welf. & Inst. Code, § 800, in providing that an appeal may be taken "from any special order made after final judgment," to make appealable any order of a juvenile court after judgment which affects the substantial rights of the juvenile irrespective of whether the order declaring a person to be a ward of the juvenile court has become final.

(4) Delinquent Children § 12(11)(a)--Correction--Proceedings--Modification or Vacation of Order.

The purpose of a hearing under Welf. & Inst. Code, § 778, which authorizes a proceeding for the purpose of changing, modifying or setting aside a previous order of the court making a person a ward or dependent child of the juvenile court where there has been a change of circumstances or new evidence, is to determine whether such circumstances or evidence makes some new or changed disposition desirable or necessary for the continued welfare of the child.

(5) Delinquent Children § 12(16)(b)--Correction--Proceedings--Appeal.

An order made after a hearing pursuant to Welf. & Inst. Code, § 778, relating to changing or setting aside a previous order of the court making a person a ward or dependent child of the juvenile court, is a proceeding after the original judgment and commitment substantially affecting the rights of the minor and is a "subsequent order" under Welf. & Inst. Code, § 800, from which an appeal may be taken.

(6) Delinquent Children § 12(16)(g)--Correction--Proceedings--Appeal.

Since a judgment declaring a minor a ward of the juvenile court and committing him to the Youth Authority is a final judgment, the appellate court is bound by the rule applicable to appellate procedure that, in determining the correctness of a judgment or order appealed from, an appellate court is limited to a consideration of the record, and that error of the trial court cannot be predicated by reason of any matter subsequent to its rendition. The appellate court cannot, therefore, consider the evidence adduced at the hearing in a subsequent proceeding to set aside the judgment, which is the subject matter of the second appeal; the judgment must stand or fall on the evidence before the trial court at the time of its rendition.

(7) Evidence § 566--Degree of Proof--Preponderance of Evidence.

By a "preponderance of evidence" is meant such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability of truth lies therein.

(8) Appeal and Error § 1233(2), 1233(4)--Questions of Law and Fact-- Authority of Court.

An appellate court cannot examine evidence to determine where the preponderance of the evidence

lies; its function is to determine whether the record contains any substantial evidence tending to support the finding of the trial court.

(9) Appeal and Error § 1292--Questions of Law and Fact--Evidence Subject to Different Inferences.

When two or more inferences reasonably can be deduced from the evidence, a reviewing court cannot substitute its own inferences for those of the trial court.

(10) Words and Phrases--"Substantial."

"Substantial" when used with reference to evidence means that such evidence must be of ponderable legal significance; it must be reasonable in nature, credible and of solid value; it must actually be "substantial" proof of the essentials which the law requires in a particular case.

(11) Delinquent Children § 12(16)(i)--Correction--Proceedings--Appeal.

In juvenile court proceedings the findings of the judge will not be disturbed on appeal where there is substantial evidence to support them.

(12) Criminal Law § 1333--Appeal--Questions of Law and Fact--Identity.

To entitle a reviewing court to set aside a finding of guilt based on the issue of identification, the evidence of identity must be so weak as to constitute practically no evidence at all.

(13) Criminal Law § 648--Province of Court and Jury--Identity.

Strength or weakness of an identification, incompatibility of and discrepancies in testimony, if there were any, and uncertainties of witnesses in giving their testimony are matters solely for the observation and consideration of the trier of fact, whose determination will stand unless the testimony is inherently incredible.

(14) Robbery § 27--Evidence--Corroborative Evidence.

The testimony of a robbery victim, if believed by the trier of facts, is sufficient of itself to warrant a conviction and no corroborative evidence is required.

(15) Criminal Law § 570--Evidence--Number of Witnesses.

It is no valid objection that the accused is identified by only one witness.

(16) Criminal Law § 374--Evidence--Identity.

It is not essential that a witness be free from doubt as to one's identity. He may testify that in his belief, opinion or judgment the accused is the person who perpetrated the crime, and the want of positiveness goes only to the weight of the testimony.

(17) Criminal Law § 565(2)--Evidence--Identity.

It is not necessary that any of the witnesses called to identify the accused should have seen his face. Identification may be based on other peculiarities such as size, appearance, similarity of voice, features or clothing.

(18) Delinquent Children § 12(9)(e)--Correction--Proceedings--Evidence.

A finding that a minor adjudged to be a ward of the juvenile court had robbed a taxicab driver was supported by the driver's testimony that he specifically identified the minor as a passenger who was sitting in the back seat of the cab, that the minor appeared to be "a little drunk," had "blondish-brown" hair, and was always sniffing his nose, and that the minor was the one who struck him from behind at the time of the robbery.

(19) Criminal Law § 649--Province of Court and Jury--Alibi.

Whether a defendant sufficiently establishes an alibi is a factual question for the trier of fact.

(20) Criminal Law § 365--Burden of Proof--Alibi.

A defendant who relies on an alibi has the burden of proving the alibi to such a degree of certainty as will, on a consideration of all the evidence, leave a reasonable doubt of his guilt in the mind of the trier of fact.

(21) Criminal Law § 649--Province of Court and Jury--Alibi.

The weight to be given alibi testimony is for the jury or, in a nonjury case, for the trial court.

(22) Criminal Law § 1322--Appeal--Questions of Law and Fact--Testimony Inherently Improbable.

The presence of alibi testimony does not make the positive identification of a defendant produced by

the prosecution unbelievable per se.

(23) Criminal Law § 1333--Appeal--Questions of Law and Fact--Alibi.

Where there is a conflict of evidence on the question of alibi, the findings of the trier of fact thereon are binding on appeal.

(24) Delinquent Children § 12(16)(h)--Correction--Proceedings--Appeal.

Where the alibi testimony produced by a minor, in a proceeding in which he was adjudged a ward of the juvenile court as the result of a finding he was one of two youths who robbed a taxicab driver, at best caused only a conflict with the testimony of the driver who positively identified the minor as one of the robbers, the resolution of the conflict by the trial court against the minor could not be disturbed on appeal.

(25) Delinquent Children § 12(4) (a)--Correction--Proceedings--Right to Counsel.

Where the record in a juvenile court proceeding disclosed that, when the matter came on for hearing and prior to the reading of the allegations of the petition by the clerk, the trial judge asked the minor whether he desired an attorney, that the minor replied that he wished to go ahead without an attorney, and that he refused to employ an attorney even though he had been advised of his right to counsel, the judge was justified in proceeding with the hearing without again advising the minor or his parent of the right to counsel.

(26) Delinquent Children § 12(1)(a)--Correction--Proceedings--Court's Role as Parens Patriae.

The judge of the juvenile court has no duty of aggressively acting as an advocate on behalf of a minor, such a role being inconsistent with the judicial function. The court's role as *parens patriae* is fulfilled if at all stages of the wardship proceedings it assures the minor of his statutory rights and follows the statutory procedures in conducting the hearing.

(27) Delinquent Children § 12(11)(a)--Correction--Proceedings--Modification or Vacation of Order.

In passing on the matters pursuant to a petition under Welf. & Inst. Code, § 778, which authorizes a proceeding for the purpose of changing, modifying or setting aside a previous order of the court making a person a ward or dependent child of the juvenile court, the trial court must necessarily consider the matters which formed the basis of the order previously made in order to ascertain whether there has been a "change of circumstances" or "new evidence" warranting a change, modification or setting aside of such previous order.

(28) Delinquent Children § 12(11)(a)--Correction--Proceedings--Modification or Vacation of Order.

In principle and in its application, Welf. & Inst. Code, § 778, which authorizes a proceeding for the purpose of changing, modifying or setting aside a previous order of the court making a person a ward or dependent child of the juvenile court, is akin to Civ. Code, § 139, with respect to the modification and termination of alimony and child support payments because of changed circumstances.

(29) Delinquent Children § 12(11)(a)--Correction--Proceedings--Modification or Vacation of Order.

Welf. & Inst. Code, § 778, which authorizes a proceeding for the purpose of changing, modifying or setting aside a previous order of court making a person a ward or dependent child of the juvenile court, must be read in connection with § 775, which provides that any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified or set aside as the judge deems proper, subject to such procedural requirements as are imposed on modification of juvenile court judgments and orders.

(30) Delinquent Children § 8--Correction--Jurisdiction of Juvenile Court.

Once having attained wardship, the juvenile court retains exclusive jurisdiction, but this jurisdiction is on a temporary basis subject to the duty to dismiss such wardship proceedings when the court becomes convinced on evidence properly before it that the protection of the child no longer requires wardship.

See **Cal.Jur.2d,** Delinquent, Dependent and Neglected Children, § 10; **Am.Jur.,** Juvenile Courts and Delinquent and Dependent Children (rev ed § 22).

(31) Delinquent Children § 12(11)(a)--Correction--Proceedings--Modification or Vacation of Order.

The modification or termination of an order previously made by a juvenile court rests within its discretion, and its order granting or refusing an application for modification or termination may not be disturbed unless there has been an abuse of discretion.

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(Cite as: 230 Cal.App.2d 813)

(32) Delinquent Children § 12(11)(a)--Correction--Proceedings--Vacation of Order.

An order denying a motion to set aside a decision adjudging a minor a ward of the juvenile court based on a finding that he had robbed a taxicab driver will not be disturbed on appeal where a witness' alibi testimony was vague as to the exact time the minor was at a certain home, there was a conflict of testimony as to whether another person had committed the crime, and the taxicab driver positively identified the minor as the robber.

SUMMARY

APPEALS from a judgment of the Superior Court of Alameda County declaring a minor to be a ward of the juvenile court, from his commitment to the California Youth Authority and from an order denying a motion to set aside the judgment and commitment. Redmond C. Staats, Jr., Judge. Affirmed.

COUNSEL

Garcia, Bruzzone & Dunn and G. M. Dunn for Defendant and Appellant.

Stanley Mosk, Attorney General, Albert W. Harris, Jr., and Michael J. Phelan, Deputy Attorneys General, for Plaintiff and Respondent.

MOLINARI, J.

These are two consolidated appeals arising out of the same case and are taken by Sylvester Corey (hereinafter referred to as appellant), who was adjudged to be a ward of the juvenile court. The first appeal (No. 21248) is taken from a judgment of wardship under Welfare and Institutions Code section 602 [FN1] and a commitment to the California Youth Authority; [FN2] the second (No. 21906) from an order denying a motion to set aside the judgment and commitment. The People (hereinafter referred to as respondent) contend that this second appeal should be dismissed on the ground that the order therein appealed from is not appealable. Before proceeding to discuss this question we set out the procedural background of these appeals.

FN1 § 602 provides: "Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

FN2 An order declaring a minor the ward of the court is appealable. (Welf. & Inst. Code, § 800.)

A verified petition, filed on December 27, 1962, by the Probation ***819** Officer of Alameda County, alleged that appellant, age 17, was a person described in Welfare and Institutions Code section 602, [FN3] in that on November 10, 1962, he committed robbery rule while armed with a lug wrench. (Pen. Code, § 211a.) Following a hearing on the petition, the court found that appellant had committed the crime of robbery in violation of Penal Code section 211 [FN4] and therefore declared him a ward of the court. Appellant filed a notice of appeal on January 30, 1963. Thereafter, on November 6, 1963, appellant filed a petition to set aside the judgment and commitment. [FN5] The petition alleged that one Leland Travers was responsible for the robbery which resulted in appellant being declared a ward of the court and his commitment to the Youth Authority. The court issued an order for a hearing pursuant to section 778. [FN6] The hearing was held on November 20 and 26, 1963. On the latter date, the court denied the motion to set aside the judgment and commitment. On November 27, 1963 the first appeal was scheduled for oral argument before this court. At oral argument counsel for appellant requested this court to consider new alibi testimony which had been adduced at the hearing to set aside the judgment of wardship. Since appellant had not as yet appealed from the denial of the motion to set aside the judgment we were unable to grant the request. ***820** However, the hearing on the first appeal was continued until such time as the second appeal could be heard. Appellant thereafter filed a notice of appeal from the order denying this motion on December 11, 1963. When the two appeals came on for oral argument, respondent, for the first time, raised the question whether the order denying the motion to set aside the judgment was an appealable order.

FN3 Unless hereinafter otherwise indicated all statutory references are to the Welfare and Institutions Code.

FN4 Apparently the petition was amended to read a violation of § 211 of the Pen. Code in lieu of § 211a, pursuant to a recommendation by the Probation Officer.

FN5 The juvenile court has jurisdiction to hear and determine a motion to vacate an order adjudging a person to be a ward of the court even though an appeal is pending from such order. (See *Agnew v. Superior Court,* 118 Cal.App.2d 230, 233-234 [257 P.2d 661].)

FN6 § 778 provides as follows: "Any parent or other person having an interest in a child who is a ward or dependent child of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward or dependent child of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction. If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to such persons and by such means as prescribed by Sections 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes."

Appealability of the Order Denying the Motion to Vacate

(1) It is the general rule that an order is not appealable unless declared to be so by the Constitution or by statute. (*People v. Keener,* 55 Cal.2d 714, 720 [12 Cal.Rptr. 859, 361 P.2d 587]; *People v. Valenti,* 49 Cal.2d 199, 204 et seq. [316 P.2d 633].) Section 800, which is part of the Juvenile Court Law, provides in pertinent part that "[a] judgment or decree of a juvenile court ... assuming jurisdiction and declaring any person to be a person described in Section 600, 601, or 602, ... may be appealed from in the same manner as any final judgment, *and any subsequent order may be appealed from as from an order after judgment*; ..." (Italics added.) The pertinent language of section 800 which we are called upon to construe is that which we have italicized. Respondent contends that since juvenile court proceedings are civil in nature (§ 503) the italicized language has reference to the applicable provisions concerning appeals in civil cases. Accordingly, respondent urges that we must read section 800 in conjunction with Code of Civil Procedure section 963 which provides for appeals in civil cases. It is respondent's position that the italicized portion of section 800 has reference to the language in subdivision 2 of section 963 of the Code of Civil Procedure which provides that an appeal may be taken "from any special order made after final judgment. ..." Since the judgment is not final in the present case, because it is before us on appeal, respondent argues that no appeal can be taken from the order denying the motion to vacate.

Respondent cites *In re Harrison,* 215 Cal.App.2d 723 [30 Cal.Rptr. 473]. This case is not in point because it involves the appealability of an order dismissing a petition to have a minor declared a ward of the juvenile court. Respondent also cites *People v. Olds,* 140 Cal.App.2d 156 [294 P.2d 1034], wherein it was held that since sexual psychopathy proceedings under the Welfare and Institutions Code are civil in nature the right to appeal is governed by section 963 of the Code of Civil Procedure, an appeal from a verdict must be dismissed because a verdict is not one of the orders specified in said ***821** section from which an appeal may be taken. We are of the opinion that the *Olds* case is not applicable because the circumstances there are distinguishable from those in the present case. The Sexual Psychopathy Law (§§ 5500 et seq.) contains no specific provision for appeal and hence section 963 of the Code of Civil Procedure has been held to be applicable to it. (See *Gross v. Superior Court,* 42 Cal.2d 816, 820-821 [270 P.2d 1025].) (2) The Juvenile Court Law, on the other hand, contains a specific provision for appeals, namely section 800. Accordingly, under the rule that a special statute

dealing expressly with a particular subject controls and takes priority over a general statute (*Brill v. County of Los Angeles,* 16 Cal.2d 726, 732 [108 P.2d 443]; *Mitchell v. County Sanitation Dist.,* 164 Cal.App.2d 133, 141 [330 P.2d 411]; *Estate of Compton,* 202 Cal.App.2d 94, 97 [20 Cal.Rptr. 589]), section 800, and not code of Civil Procedure section 963, is the one which must be looked to with respect to appeals under the Juvenile Court Law. This conclusion was reached in *Moch v. Superior Court,* 39 Cal.App. 471 [179 P. 440], wherein the appellate court held that the right of appeal under the Juvenile Court Law is restricted to appeals from the judgments and orders enumerated in section 23 of that act. Section 23 of the Juvenile Court Law (Stats. 1915, ch. 631, p. 1248), is the original statute upon which section 800 is based and its language is substantially the same. [FN7] (See Legislative History, § 800.)

> FN7 § 23 then read as follows: "Every judgment or decree of a juvenile court assuming jurisdiction and declaring any person to be a ward of the juvenile court or a person free from the custody and control of his parents may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment."

The crux of our inquiry, then, is the meaning and interpretation of the language of section 800 which reads as follows: "[A]ny subsequent order ... as from an order after judgment; ..." It should be noted that this language reads differently from that in Code of Civil Procedure section 963, subdivision 2, which provides that an appeal may be taken "from any *special order made after final judgment.* ..." (Italics added.) The words we have underscored are not found in section 800. In the case of *In re Hartman,* 93 Cal.App.2d 801 [210 P.2d 53], an appeal was taken from the orders adjudging the minor to be a ward, committing him to the probation officer and placing him on probation. All three orders were held to be appealable. The last two mentioned were ***822** recognized to be appealable orders after judgment under section 580, which, in 1961, became section 800 without substantial change. (3) We are satisfied that the crucial language in section 800 is contained in the words "subsequent order" and that it was the legislative intent to make appealable any order of a juvenile court after judgment which affects the substantial rights of the juvenile irrespective of whether the order declaring a person to be a ward of the juvenile court has become final. (See *In re DeBaca,* 197 Cal.App.2d 672, 674 [17 Cal.Rptr. 554].) (4) In the present case, the second appeal arises out of proceedings brought pursuant to section 778 which authorizes a proceeding for the purpose of changing, modifying or setting aside a previous order of the court making a person a ward or dependent child of the juvenile court where there has been a change of circumstances or new evidence. The purpose of such hearing is to determine whether such circumstances or evidence makes some new or changed disposition desirable or necessary for the continued welfare of the child. (5) Such a hearing and any order made pursuant thereto affect the substantial rights of the juvenile. There can be little doubt that an order made after a hearing pursuant to section 778 is a proceeding after the original judgment and commitment substantially affecting the rights of the minor and that it is an "subsequent order" under section 800. (See *In re DeBaca, supra,* p. 674; *In re Syson,* 184 Cal.App.2d 111, 114 [7 Cal.Rptr. 298].)

The First Appeal

A. *The Sufficiency of the Evidence:*

Appellant contends that respondent has not met its burden of establishing its case by a preponderance of the evidence pursuant to section 701. [FN8] This contention is based upon the assertion that the evidence was insufficient to identify him as the perpetrator of the robbery and that the uncorroborated testimony of Van Jenks (hereinafter called Jenks) as to identity was mere opinion and therefore so inherently weak from an evidentiary standpoint as to leave it without convincing force. Opposed to this evidence, argues appellant, is the alibi evidence adduced by him which, when weighed against the evidence of identification, has so much more convincing ***823** force as to impel the conclusion, as a matter of law, that respondent has not proven its case by a preponderance of the evidence. In evaluating the merit of his contention, appellant urges that we consider the cumulative alibi testimony adduced both at the original commitment hearing and the subsequent hearing pursuant to section 778. No authorities are cited in support of this procedure. (6) As already discussed, the decree declaring appellant a ward of the juvenile court and committing him to the Youth Authority is a final judgment. Accordingly, we are bound by the well-established rule applicable to appellate procedure that in determining the correctness of a judgment or order

appealed from an appellate court is limited to a consideration of the record thereof, and that error on the part of the trial court cannot be predicated by reason of any matter subsequent to its rendition. (*Olincy v. Merle Norman Cosmetics, Inc.* 200 Cal.App.2d 260, 275-276 [19 Cal.Rptr. 387]; *People's Home Sav. Bank v. Sadler,* 1 Cal.App. 189, 193 [81 P. 1029]; see *Bradley v. Bradley,* 40 Cal.App. 638, 640-641 [181 P. 237].) We cannot, therefore, consider the evidence adduced at the hearing which is the subject of the second appeal in our determination of the correctness of the order which is the subject of the first appeal. The propriety of the latter order must stand or fall upon the evidence before the trial court at the time of its rendition. Accordingly, if there is sufficient evidence set forth in the transcript of the proceedings at the first hearing to sustain the judgment, we must accept the judgment and findings of the lower court as conclusive. (See *In re Stein,* 86 Cal.App. 226, 230 [260 P. 566].)

> FN8 § 701 provides in part as follows: "[A] preponderance of evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described by Section 602. ..."

(7) By a "preponderance of evidence" is meant such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability of truth lies therein. (*People v. Miller,* 171 Cal. 649, 652-654 [154 P. 468]; *Lawrence v. Goodwill,* 44 Cal.App. 440, 451-452 [186 P. 781]; Witkin, California Evidence, § 59, p. 77; see BAJI Instruction No. 21 (Revised) 1964 Pocket Part.) (8) It is elementary that an appellate court cannot examine evidence to determine where the preponderance of the evidence lies. (*Bulkley v. Klein,* 206 Cal.App.2d 742, 751 [23 Cal.Rptr. 855]; *Estate of Harvey,* 143 Cal.App.2d 368, 370 [299 P.2d 712]; *Washko v. Stewart,* 20 Cal.App.2d 347, 348 [67 P.2d 144]; *Crain v. Security Title Ins. etc. Co.,* 6 Cal.App.2d 343, 345 [44 P.2d 632].) Our function is to determine whether the record contains any substantial evidence ***824** tending to support the finding of the trial court. (*Bulkley v. Klein, supra,* p. 751; *Estate of Harvey, supra,* p. 370; *Phillips v. Standard Acc. Ins. Co.,* 180 Cal.App.2d 474, 480 [4 Cal.Rptr. 277]; *Washko v. Stewart, supra,* p. 348.) (9) Consonant with this principle is the rule that when two or more inferences reasonably can be deduced from the evidence the reviewing court cannot substitute its own inferences for those of the trial court. (*Estate of Harvey, supra,* p. 370; *Washko v. Stewart, supra,* p. 349.) (10) *Estate of Teed,* 112 Cal.App.2d 638 [247 P.2d 54], defines substantial evidence as follows: "[I]t clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with 'any' evidence. It must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case." (P. 644; in accord: *Forslund v. Forslund,* 225 Cal.App.2d 476, 499 [37 Cal.Rptr. 489]; *Dyer v. Knue,* 186 Cal.App.2d 348, 351 [8 Cal.Rptr. 753].) (11) The principle of substantial evidence is applicable in juvenile court proceedings as in other matters. (*In re Corrigan,* 134 Cal.App.2d 751, 754 [286 P.2d 32].) Accordingly, the findings of the juvenile court judge will not be disturbed on appeal where there is substantial evidence to support them. (*In re Corrigan, supra,* p. 754; *In re Ayers,* 116 Cal.App.2d 55, 58 [253 P.2d 65]; *In re Schubert,* 153 Cal.App.2d 138, 143 [313 P.2d 968].)

Before proceeding to the questions of identity and alibi we set out the following evidence disclosed by the record. On November 10, 1962, shortly after midnight, two white male youths entered the taxicab of Jenks at MacArthur and Broadway in Oakland. Both passengers sat in the rear of the cab, gave the Grizzly Peak Ranch as their destination, and directed Jenks to proceed northeast on Broadway through the tunnel and to turn right immediately upon reaching the east end. Jenks drove east on the side road which parallels the tunnel until his passengers ordered him to stop at a point where this road intersects the Fish Ranch Road. Without warning he was struck on the back of his right shoulder at the base of his neck. Simultaneously, one of the youths moved from the rear to the front seat. Jenks did not know if he had first been struck with a weapon, but he testified that the youth in the front seat punched him several times. The youth in the rear of the cab reached over Jenks' shoulder and removed ***825** a number of bills from his shirt pocket. [FN9] Jenks was then asked if he had any money of his own. The youth in the rear seat removed Jenks' wallet from his right rear pocket. Following the robbery, Jenks was ordered to drive north on Fish Ranch Road. At this time the youth in the rear brandished what the cab driver characterized as an " 'iron.' " [FN10] Jenks testified that he was unfamiliar with the area and stated that there was a heavy

fog; therefore, he was unable to state exactly where he drove the youths during the better part of an hour following the robbery. From their directions, however, he gathered that they were searching for a particular road. They finally ordered him to stop the automobile, whereupon they left telling Jenks to wait 5 minutes. Jenks stated that to his knowledge he was never struck with a weapon. He estimated that nearly $15 in fares and tips was taken from his person. Between the time of the robbery and appellant's arrest, Jenks saw him on the street in downtown Oakland on several occasions. The first time was about 4 o'clock in the morning on an unknown date, but appellant quickly disappeared. The second time was during the day at a drugstore on Eleventh and Broadway Streets in Oakland, but the youth had disappeared by the time Jenks returned with the police. Jenks could not remember whether this second encounter was on a weekday or a weekend. At 3 p.m. on December 25, 1962, he again saw appellant loitering on the street in downtown Oakland. Jenks followed appellant for several minutes before the latter became annoyed and the two became involved in brief conversation. The police were notified and appellant was subsequently taken into custody. Later, fingerprints were lifted from the cab, but, when matched with appellant's, they proved to be dissimilar.

> FN9 The narration of facts in both briefs was copied largely from the report of the probation officer to the court. The probation officer's report differs from the record as to this fact in that the report indicates that the youth in the front seat reached into Jenks' pocket and removed the money.

> FN10 The probation report states that the arrest report describes the object as a " 'lug wrench.' "

(12) Apropos the question of identity, to entitle a reviewing court to set aside a finding of guilt the evidence of identity must be so weak as to constitute practically no evidence at all. (*People v. Braun,* 14 Cal.2d 1, 5 [92 P.2d 402]; *People v. Jackson,* 183 Cal.App.2d 562, 567 [6 Cal.Rptr. 884].) (13) The strength or weakness of the identification, the incompatibility of and discrepancies in the testimony, if ***826** there were any, the uncertainty of recollection, and the qualification of identity and lack of positiveness in testimony are matters which go to the weight of the evidence and the credibility of the witnesses and are for the observation and consideration of the trier of fact, whose determination will stand unless the testimony is inherently incredible. (*People v. Braun, supra,* p. 5; *People v. Jackson, supra,* pp. 567-568; *In re DeBaca, supra,* 197 Cal.App.2d 672, 677.) (14) The testimony of a robbery victim, if believed by the trier of facts, is sufficient of itself to warrant a conviction, and no corroborative evidence is required. (*People v. Hornes,* 168 Cal.App.2d 314, 318-319 [335 P.2d 756]; *People v. Sanders,* 217 Cal.App.2d 606, 610 [31 Cal.Rptr. 707].) (15) Nor is it a valid objection that the accused is identified by only one witness. (*People v. Whitson,* 25 Cal.2d 593, 604 [154 P.2d 867]; *People v. Wyback,* 193 Cal.App.2d 754, 757-758 [14 Cal.Rptr. 501]; *People v. Wiest,* 205 Cal.App.2d 43, 45 [22 Cal.Rptr. 846].) (16) It is not essential that a witness be free from doubt as to one's identity. (*People v. Jackson, supra,* p. 568; *People v. Arenas,* 128 Cal.App.2d 594, 601 [275 P.2d 811]; *People v. Waller,* 14 Cal.2d 693, 700 [96 P.2d 344].) He may testify that in his belief, opinion or judgment the accused is the person who perpetrated the crime, and the want of positiveness goes only to the weight of the testimony. (*People v. Harris,* 87 Cal.App.2d 818, 824 [198 P.2d 60]; *People v. Abner,* 209 Cal.App.2d 484, 491 [25 Cal.Rptr. 882]; *People v. Tullous,* 119 Cal.App.2d 637, 639-640 [259 P.2d 955]; *People v. Cahan,* 141 Cal.App.2d 891, 897 [297 P.2d 715]; *People v. Deal,* 42 Cal.App.2d 33, 37 [108 P.2d 103]; *People v. Glab,* 15 Cal.App.2d 120, 123 [59 P.2d 195]; see also: Witkin, California Evidence, § 171, p. 192.) (17) Our courts have also held that it is not necessary that any of the witnesses called to identify the accused should have seen his face. (*People v. Loar,* 165 Cal.App.2d 765, 773 [333 P.2d 49].) Identification may be based on other peculiarities such as size, appearance, similarity of voice, features or clothing. (*People v. Molarius,* 213 Cal.App.2d 10, 15 [28 Cal.Rptr. 541]; *People v. Van De Wouwer,* 91 Cal.App.2d 633, 639 [205 P.2d 693]; *People v. James,* 218 Cal.App.2d 166, 170 [32 Cal.Rptr. 283]; see *People v. Glab, supra,* p. 123; and *People v. Coley,* 61 Cal.App.2d 810, 813-814 [143 P.2d 755].)

(18) Adverting to the record in the light of these principles, we are satisfied that the evidence of identity was of ***827** sufficient substantiality. Jenks testified that he paid particular attention to appellant when he picked up the two fares. He specifically identified appellant as the passenger who was sitting

in the back seat, stating that he paid particular attention to him because he appeared to be "a little drunk. ..." He remembered appellant's hair as being "blondish-brown" in color. In response to the question, "[h]ow do you recognize the boy?" he answered, "[w]ell, I would recognize a man several ways-the features of his face, silhouette. You can recognize a man by a silhouette." The answer to a further question, "[h]ow do you specifically recognize Sylvester?" was: "Well, Sylvester's voice is very distinctive to me. I listened to him for quite awhile, and his receding hairline. He walked from the corner to get in the cab." Furthermore, Jenks, after watching appellant during the course of the hearing, stated to the court that, "[t]here is something I have noted Sylvester doing here in the courtroom that I remember very distinctly." The court replied, "[w]hat is that?" Jenks stated: "The man sniffs; always sniffing his nose and wiggling his upper lip. ... I have watched him do it twenty-five or thirty times, always sniffing his nose. That probably don't [*sic*] mean anything, but I remember that when I was driving." He also identified appellant as the boy who struck him from behind and remained in the back seat of the cab.

Turning to the alibi testimony, the record discloses the following: Testifying on his own behalf, appellant denied entering the cab at MacArthur and Broadway on the evening of November 10, shortly after midnight. He asserted that at the time in question he was on a bus enroute to San Francisco for the purpose of visiting one Alfred Kober. Appellant stated that he took the 11:03 p.m. bus departing from the Doggie Diner in Oakland and arrived in San Francisco about midnight; that upon leaving the depot, he proceeded directly to Kober's house. [FN11] Kober testified that appellant, whom he only knew by the name " 'Corky,' " was in his apartment just after midnight on November 10, 1962. He stated that initially he was not positive which weekend in November appellant ***828** had visited him, but that on the evening before his appearance in court he had ascertained from one Jean Saville that it was on November 10. Kober also testified that Saville told him he had stopped by after getting off work at 2 a.m. on this date, and remembered seeing appellant in Kober's apartment. Kober also testified that another person named Tom Bertram was in the apartment that night. [FN12]

FN11 Counsel for appellant directs our attention to a probation officer's memorandum which is part of the clerk's transcript. This memorandum indicates that a check of the Alameda Naval Air Station roster was made and that it shows appellant was on duty each weekend in November, excepting the weekend of November 9 and 10. The record is silent as to whether this memorandum was read to or seen by the trial judge.

FN12 A court officer, one Holliman, thereafter made a statement to the court, which was not objected to, that he had contacted Bertram, who could not come to court because he was ill, and that Bertram told him that he did not recall the nickname "Corky" and denied being in Kober's apartment on the evening of the 9th or early morning of the 10th of November.

(19) Whether a defendant sufficiently establishes an alibi is a factual question for the trier of fact. (*People v. Mercer*, 103 Cal.App.2d 782, 790 [230 P.2d 4].) (20) It devolves upon him to prove the alibi to such a degree of certainty as will, upon a consideration of all the evidence, leave a reasonable doubt of his guilt in the mind of the trier of fact. (*People v. Lewis*, 81 Cal.App.2d 119, 124 [183 P.2d 271]; *People v. Alexander*, 78 Cal.App.2d 954, 958 [178 P.2d 813].) (21) The weight to be given alibi testimony is for the jury (*People v. Weathers*, 97 Cal.App.2d 821, 823 [218 P.2d 545]), or, in a nonjury case, for the trial court. (*People v. D'Elia*, 73 Cal.App.2d 764, 767 [167 P.2d 253].) (22) The presence of alibi testimony does not make the positive identification of a defendant produced by the prosecution unbelievable per se. (*People v. King*, 103 Cal.App.2d 122, 126-127 [229 P.2d 20]; *People v. Ohman*, 67 Cal.App.2d 467, 475 [154 P.2d 463].) (23) Where there is a conflict of evidence on the question of alibi, the findings of the trier of fact thereon are binding on appeal. (*People v. Spillard*, 15 Cal.App.2d 649, 652-653 [59 P.2d 887]; *People v. Mercer*, *supra*, p. 791; *People v. Villarico*, 140 Cal.App.2d 233, 238 [295 P.2d 76].)

(24) Turning once again to appellant's argument with respect to the preponderance of the evidence in the light of the record and the foregoing principles, we find that it is, in reality, an attack upon the trial court's power to judge the credibility of the witnesses. The fallacy of appellant's argument is the assumption

that a greater quantum of evidence on one side is as credible as a lesser quantum of evidence on the other side, and that, therefore, the lesser amount of evidence cannot constitute a preponderance of the evidence. As we have already noted, the determination of credibility ***829** is the exclusive function of the trier of fact. We have also pointed out that the evidence as to appellant's identification as a perpetrator of the robbery is of sufficient substantiality. The alibi evidence, at best, caused a conflict only with the testimony of Jenks who positively identified appellant as one of the robbers and the resolution of the conflict by the trial court against appellant cannot be disturbed on appeal.

B. *The Waiver of Counsel:*

(25) Appellant contends that his waiver of counsel was not intelligently made because the trial judge failed to comply with the procedure set forth in section 700, which, in pertinent part, provided as follows: "At the beginning of the hearing on a petition filed pursuant to Article 7 (commencing with Section 650), the judge or clerk shall first read the petition to those present and upon request of the minor ... or upon the request of any parent, relative or guardian, the judge shall explain any term of allegation contained therein and the nature of the hearing, its procedures, and possible consequences. The judge shall ascertain whether the minor or his parent or guardian has been informed of the right of the minor to be represented by counsel, and if not, the judge shall advise the minor and the parent or guardian, if present, of the right to have counsel present." The record discloses that when the matter came on for hearing, and prior to the reading of the allegations of the petition by the clerk, the trial judge asked appellant whether he desired an attorney, that appellant replied that he wished to go ahead without an attorney, and that he refused to employ an attorney even though he had been advised of his right to counsel. [FN13] Thereafter, the petition was read and the hearing commenced. Appellant does not contend that he was not informed of his right to counsel, nor does he deny that he expressly waived that right. He maintains, however, that since he was advised of his right to counsel *prior* to the reading of the petition his waiver was not an intelligent one because he was not then aware of the "nature of the hearing, its procedures, and possible consequences" within the contemplation of section 700.

FN13 The record also discloses the following colloquy. "The Court: You have talked with the Public Defender and he is unable to represent you? Sylvester Corey: Yes, sir."

Appellant's argument is, in our opinion, answered by the holding of *In re Patterson*, 58 Cal.2d 848 [27 Cal.Rptr. 10, 377 P.2d 74]. There the trial judge proceeded with the ***830** hearing without informing the minor and his mother, who was present, of the right to counsel. However, the records before the court at the commencement of the hearing reflected that the minor had been advised at the detention hearing before a referee of the juvenile court of the right to counsel and that his mother, who was present at the hearing on the petition, had been advised of the right to counsel in the notice of hearing personally served upon her. [FN14] The Supreme Court held that once the judge had ascertained from the records then before him that the minor and his parent had been informed of the right to counsel and that no request had been made for the appointment of counsel, he was justified in proceeding without again advising the minor or his parent of the right to counsel. "That duty," said the court, "would have evolved upon him only if it had appeared that they had not previously been advised of such right." (P. 852.)

FN14 In the case at bench the detention order of December 27, 1962, recites that appellant was informed of his right "to be represented at every stage of the proceedings by Counsel. ..." Moreover, the memorandum of the deputy probation officer to the court dated January 14, 1963, discloses that appellant was not only informed of his right, but was given every opportunity to obtain an attorney. The memorandum is as follows: "Sylvester was informed by the Probation Officer of his right to be represented at the hearing by an attorney. When this fact was initially disclosed to him the boy indicated that he wished to be represented. The Public Defender's Office was contacted by the Probation Officer and the boy [was] subsequently interviewed by an attorney from that department. The office then notified the Probation Officer that Sylvester was ineligible for such representation. Reportedly there is a trust fund in his name from which he may draw funds to pay for an attorney. The

boy was informed of this fact by the Probation Officer and again asked if he wished this Department to contact the Bar Association. At that time the boy stated that he did not wish a lawyer. A few days later he was again asked if he wished to be represented and at that time he stated in vague terms that it was too late."

C. *The Juvenile Court's Role of "Parens Patriae":*

(26) Appellant contends that the juvenile court failed to fulfill its role as counsel for the defense when it did not test the qualifications of the identifying witness and when it did not obtain the testimony of Bertram and one Jean Saville, [FN15] both of whom were alleged to have been able to provide appellant with an alibi. With respect to the first observation, the record discloses that the court examined Jenks closely as to the accuracy of his identification and the specifics of the robbery. As respects Bertram, it appears that the court did attempt to obtain his presence but was unable to do so ***831** because of illness. Moreover, it also appears that Bertram stated he did not know appellant and that he was not in Kober's house on the night in question. No request was made that Saville be subpoenaed, nor was any suggestion made by appellant that Saville was an alibi witness. This suggestion was made by Kober as the basis for his own refreshment of memory. Appellant's argument assumes that the judge of the juvenile court has the duty of aggressively acting as an advocate on behalf of the minor. Such a role is inconsistent with the judicial function. The trial court's role as *parens patriae* is fulfilled if at all stages in the proceedings it assures the minor of his statutory rights and follows the statutory procedures in conducting the hearing. Having carried out this obligation in the case at bench, we cannot say that the court below abused its discretion.

FN15 The name of Jean Saville was injected into the record by Kober as another person who had reminded him that appellant was at Kober's house on the early morning of November 10th.

The Second Appeal

The second appeal, unlike the first, is not confined solely to transcripts of the proceedings from which it emanates. (27) Although we have found no case directly construing section 778, and none has been cited to us, [FN16] we are satisfied that in passing upon the matters presented pursuant to a petition under said section the trial court must necessarily consider the matters which formed the basis of the order previously made in order to ascertain whether there has been a "change of circumstance" or "new evidence" warranting a change, modification or setting aside of such previous order. (28) We believe that in principle and in its application, section 778 is akin to Civil Code section 139 with respect to the modification and termination of alimony and child support payments because of changed circumstances. In such proceedings the circumstances existing when the order sought to be modified or terminated was made are considered in order to determine whether there has been a substantial change in the circumstances warranting a modification or termination. (See *Marxer v. Marxer,* 185 Cal.App.2d 400, 403 [8 Cal.Rptr. 323]; *Crain v. Crain,* 187 Cal.App.2d 825, 831 [9 Cal.Rptr. 850]; *Bratnober v. Bratnober,* 48 Cal.2d 259, 261 [309 P.2d 441].) In these cases it is well established that the modification or termination rests in the sound discretion of the trial court and, in the absence of a clear showing of abuse of discretion, an appellate court is not free to interfere ***832** with the trial court's order. (*Crain v. Crain, supra,* p. 834; *Bratnober v. Bratnober, supra,* p. 262.)

FN16 § 778 was added in 1961 and is based on former § 753 as added in 1959.

(29) We are persuaded moreover that section 778 must be read in conjunction with section 775 which provides that "[a]ny order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article." (30) The cases recognize that once having attained wardship the juvenile court retains exclusive jurisdiction but that this jurisdiction is on a temporary basis subject to the duty to dismiss such wardship proceedings when the court becomes convinced on evidence properly before it that the protection of the child no longer requires wardship. (*People v. De Fehr,* 81 Cal.App. 562, 574 [254 P. 588]; *In re Stein, supra,* 86 Cal.App. 226, 230; *In re Contreras,* 109 Cal.App.2d 787, 792 [241 P.2d 631]; *In re Syson, supra,* 184 Cal.App.2d 111, 117.) *De Fehr* and *Stein* were concerned with sections of the Juvenile Court Law which are the predecessors of section 775. The opinions in

Contreras and *Syson*, although recognizing the continuing jurisdiction of the juvenile court, make no reference to either section 775 or 778. In *Stein* the reviewing court noted that, although it was required to accept the findings of the lower court adjudging a minor to be a ward of the court, because the evidence was sufficient, the procedure providing for an application for a modification or setting aside of the orders of the juvenile court gave such court, if it made an error in its estimate of the testimony upon which it acted in making the previous order, an opportunity to correct it at any time. (31) The cases also establish the principle that the modification or termination of an order previously made by a juvenile court rests within its discretion, and that its order granting or refusing an application for modification or termination may not be disturbed unless there has been an abuse of discretion. (*People v. De Fehr, supra*, p. 574; *In re Contreras, supra*, p. 792.)

(32) The basis of the motion to set aside the previous order of the court was the "new evidence" that one Leland Travers had admitted he was the perpetrator of the robbery in question. At the hearing, however, in addition to the testimony of Travers and one J. M. Short in this regard, appellant also called the aforementioned Saville as an alibi witness and recalled Jenks as a witness. [FN17] ***833**

FN17 Appellant was represented by counsel at this hearing.

Short, a Correctional Counselor at the Deuel Vocational Institution, testified concerning a conversation at which he was present along with appellant, his attorney and one Travers, an inmate at said institution. According to Short, during this conversation, which was about the robbery in question, Travers said " 'Yes, I did it.' " On cross-examination, Short testified that two days after this conversation Travers, in the presence of his counsellor and Short, denied that he committed the robbery, and stated that he and appellant had had a conversation wherein the latter stated: " 'Why should both of us ride this beef?' " Short also stated that Travers told him he thought he " 'could ride his beef if it didn't mess up my time' " and that "he had been fully informed of what had happened but that he had not been in on it."

Travers testified that he and a friend named "Tommy" entered a green and white "Lux" taxicab at Broadway and MacArthur Boulevard in Oakland on November 10, 1962, and directed the driver to take them to the Grizzly Bear Ranch; that he rode in the back seat and his companion in the front seat with the cab driver; that they went "up toward Skyline Boulevard"; [FN18] that his companion struck the driver in the back of the head when he refused to drive up a certain road; that after driving up the road he told the driver to stop; that the driver handed his companion his wallet; that his companion took the money out and returned the wallet to the driver; and that he told the driver not to start the motor and to " 'stay right there until we make it.' " Travers also testified that appellant had been present during the planning of this robbery but that he "didn't want to go. He said he was going to Frisco so he took off. He was with some other guy, Danny." When asked at the hearing if Jenks was the taxicab driver, Travers said "[h]e looks just like him"; but also said "he looks different."

FN18 The reference is apparently to Fish Ranch Road.

Jean Saville testified that he lived with Kober from September to the latter part of November in 1962 and that a little over a week after the 30th or 31st of October on either a Friday or Saturday night at about 2:30 a.m. he saw appellant at Kober's house. Jenks was examined at length, but again identified appellant as one of the robbers and stated that Travers was not one of them.

What we have already said as to identity, alibi, credibility ***834** and substantiality of the evidence with respect to the first appeal is likewise applicable here. The trial court was the sole arbiter as to the credibility of the witnesses. Saville's alibi testimony was not positive but vague as to the exact time appellant was at Kober's home. In view of Short's testimony, the trial court was entitled to disregard that of Travers. Moreover, in view of Jenks' positive identification, which he again repeated at the subsequent hearing, we have, at best, a conflict in the testimony. Accordingly, we cannot disturb the trial court's resolution of that conflict. Nor can we say that under all the circumstances the trial court abused its discretion in denying the motion to vacate.

The judgments appealed from are affirmed.

Sullivan, P. J., and Bray, J., [FN*] concurred.

FN* Retired Presiding Justice of the District Court of Appeal sitting under assignment by the Chairman of the Judicial Council.

Cal.App.1.Dist.
In re Corey
230 Cal.App.2d 813, 41 Cal.Rptr. 379

END OF DOCUMENT

87 Cal.App.3d 919, 151 Cal.Rptr. 29
(Cite as: 87 Cal.App.3d 919)

In re MICHAEL ALAN DAVIS, a Minor, et al. on Habeas Corpus.

Crim. No. 9700.

Court of Appeal, Third District, California.
Nov. 28, 1978.

SUMMARY

Two minors sought, by habeas corpus petition, to compel the Youth Authority to advance their parole consideration dates by the amount of time they had been subjected to precommitment detention, citing Pen. Code, § 2900.5 (presentence credit against term of imprisonment including parole release date). The superior court granted the order. (Superior Court of Sacramento County, No. 51605, William H. Lally, Judge.)

On appeal by the Youth Authority, the Court of Appeal reversed, holding that the parole consideration hearing date is not a parole release date under Pen. Code § 2900.5 The court noted that every ward committed to the Youth Authority is reviewed annually for parole, and that the parole consideration hearing date is determined for individual wards on the particular facts of their cases. (Opinion by Evans, J., with Puglia, P.J., and Janes, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Habeas Corpus § 38--Appeal--Scope of Review.

Appellate review of a habeas corpus order directing the Youth Authority to advance petitioner wards parole consideration dates by the time spent in precommitment detention was not limited to a substantial evidence determination, where the order had been based on an interpretation of Pen. Code, § 2900.5 (presentence credit).

(2) Delinquent, Dependent and Neglected Children § 36--Youth Correction-- Commitment to Youth Authority--Parole Consideration Hearing Date--Presentence Credit.

A California Youth Authority parole consideration hearing date is not a release date, a term of imprisonment or a sentence, under Pen. Code, § 2900.5 (requiring presentence credit). Thus, on petition for writ of habeas corpus, the superior court erred in directing the Youth Authority to advance the date of petitioner wards' parole consideration hearing dates by the time spent in precommitment detention, where the original parole consideration hearing dates did not exceed the maximum permissible terms of imprisonment. Under Welf. & Inst. Code, § 1762, all wards are considered for parole at least annually, with an additional parole consideration date set according to the facts of the individual case.

[See **Cal.Jur.3d**, Delinquent and Dependent Children, § 119; **Am.Jur.2d**, Juvenile Courts, § 33.]

COUNSEL

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, Arnold O. Overoye, Assistant Attorney General, Eddie T. Keller and W. Scott Thorpe, Deputy Attorneys General, for Appellant.

Quin Denvir, State Public Defender, under appointment by the Court of Appeal, Gary S. Goodpaster and Ezra Hendon, Chief Assistant State Public Defenders, and Tom Lundy, Deputy State Public Defender, for Petitioners.

EVANS, J.

The California Youth Authority appeals from a habeas corpus order directing that previously fixed parole consideration hearing dates, formerly referred to as ‘a continuance date,‘ be advanced by the time the respondents had been subject to precommitment detention prior to their commitment to the Youth Authority.

The only contention presented is whether the parole consideration date is in fact a parole release date for which confinement credit must be applied pursuant to Penal Code section 2900.5. ***921**

(1)Prior to disposing of the primary issue presented, we reject respondents' suggestion that our review of the ruling is limited to a determination of whether there is sufficient evidence to support the trial court's order. That order was predicated upon an in-

terpretation of sections 30 and 31 of the California Youth Authority Board Policy Manual. Inasmuch as an interpretation of a regulation or statute is involved, the question is one of law, not fact. We are not limited as respondents argue by the trial court's conclusion. (See *Neal v. State of California* (1960) 55 Cal.2d 11, 17 [9 Cal.Rptr. 607, 357 P.2d 839]; *County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665, 668 [114 Cal.Rptr. 283]; *Plum v. City of Healdsburg* (1965) 237 Cal.App.2d 308 [46 Cal.Rptr.827]; see also *People v. Carr* (1974) 43 Cal.App.3d 441, 444 [117 Cal.Rptr. 714].)

The authorities relied upon by respondents in support of their argument that we are limited in our review by the conclusion of the trial court are inapposite, as each involves appellate review of a trial court's resolution of a question of fact. (See *People v. Valdez* (1962) 203 Cal.App.2d 559, 562, 563-564 [21 Cal.Rptr. 764] [consent]; *People v. Castaneda* (1969) 1 Cal.App.3d 477, 484-485 [82 Cal.Rptr. 205] [probable cause]; *People v. Walker* (1973) 32 Cal.App.3d 897, 903-906 [108 Cal.Rptr. 548] [evidence did not justify instruction on diminished capacity and in any event diminished capacity was not relevant to issue of self-defense]; *People v. Mulqueen* (1970) 9 Cal.App.3d 532, 541 [88 Cal.Rptr. 235], and *People v. Hillery* (1965) 62 Cal.2d 692, 702 [44 Cal.Rptr. 30, 401 P.2d 382] [sufficiency of evidence to sustain conviction].)

Respondent, Michael Alan Davis, a minor, was initially committed to the Youth Authority on April 2, 1976, following his conviction of first degree burglary. On September 6, 1976, approximately three months after his release on parole, he was apprehended and thereafter convicted for an act of forcible rape and false imprisonment, and was recommitted to the Youth Authority on April 21, 1977. The Youth Authority set Davis' maximum term at four years and gave him a credit of seven months and ten days for time served prior to commitment, thus reducing his maximum term to three years, four months, and twenty days, which expires on September 8, 1981. However, his maximum release date was scheduled for the earlier date of August 30, 1981, by reason of his age. His parole consideration hearing date is scheduled for May 1979.

Fred Leon Jackson, Jr., was first committed to the Youth Authority on June 18, 1975, upon a finding that he was a minor within the provisions of ***922** Welfare and Institutions Code section 602 as a result of his commission of an armed robbery. Within three months of his parole from the Youth Authority, he was arrested for second degree robbery. Upon his plea of guilty, he was convicted and committed to the Youth Authority April 4, 1977. His term was set at three years, and he was given a credit of four months and twenty-four days for time served prior to the commitment resulting in a maximum Youth Authority confinement term of two years, seven months, and six days. His maximum release date was fixed as November 11, 1980, and his continuance date, or parole consideration hearing date, was set for April 1979.

Melvin Murphy was involved in a homicide and was committed to the Youth Authority for second degree murder in exchange for his testimony. The Youth Authority set his term at six years, and gave him credit for one year, four months, and twenty-four days served prior to the commitment. His maximum release date was fixed at November 25, 1982, and his parole consideration hearing date is set for April 1980.

Following the Youth Authority's refusal to advance the parole consideration hearing date (formerly continuance date) by the time served prior to their respective commitments, respondents filed their petition for writ of habeas corpus in the Sacramento Superior Court. That court granted the petition and directed the Youth Authority to apply the provisions of Penal Code section 2900.5 and credit precommitment detention time to advance the parole consideration date accordingly.

From that order this appeal was taken. [FN1]

> FN1 On May 23, 1978, this court denied appellant's application for a stay of execution of the superior court order granting a writ of habeas corpus and ordering that respondents' parole consideration dates be advanced by periods equivalent to their time in precommitment detention. In doing so, we cautioned that the stay was not to be construed as an indication of the merits on appeal. The order provided in part: 'In the event the action of the trial court is reversed and, pending reversal, the petitioners, or any of them, are released on parole under authority of the superior court order, they will be subject to

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> return to custody to serve any time with which they were erroneously credited.‘

The issue framed by respondents is neither novel nor new; it has been previously considered and rejected by the appellate court. In *In re Keele* (1975) 53 Cal.App.3d 70 [125 Cal.Rptr. 492], petitioner sought to have the ‘back time credit‘ provision of Penal Code section 2900.5 applied to advance his ‘continuance date.‘ In denying that request the court determined that section 2900.5, subdivision (a) of the Penal Code, requires that in all felony convictions, the time defendant spends in ***923** custody following arrest to the date service of the sentence imposed commences shall be credited upon the sentence.

The court in *In re Keele*, at pages 72-73 and 77 stated:

‘In *In re Grey*, 11 Cal.3d 554, 555 [114 Cal.Rptr. 104, 522 P.2d 664] and *In re Kapperman*, 11 Cal.3d 542, 546-547 [114 Cal.Rptr. 97, 522 P.2d 657], the California Supreme Court held that section 2900.5, Penal Code applies to a state prison inmate's minimum term, his maximum term, except where the maximum is life, and his minimum eligible parole date. ...

‘Petitioner's commitment has neither a statutory minimum term nor a minimum eligible parole date (see §§ 1711.3, 1766, subd. (a)(1), 1766, subd. (a)(6), Welf. & Inst. Code). Thus petitioner was eligible for release on parole at the time of the Youth Authority Board hearing of January 8, 1975, when the above continuance date was set. The Youth Authority Board is required to determine parole releases, discharges, and the like on an individual basis for each minor. (See *Bryan v. Superior Court*, 7 Cal.3d 575, 585 [102 Cal.Rptr. 831, 498 P.2d 1079]; *In re Minnis*, 7 Cal.3d 639 [102 Cal.Rptr. 749, 498 P.2d 997].) It would appear therefore that section 2900.5, Penal Code, as interpreted in the cases hereinabove cited, has no application to petitioner's continuance date. ...

‘

. . . . . .

‘We conclude that application of the 'back time credit’ provision of 2900.5, Penal Code to petitioner's present continuance date to be improper and an unwise restriction upon the Youth Authority Board's duty to consider each case before it on its individual facts. (See *Bryan v. Superior Court*, 7 Cal.3d 575, 585 [102 Cal.Rptr. 831, 498 P.2d 1079].)‘

(2)Subsequent to the decision in *In re Keele, supra.*, section 2900.5 was amended in part to read, ‘For the purposes of this section, 'sentence’ ... includes any term of imprisonment, including any period of imprisonment prior to release on parole ... whether established or fixed by statute, by any court, or by any duly authorized administrative agency.‘

The parole consideration date is neither a parole release date, a term, or a sentence. It is a date for further review, subject to change by the Youth Authority depending upon the rehabilitation process of the ward. ***924** Moreover, pursuant to Welfare and Institutions Code section 1762, wards must be considered for parole at least annually. The parole consideration date is merely an additional review of parole readiness based upon the ward's projected rehabilitation progress. It is not an inflexible time but may, within the principles of the rehabilitation program of the Youth Authority, be modified to reflect the needs of the ward.

In this instance, it is undisputed that respondents have each had their terms fixed as required by the mandate of *People v. Olivas* (1976) 17 Cal.3d 236 [131 Cal.Rptr. 55, 551 P.2d 375], and have received Penal Code section 2900.5 (as amended) credit for precommitment detention. (See *People v. Sandoval* (1977) 70 Cal.App.3d 73 [138 Cal.Rptr. 609].) The credits were applied against their maximum terms, as they were fixed. Each of them, in contrast to adults committed to the adult authority system, was eligible and considered for parole at the time of his commitment. Parole was rejected at that time but they were nonetheless eligible and considered; annually, that parole consideration must be reviewed. To accept and adopt the contention presented that the parole hearing date is the equivalent to a minimum parole discharge date would inject by judicial decision a new regulation in the Youth Authority Board Policy Manual that would anathematize the principles of the rehabilitative function of the Youth Authority.

The function of the Youth Authority is specifically prescribed by statute. The statute states, inter alia: ‘When a person has been committed to the authority, it may ... (b) Order his confinement under such conditions as it believes best designed for the protec-

tion of the public, except that a person committed to the Youth Authority pursuant to Sections 731 or 1731.5 may not be held in physical confinement for a total 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 ... resulted in the commitment of the young adult to the Youth Authority.' (Welf. & Inst. Code, § 1766, subd. (b).) 'The following powers and duties shall be exercised and performed by the Youth Authority Board ... discharge of commitment, orders to parole and condition thereof, revocation or suspension of parole, recommendation for treatment program, [and] *determination of the date of next appearance*, ...' (Italics added.) (Welf. & Inst. Code, § 1711.3.)

As the parole consideration hearing dates do not exceed the maximum permissible terms of imprisonment, and the regulations are obviously within the powers of the Youth Authority Board, these rules and ***925** regulations have the force and effect of law. (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401 [128 Cal.Rptr. 183, 546 P.2d 687]; *Dabis v. San Francisco Redevelopment Agency* (1975) 50 Cal.App.3d 704, 706 [122 Cal.Rptr. 800]; *Zumwalt v. Trustees of Cal. State Colleges* (1973) 33 Cal.App.3d 665, 675 [109 Cal.Rptr. 344]; see Gov. Code, § 11374.)

For the foregoing reasons and the principles stated in *In re Keele*, *supra.*, 53 Cal.App.3d 70, the order granting the petition for habeas corpus is reversed, and the trial court is directed to enter a contrary order.

Puglia, P. J., and Janes, J., concurred.

A petition for a rehearing was denied December 27, 1978, and petitioners' application for a hearing by the Supreme Court was denied January 24, 1979. ***926**

Cal.App.3.Dist.
In re Davis
87 Cal.App.3d 919, 151 Cal.Rptr. 29

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170 Cal.App.3d 604, 216 Cal.Rptr. 502
(Cite as: 170 Cal.App.3d 604)

ENVIRONMENTAL PROTECTION INFORMATION CENTER, INC., et al., Plaintiffs and Appellants,
v.
ROSS JOHNSON, as Resources Manager, etc., et al., Defendants and Respondents.

No. A024754.

Court of Appeal, First District, Division 5, California.
Jul 25, 1985.

SUMMARY

By petition for writ of mandate, plaintiffs challenged the approval of a timber harvesting plan by the California Department of Forestry, which authorized the logging of a 75-acre grove of old-growth redwoods, which site included a native American archaeological site. The trial court denied the petition. (Superior Court of Mendocino County, No. 48383, William H. Phelps, Judge. [FN*])

The Court of Appeal reversed and remanded with instructions to grant the petition and set aside the timber harvesting plan. The court held that the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) applied to the Forest Practices Act (Pub. Resources Code, § 4511 et seq.) and its regulation of the timber harvesting industry. The court further held that, since fundamental provisions of both acts were not followed, the timber harvesting plan was not approved in the manner prescribed by law. The court held that Pub. Resources Code, § 21080.5, did not grant the timber harvesting industry a blanket exemption from the provisions of the California Environmental Quality Act, but only granted a limited exemption by allowing a timber harvester to prepare a timber harvesting report in lieu of a complete environmental impact report. The court also held the department was guilty of prejudicial abuse of discretion in failing to consider the cumulative impact of past logging activities, combined with the proposed harvest, on the ecology of the grove. It further held the department had a legal duty to consult with the Native American Heritage Commission, which has special expertise on the subject of native American historical sites, and that its failure to do so was a prejudicial abuse of discretion. It also held the department failed to proceed in the manner required by law by failing to provide an adequate response to public objections to the harvesting plan.

FN* Assigned by the Chairperson of the Judicial Council.(Opinion by Low, P. J., with King and Haning, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 113--Judicial Review--Scope and Extent--Standard of Review--Approval of Timber Harvesting Plan.

The standard of judicial review of a California Department of Forestry decision to approve a timber harvesting plan is the same as that used to review an agency decision involving an environmental impact report: the limited inquiry is into whether the decision was a prejudicial abuse of discretion. An abuse of discretion may be shown only if the decision is not based on substantial evidence, or if the department did not proceed in the manner required by law in approving the plan.

(2a, 2b, 2c) Logs and Timber § 2--Management and Protection of Forest--Application of California Environmental Quality Act.

Except for specific exemptions, the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) and its substantive criteria for the evaluation of a proposed project's environmental impact apply to the timber harvesting industry, and are deemed part of the Forest Practices Act (Pub. Resources Code, § 4511 et seq.) and the Forestry Rules. While Pub. Resources Code, § 21080.5, may allow the forest industry to prepare abbreviated project plans instead of complete environmental impact reports, it does not exempt the industry from adhering to the broad policy goals of the California Environmental Quality Act as stated in Pub. Resources Code, § 21000, and to the act's substantive standards designed to fulfill its goal of long-term preservation of a high quality environment for the citizens of California.

[See **Cal.Jur.3d,** Logs and Timber, § 1; **Am.Jur.2d,**

Logs and Timber, § 64.]

(3) Pollution and Conservation Laws § 1.4--California Environmental Quality Act--Exemption From Requirements of Act--Timber Harvesting.

Pub. Resources Code, § 21080.5, does not grant the timber harvesting industry a blanket exemption from the California Environmental Quality Act's provisions; it grants only a limited exemption to the applicability of the act by allowing a timber harvester to prepare a timber harvesting report in lieu of a complete environmental impact report. Under the maxim *expressio unius est exclusio alterius*, exemptions specified in the statute prevent additional exemptions from being implied or presumed, absent a clear legislative intent to the contrary.

(4) Logs and Timber § 2--Management and Protection of Forest--California Environmental Quality Act.

Pub. Resources Code, § 4582.75, providing that the Forestry Rules shall be the only criteria employed when reviewing timber harvesting plans, does not manifest a legislative intent to exempt the Forest Practice Act (Pub. Resources Code, § 4511 et seq.) from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.). Section 4582.75 is a measure to prevent the exercise of discretion by the Director of the Department of Forestry outside of the rules, but not to completely exempt the timber harvest industry from the California Environmental Quality Act.

(5) Pollution and Conservation Laws § 1.2--California Environmental Quality Act--Environmental Impact Report; Negative Declarations--Timber Harvesting Report--Public Response--Time Limits.

Rules promulgated under the Forest Practice Act (Pub. Resources Code, § 4511 et seq.) requiring the California Department of Forestry to issue a written response to significant environmental objections in its notice of approval of a timber harvesting plan not later than 10 days from the date of approval (lawsuits challenging the approval must be filed within 30 days of approval) is a duty imposed by the regulations and must be strictly followed. The failure to proceed in the manner required by law following the regulation is a prejudicial abuse of discretion. The 10-day limit must be enforced without after-the-fact speculations on possibilities of prejudice or the lack thereof.

(6) Logs and Timber § 3--Logging and Lumbering--Approval of Timber Harvesting Plan--Violation of California Environmental Quality Act--Cumulative Impact.

Because the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq) applies to a timber harvesting plan and requires that cumulative impact be considered as a substantive criterion for the evaluation of the environmental impact of a proposed project, the California Department of Forestry was guilty of a prejudicial abuse of discretion in approving a timber harvesting plan for a grove of redwood trees without properly considering the cumulative impact of past logging activities, combined with the proposed harvest, on the ecology of the grove.

(7) Logs and Timber § 3--Logging and Lumbering--Timber Harvesting Plan-- California Environmental Quality Act--Historical Sites.

Before approving a timber harvesting plan for a redwood grove in the vicinity of a native American archaeological site, the California Department of Forestry had a legal duty under the California Environmental Quality Act to consult with the Native American Heritage Commission, which has a special expertise on the subject of such historical sites, and its failure to do so constituted a prejudicial abuse of discretion.

(8) Logs and Timber § 7--Remedies--Inadequate Response to Environmental Objections--Mandamus.

The insufficiency of the Director of Forestry's response to environmental objections to a timber harvesting plan may be grounds for the issuance of a writ of mandate to set aside a decision approving the plan.

(9) Logs and Timber § 3--Logging and Lumbering--Timber Harvesting Plan-- Response to Public Objections.

In the process of evaluating a timber harvesting plan for a redwood grove, in which members of the public raised an objection to the sufficiency of means to mitigate damage to a Native American archaeological site located in the grove, the California Department of Forestry's response was inadequate, where it contained no analysis of the issue of the protection of the site and no specific information as to the basis for the rejection of the objection. Conclusory responses unsupported by empirical information, scientific authorities or explanatory information are insufficient to satisfy the requirement of a meaningful, reasoned

response. Although a report relied on by the department as a substantive basis for meeting public objections to site-mitigation measures was not explicitly incorporated by reference, and was thus not required to be disclosed by statute, it was improper to simply cite the report and fail to provide substantive, detailed responses to environmental objections regarding the report's subject matter. Under these circumstances, the report was required to be disclosed.

COUNSEL

Richard Jay Moller, Michael T. Solomon, Sharon E. Duggan and Leonardini & Associates for Plaintiffs and Appellants.

Julie E. McDonald, Douglas B. Allen, Francisca A. Burnett and Burnett, Burnett & Allen as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, R. H. Connett, Assistant Attorney General, Charles W. Getz IV and Peter Van Der Naillen, Deputy ***608** Attorneys General, Jared G. Carter and Rawles, Hinkle, Carter, Brigham, Gaustad & Behnke for Defendants and Respondents.

Margaret Mary O'Rourke as Amicus Curiae on behalf of Defendants and Respondents.

LOW, P. J.

By petition for writ of mandate, appellants unsuccessfully challenged the approval of a timber harvesting plan by the California Department of Forestry. [FN1] The harvesting plan authorized the logging of a 75-acre grove of old-growth redwoods, some of which are over a thousand years old. The redwood grove is situated in the Lost Coast wilderness area of Mendocino County near the Sinkyone Wilderness State Park and is alleged to be among the last remaining 4 percent of the original stands of California virgin redwood. The grove includes a Native American archaeological site thought to have been once inhabited by members of the Sinkyone nation. We hold that the provisions of the California Environmental Quality Act (CEQA) (§ 21000 et seq.) apply to the Forest Practice Act and its regulation of the timber harvesting industry. We further hold that since fundamental provisions of both acts were not followed, the timber harvesting plan was not approved in the manner prescribed by law. Accordingly, we reverse the order denying the petition for writ of mandate.

FN1 Approval of the plan was pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 and its implementing regulations. (Pub. Resources Code, § 4511 et seq.; Cal. Admin. Code, tit. 14, § 895 et seq.)

Unless otherwise indicated, all statutory references are to the Public Resources Code.

Appellants, petitioners below, are the Environmental Protection Information Center, Inc. (EPIC), a nonprofit California membership organization; the International Indian Treaty Council, a California corporation representing eight Native American nations and concerned for the preservation of Native American heritage; Robert Sutherland and Richard Gienger, Mendocino County residents who use the Sinkyone Wilderness for recreation and biological study; and Fred Downey, a Native American Mendocino County resident who has ancestral and spiritual ties to the Sinkyone Wilderness. Appellants will be collectively referred to as “EPIC.”

Respondents are Ross Johnson (Johnson), Resources Manager for the California Department of Forestry (CDF) and the individual who approved the timber harvesting plan as the representative of the Director of CDF; Jerry ***609** Partain, CDF's director; CDF itself, along with the State Board of Forestry and the Secretary of the California Resources Agency, as entities responsible for implementing the Forest Practice Act; Georgia-Pacific Corporation (G-P), which acquired the redwood site in 1973; and its wholly owned subsidiary, Rex Timber, Inc. (Rex Timber), which submitted the timber harvesting plan.

By leave of court, the Sierra Club, the Lexington Hills Association and others, have filed amici curiae briefs on behalf of EPIC. The International Woodworkers of America, Local No. 3-469, has filed an amicus curiae brief on behalf of respondents. [FN2]

FN2 This appeal was initially submitted May 1, 1984. We then determined to resolve this appeal in conjunction with two related petitions for writ relief which involved issues that challenged the constitutionality of the Forest Practice Act. (*County of Marin v. California Department of Forestry* [

A027483]; *Laupheimer v. Superior Court* [A028210].) On August 8, 1984, we vacated submission of the EPIC appeal to permit further consideration of EPIC's contentions in conjunction with the related issues pending in the *Laupheimer* and *County of Marin* cases. On September 6, 1984, the Laupheimer petition was denied. Subsequent developments in the trial court concerning the timber harvesting plan in the *County of Marin* case resulted in the dismissal of that matter as moot on May 1, 1985. Consequently, the EPIC appeal was resubmitted on that date.

I

Respondent Rex Timber owns the several parcels of timberland which surround the grove. [FN3] Past logging operations of the company have resulted in the redwood grove standing alone as the only wooded area in the vicinity, encircled by harvested parcels. Rex Timber decided to extend its logging operations to include the redwood grove, and filed a proposed timber harvesting plan with the department.

FN3 The parties engage in a semantic debate regarding the appropriate name of the redwood grove. EPIC resolutely refers to the grove as the "Sally Bell Grove," assertedly named in honor of the last living full-blooded member of the Sinkyone nation. Respondents, on the other hand, persistently protest that the name "Sally Bell Grove" exists on no map or official document, and that the official designation of the area of the grove is "Little Jackass Creek." Evidently, respondents believe that the name used by EPIC was conceived in contemplation of this litigation, to add a touch of emotional impact to EPIC's arguments against approval of the harvesting plan. Whatever the source of the designation "Sally Bell Grove" it is more appropriate for this court to refer to the stand of redwoods by its official designation. Although "a rose by any other name would smell as sweet," the term "Little Jackass Creek" has stylistic deficiencies. We refer to the trees as "the grove."

Under the Forest Practice Act (hereafter FPA), a specific logging operation on privately owned timberlands cannot begin without the logger's preparation and submission of a timber harvesting plan (hereafter THP or plan), which must be approved by the Director of CDF, or, as in this case, the director's representative or designee. (§ 4581.) The THP is an informational ***610** document designed to serve as an "abbreviated" environmental impact report, setting forth proposed measures to mitigate the logging operation's potential adverse impact on the environment. CDF and public review of the THP prior to approval is intended to ensure that the adverse environmental effects are substantially lessened, particularly by the exploration of feasible less damaging alternatives to the proposed harvesting project.

A THP is an alternative to a complete environmental impact report (EIR). Normally, a project having a potential significant effect on the environment requires the preparation of an EIR under CEQA (§ 21000 et seq.). The process of EIR preparation includes the initial study of the project to determine whether or not it will potentially have a significant effect on the environment; the issuance of a "negative declaration" in lieu of an EIR if the initial study reveals no potential for a significant effect; and the preparation of an EIR if the study concludes to the contrary. The EIR is then subject to a review process, including public hearings, set forth in CEQA and the administrative regulations promulgated for its implementation. (Cal. Admin. Code, tit. 14, §§ 15060-1507515080 et seq.; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 [118 Cal.Rptr. 34, 529 P.2d 66]; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988 [165 Cal.Rptr. 514].)

Section 21080.5, however, provides that the Secretary of the Resources Agency may certify a regulatory program of a state agency as exempt from the requirement of EIR preparation, if the program requires that a project be preceded by the preparation of a written project plan containing sufficient environmental impact information. To be certifiable, the agency's regulatory program must be governed by rules and regulations (1) which require that no project shall be approved if there are feasible alternatives or mitigation measures available which would substantially lessen any adverse impact on the environment (§ 21080.5, subd. (d)(2)(i)); (2) which include guidelines for the preparation of the project plan and for its evaluation "consistent with the environmental protection purposes of the regulatory program" (§ 21080.5, subd. (d)(2)(ii)); (3) which require the agency to

"consult with all public agencies which have jurisdiction, by law, with respect to the proposed activity" (§ 21080.5, subd. (d)(2)(iii)); and (4) which "[r]equire that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process" (§ 21080.5, subd. (d)(2)(iv)). The project plan itself must include a description of the proposed activity, its alternatives, and mitigation measures to minimize significant adverse environmental impact. The plan must also be available for a reasonable time for ***611** review and comment by other concerned agencies and by the general public. (§ 21080.5, subd. (d)(3)(i), (ii).)

In January of 1976, the Secretary of the Resources Agency reviewed the FPA and its implementing rules, promulgated by the State Board of Forestry. (Cal. Admin. Code, tit. 14, § 895 et seq. [hereafter Rule or Forestry Rules].) Based on this review, the secretary certified the regulation of the timber industry as exempt from EIR preparation under section 21080.5. This certification constitutes a determination that the THP preparation and approval process, as governed by the FPA and its implementing regulations, is a "functional equivalent" to EIR preparation. (*Natural Resources Defense Council, Inc. v. Arcata Nat. Corp*. (1976) 59 Cal.App.3d 959, 976-977 [131 Cal.Rptr. 172].)

While a proposed timber harvest is exempt from preparation of a formal environmental impact report, a THP must be prepared. As an "abbreviated" EIR, the THP must contain sufficient information regarding the environmental effect of the logging project to enable the evaluation of the effect of the project on the environment, the feasibility of alternatives to the project, and the measures to minimize any significant adverse impact.

To this end, the FPA requires that the THP contain specific items of information, including a description of silvicultural methods to be used. (§ 4582.) The Forestry Rules provide regulations governing the contents of the plan, choice of logging methods, as well as CDF's process of the THP evaluation. Sections 897 and 898 of the Rules require the author of a proposed THP to conduct a "feasibility analysis" and thereby select "silvicultural systems, operating methods and procedures" which will "avoid or substantially lessen significant adverse effects on the environment from timber harvesting." (Forestry Rules, § 897, subd. (a).) The Rules further provide substantive criteria for the approval of a THP, and provide, inter alia, that plans will not be approved if they fail to reflect a feasibility analysis, or do not otherwise conform to the rules.

Once proposed, the THP is subject to a review and evaluation process which requires that the proposed plan be reviewed by an interdisciplinary review team and be made available for public inspection. The process also provides for public input by way of comment and for consultation with certain public agencies, including the Department of Fish and Game, the appropriate California regional water quality control board, and the pertinent county planning agency. (§§ 4582.6, 21080.5, subd. (d)(3)(ii).) If CDF approves the plan as in conformity with the rules, the department issues a notice of approval which must include a "written response to significant ***612** environmental points raised during the evaluation process," including those points raised by members of the general public. (Forestry Rules, §§ 1037.7, 1037.8, 1059; *Gallegos v. State Bd. of Forestry* (1978) 76 Cal.App.3d 945, 953-954 [142 Cal.Rptr. 86].)

Rex Timber submitted proposed THP No. 1-83-464M to CDF on August 1, 1983. The proposed THP described the silvicultural method to be used, the type of logging systems and equipment, erosion hazard ratings, methods to minimize accelerated erosion caused by logging, and other factors speaking to the impact of the proposed logging on the natural environment.

The THP was reviewed by an interdisciplinary review team, consisting of representatives of CDF, the Department of Fish and Game, and the regional water quality control board. On August 17, 1983, the team made a preliminary determination that the plan was in conformance with the Forestry Rules. Concerned member of the public addressed their comments on the sufficiency of the plan to CDF; the comments included objections to the logging operations on geological or other scientific grounds, including the objections of appellants Sutherland and Gienger who noted the increased hazard of hillside erosion projected from the proposed silvicultural method of clearcutting. [FN4] Some objectors opposed the cutting of the trees on aesthetic and philosophical

grounds; others noted the value of the grove for recreation, including the visual backdrop it provides for hikers and campers using the nearby Sinkyone Wilderness State Park. Some objectors, including appellant International Indian Treaty Council, indicated their concern that the THP did not adequately protect the Native American archaeological site from damage due to logging operations.

> FN4 "Clearcutting" is a silvicultural method involving the removal of an entire stand of trees in one cut. (Forestry Rules, § 913.1, subd. (a).)

Respondent Johnson made the final determination that the plan conformed to the Forestry Rules, and approved the THP as the director's designee on September 2, 1983. On September 20, EPIC received a document entitled "Official Response of the Director of Forestry to Significant Environmental Points Raised During the Timber Harvesting Plan Evaluation Process." This document briefly considered and rejected the various objections advanced by appellants and other members of the public to the approval of Rex Timber's THP.

On September 30, EPIC filed an action in Sonoma County Superior Court attacking CDF approval of the THP. As its first cause of action, EPIC's complaint sought a writ of mandate to set aside the approval decision. The ***613** second and third causes of action sought declaratory and injunctive relief. The fourth cause of action sought a preliminary injunction against Rex Timber and G-P, restraining them from cutting down any trees or otherwise conducting logging operations under the plan pending the disposition of the lawsuit.

Following a change of venue to Mendocino County, Rex Timber and G-P were temporarily restrained from conducting logging operations pending the outcome of the proceeding. After hearing, the superior court determined that the application for injunctive relief would be denied on the mandamus petition, and proceeded to determine whether or not the petition should be granted. EPIC argued that CDF's decision to approve the plan was not supported by substantial evidence, and that CDF had approved the plan without proceeding as required by law. After hearing argument but refusing to consider proffered evidence outside of the administrative record, the superior court denied the petition and the application for injunctive relief, and extended its temporary restraining order (TRO) to enable EPIC to seek a stay of the logging operations from this court. We issued a stay order restraining Rex Timber and G-P from conducting any logging operations on the grove pending our resolution of this appeal. [FN5]

> FN5 Respondents Rex Timber and G-P contend that EPIC's appeal violates the one-judgment rule, which provides that a judgment adjudicating less than all causes of action is not appealable. (*Lostritto v. Southern Pac. Transportation Co.* (1977) 73 Cal.App.3d 737, 750 [140 Cal.Rptr. 905]; 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 36, p. 4050.) The argument is that the order denying the petition for writ of mandate and the dependent application for preliminary injunction does not dispose of the second and third causes of action to which respondents demurred. EPIC voluntarily dismissed with prejudice its second and third causes of action after the filing of its notice of appeal. Under the circumstances, the accepted procedure is for the appellate court to consider the appeal as from a final judgment. (See *Lostritto v. Southern Pac. Transportation Co.*, *supra.*, at p. 750; cf. *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 207-208, fn. 5 [197 Cal.Rptr. 783, 673 P.2d 660].)

II

A

EPIC argues that the superior court erred by restricting itself to the record before the administrative agency (CDF), and that the court refused to consider additional evidence outside the record, proffered by EPIC to show (a) that the decision that the proposed THP was in conformity with the FPA and Rules was not based on substantial evidence; and (b) that CDF failed to proceed as required by law in that it did not follow all appropriate procedures in its evaluation and approval process. EPIC also argues that notwithstanding this allegedly erroneous evidentiary limitation, the administrative ***614** record itself shows that CDF did not adequately follow all procedures required by law. This contention focuses on the sufficiency of CDF's written responses to the public's sig-

nificant environmental objections to the proposed logging operation and the contents of the THP; CDF's failure to timely issue those responses; CDF's failure to consult with all necessary agencies having jurisdiction over matters affected by the plan; and CDF's failure to consider the cumulative effects of logging both on the site of the grove and in surrounding areas. EPIC argues that these procedural derelictions constitute a "prejudicial abuse of discretion" within the meaning of section 21168.5, and require the setting aside of the THP by writ of mandate. [FN6]

FN6 Consistent with the sound approach adopted by the trial court, we focus on the merits of EPIC's petition for writ of mandate. The merits of the application for preliminary injunction necessarily hinge upon the merits of the petition for mandamus.

For purposes of stylistic convenience, we refer to respondents in the plural even when discussing an argument made or position taken by one respondent, or by only one of the two respondents' briefs.

(1)The parties agree that the standard of judicial review of a CDF decision to approve a THP is the same as that used to review an agency decision involving an EIR: the limited inquiry into whether the decision was a prejudicial abuse of discretion. (§§ 21168, 21168.5; *No Oil, Inc. v. City of Los Angeles, supra.*, 13 Cal.3d at p. 83.) An abuse of discretion may be shown only if CDF's decision is not based on substantial evidence, or if CDF did not proceed in the manner required by law in approving the plan. (*Ibid.*)

B

Do the provisions of CEQA apply to the FPA and the Forestry Rules, and thus govern the regulation of the timber harvesting industry of this state? EPIC contends that the provisions of CEQA apply to timber harvesting operations and the process of THP evaluation. Respondents maintain that only the FPA and the Rules apply and dispute every contention of EPIC that the provisions of CEQA apply to the subject matter of this appeal. [FN7] (2a)We agree with EPIC that the provisions of CEQA apply to the regulation of the timber harvesting industry under the FPA and the Rules.

FN7 Although EPIC explicitly argues that CEQA applies, and so argued below, respondents address this issue for the most part by implication.

Two Court of Appeal decisions hold CEQA applicable to the regulation of the timber harvesting industry. (*Gallegos v. State Bd. of Forestry, supra.*, ***615** 76 Cal.App.3d 945; *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp., supra.*, 59 Cal.App.3d 959.)

In *Natural Resources*, Division Two of this court discussed the relationship between CEQA and FPA, and rejected arguments by the timber companies that CEQA was not applicable to regulation of harvesting operations. The court rejected an argument that the FPA applies to the THP to the exclusion of CEQA, because FPA is a specific statutory scheme, while CEQA is a general one. "One should seek to consider the statutes not as antagonistic laws but as parts of the whole system which must be harmonized and effect given to every section [citations]. Accordingly, statutes which are in *pari materia* should be read together and harmonized if possible. Even when one statute merely deals generally with a particular subject while the other legislates specially upon the same subject with greater detail and particularity, the two should be reconciled and construed so as to uphold both of them if it is reasonably possible to do so [citations]." (*Natural Resources Defense Council, Inc. v. Arcata Nat. Corp., supra.*, 59 Cal.App.3d at p. 965.) The court concluded that CEQA and the FPA "are not in conflict, but rather supplement each other and, therefore, must be harmonized." (*Ibid.*) CEQA's provisions are deemed a part of the FPA, along with the administrative guidelines adopted for CEQA's implementation (Cal. Admin. Code, tit. 14, § 15000 et seq. [hereafter CEQA Guidelines or Guidelines]).

In rejecting another argument against the applicability of CEQA, the court cited a crucial distinction between the two acts which seems equally applicable in this context. The distinction stems from the fundamental differences in the purposes and goals of the two statutory schemes. CEQA demonstrates a legislative intent to maintain "a quality environment for the people of this state" (§ 21000, subd. (a)), and to ensure that all state agencies which regulate private conduct "found to affect the quality of the environment" shall regulate such conduct "so that major con-

sideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." (§ 21000, subd. (g); see § 21001.) CEQA is "perceived as a logical and carefully devised program of wide application and broad public purpose ...." (*Natural Resources Defense Council, Inc. v. Arcata Nat. Corp., supra.*, 59 Cal.App.3d at p. 966; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810 [108 Cal.Rptr. 377].) The act is to be interpreted broadly in order to afford the fullest protection to the environment consistent with the reasonable scope of the statutory language. (*No Oil, Inc. v. City of Los Angeles, supra.*, 13 Cal.3d at p. 83; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 [104 Cal.Rptr. 761, 502 P.2d 1049].) ***616**

In contrast, the FPA is not intended as a general set of guidelines for statewide environmental protection. More importantly, the protection of the environment is not the sole purpose of the statute. The purpose clause of the FPA mentions environmental concerns as a secondary consideration. The primary goal of the statute seems to be the "maximum sustained production of high-quality timber products," achieved "while giving consideration" to environmental concerns and values. (§ 4513; see § 4512.) Although the FPA recognizes the need to conduct timber harvesting operations consistent with environmental concerns, it is a specific statute not only regulating but fostering timber harvesting despite the industry's recognized potential for adverse environmental effects. (*Bayside Timber Co. v. Board of Supervisors* (1971) 20 Cal.App.3d 1, 6-8, 11 [97 Cal.Rptr. 431].)

CEQA, as the general polestar of environmental protection, can be readily harmonized with the FPA and is applicable to timber harvesting operations and the approval of THPs. This same conclusion was reached in *Gallegos v. State Bd. of Forestry*, *supra.*, 76 Cal.App.3d 945, wherein Division Four of this court held CEQA applicable to timber harvesting operations. The *Gallegos* court took from CEQA cases the standard of sufficiency of responses to public objections to a proposed project, and applied that standard to the responses of the Director of Forestry to objections made to a THP during the evaluation process. (*Id.*, at pp. 952-954.)

(3)Section 21080.5 does not grant the timber harvesting industry a blanket exemption to CEQA's provisions; it grants only a limited exemption to the applicability from CEQA by allowing a timber harvester to prepare a THP in lieu of a complete environmental impact report. In *Natural Resources*, the court discussed the history of the interrelationship of CEQA and the FPA prior to the enactment of section 21080.5. Before 1976, the FPA was provided a blanket exemption from CEQA in explicit terms; the exemption expired on January 1, 1976. Meanwhile, the Legislature in 1975 rejected at least four bills which would have accorded a permanent blanket exemption of the timber harvesting industry from the provisions of CEQA. (*Natural Resources Defense Council, Inc. v. Arcata Nat. Corp., supra.*, 59 Cal.App.3d at p. 973.) The court discussed the newly enacted section 21080.5 and concluded that far from being a blanket exemption to the scheme of CEQA, the section allowed for a limited exemption to the extent that a project plan required the filing of only an abbreviated EIR. (*Id.*, at pp. 976-977.)

The *Gallegos* court's analysis of the issues raised in that case is in complete harmony with the "limited exemption" approach. Other authorities are in accord. Our Supreme Court has discussed section 21080.5 in terms ***617** of its providing "an alternative to the EIR requirement" of CEQA. (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196 [132 Cal.Rptr. 377, 553 P.2d 537].) The CEQA Guidelines themselves provide that: "A certified program [under section 21080.5] remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible." (Guidelines, § 15250.) These Guidelines were promulgated by the administrative agency charged with the implementation of CEQA; an implementing agency's official interpretation of a statute is entitled to considerable weight. (*Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640 [335 P.2d 672].) The Secretary of the Resources Agency, when certifying the FPA and Rules as "functionally equivalent" under section 21080.5, confirmed "that the regulation of timber operations on private lands in California by the California Division of Forestry and the Board of Forestry meets the criteria contained in ... section 21080.5 and accordingly *is exempt from the requirement for preparing environmental impact reports under Chapter 3* (*commencing with Section 21100 of Division 13 of the Public Resources Code*)." (Italics added.) The secretary did not use language exempting the regulation from the entire CEQA (div. 13 in

its entirety, commencing with § 21000), but only to chapter 3 of CEQA, which specifically involves EIR requirements and procedures.

Furthermore, section 21080.5, by its own terms, specifically exempts "functionally equivalent" regulatory programs from two chapters and one additional section of CEQA: chapter 3 (§ 21100 et seq.), chapter 4 (§ 21150 et seq.), and section 21167. Under the maxim *expressio unius est exclusio alterius*, exemptions specified in the statute prevent additional exemptions from being implied or presumed, absent a clear legislative intent to the contrary. (*Wildlife Alive v. Chickering* , *supra.*, 18 Cal.3d at p. 195; *State Board of Education v. Levit* (1959) 52 Cal.2d 441, 461 [343 P.2d 8].) An examination of the specific exemptions in the statutory scheme of CEQA reveals no legislative intent contradicting that maxim, and if anything strengthens the maxim's applicability and the conclusion that save for the exempted provisions, CEQA applies to the FPA and Forestry Rules.

Chapter 3 of CEQA requires the preparation of an EIR for projects of potentially significant environmental effect which are to be carried out or approved by state agencies, boards or commissions; chapter 4 deals similarly with projects to be carried out or approved by local agencies. Section 21167 governs the time limitations on judicial proceedings to review or set aside agency decisions specifically involving the various steps of the EIR process, including the initial decision regarding potential adverse impact.

Chapters 3 and 4 are in large part procedural elements of the EIR process. A certified program under section 21080.5 is logically exempted from their ***618** coverage as such programs provide an alternative to an EIR. Section 21167 is specifically geared to the machinery of the EIR process, and the application of any of its provisions to the THP approval process would be superfluous: Section 21080.5 contains its own time limitation for judicial action challenging a decision made under a functionally equivalent regulatory program. The logic of exempting these sections from the process declared to be an acceptable alternative to EIR preparation is apparent. By making these specific exemptions, the Legislature has manifested an intent to retain the applicability of the other provision of CEQA and of the Guidelines, particularly the substantive criteria and the specific aspects of environmental effect that must be evaluated before a project may proceed. Nothing in section 21080.5 supplies a basis for concluding that the Legislature intended the section to stand as a blanket exemption from CEQA's thorough statutory scheme and its salutary substantive goals.

(4)Respondents argue, however, that the Legislature has evidenced its contrary intent that CEQA not apply to the timber harvesting industry by its enactment of section 4582.75 of the FPA. This section reads: "The rules adopted by the board [i.e., the Forestry Rules] shall be the only criteria employed by the director when reviewing timber harvesting plans pursuant to Section 4582.7." Section 4582.75 was enacted by the 1977 Legislature, the year after *Natural Resources* was decided; respondents contend that the section is a legislative riposte to the thrust of *Natural Resources*' holding that CEQA applies to the FPA; stressing the section's use of the word "only," respondents argue that section 4582.75 purports to limit the evaluative criteria of THPs to the Forestry Rules. Respondents' position does not withstand analysis. The section's legislative history dispels any inference that the statute manifest a legislative intent to exempt the FPA from the provisions of CEQA, nullifying *Natural Resources* .

Section 4582.75 was added to the Public Resources Code (Stats. 1977, ch. 930, § 3, p. 2844) along with section 4555 (Stats. 1977, ch. 930, § 2, pp. 2843-2844) and an amendment to section 4552 (Stats. 1977, ch. 930, § 1, p. 2843). Prior to the 1977 amendment, section 4552 provided that "[t]he rules and regulations adopted by the board shall be based upon a study of the factors that significantly affect the present and future condition of timberlands and shall be used as standards by persons preparing timber harvesting plans." The amendment added the sentence, "In those instances in which the board intends the director to exercise professional judgment in applying any rule, regulation, or provision of this chapter, the board shall include in its rules standards to guide the actions of the director, and the director shall conform to such standards, consistent with Section 710 [which prohibited the director from amending or repealing any regulation or directive ***619** of the board]." Section 4555 provided that if the director "determines that a substantial question concerning the intent of this chapter is not currently provided for by the rules and regulations of the board," and a pro-

posed THP involving that question would, if approved, result in "immediate, significant and long-term harm" to the environment, the director could withhold approval of the plan pending a public hearing of the board addressing and resolving the question. Section 4582.75 then provided that the rules would be the sole criteria employed by the director in reviewing THPs.

These statutory changes do not bear the stamp of disapproval of the *Natural Resources* decision or its interpretation of the relationship of CEQA and the FPA. Rather, the changes bear the hallmarks of modifications of internal relationships and operating procedures between the director and the board, and speak primarily to the perceived evil of the director's exercise of unbridled judgment. The legislative digest of the bill (Sen. Bill No. 886) describes the bill as "[requiring] the board to include in its rules standards to guide the actions of the Director of Forestry where it intends the director to exercise professional judgment in applying any rule, regulation, or provision of the act. The bill would require the director to conform to such standards, and would specify that the rules adopted by the board shall be the only criteria employed by the director ...." (Legis. Counsel's Dig. of Sen. Bill No. 886, Stats. 1977 (1977-1978 Reg. Sess.) Summary Dig., p. 241.)

We construe section 4582.75 as a measure to prevent the exercise of the director's discretion outside of the Rules, but not as a manifest intent to completely exempt the timber harvest industry from CEQA. Had the Legislature intended to declare this state's major environmental quality legislation inapplicable to the statutes and regulations governing the timber industry, it certainly could have done so in a more positive fashion. It has made such an explicit exemption in the past. The *Natural Resources* opinion noted that the timber industry was granted a temporary exemption from CEQA as an emergency measure, enacted as section 4514.3 and expiring of its own terms on January 1, 1976. Former section 4514.3 explicitly provided that "[a]ll actions taken pursuant to this chapter [the FPA] are exempt from the provisions of Division 13 (commencing with Section 21000)" of the Public Resources Code, which is a citation to CEQA in toto. (Stats. 1975, ch. 174, § 1, p. 327.) Had the Legislature chosen to do what respondents claim it has done, one would have expected to have seen similar language in section 21080.5 or perhaps in section 4582.75; the language is conspicuously absent. Section 4514.3, subdivision (d) provided that the "provisions of Division 13 (commencing with Section 21000)," in other words, CEQA in its entirety, "do not apply to the preparation, review, or ***620** approval of timber harvesting plans ... *until January 1, 1976*." (Italics added.) This statutory language itself lapsed when section 4514.3 expired of its own terms, but provides even further evidence that the Legislature intends CEQA to apply to the regulation of the timber harvesting industry, particularly the evaluation and approval of THPs. [FN8]

FN8 Respondents also claim that since section 4582.75 was enacted *after* the *Natural Resources* decision, this illustrates a legislative intent to overrule the case. After both *Natural Resources* and *Gallegos* were decided, the Legislature made comprehensive amendments to the FPA, made no mention of the applicability of CEQA to the FPA, and took no action to "correct" the "erroneous" interpretation application of CEQA to the timber industry, embodied in the 1978 holding of *Gallegos*. (Stats. 1984, ch. 636; Stats. 1984, ch. 738; Stats. 1984, ch. 1297; Stats. 1984, ch. 1446; Stats. 1984, ch. 1508.) Moreover, the Legislature added section 21080 to CEQA in 1983, listing 18 types of projects to which CEQA was declared inapplicable. Among these projects are "[p]rojects undertaken *by a local agency* to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5." (§ 21080, subd. (b)(16).) Whatever the purpose of this subdivision, it applies to a limited aspect of a section 21080.5 program (local projects *designed to implement a state regulation*), not section 21080.5 projects in general, such as timber harvests, development, or any other project with a potential adverse environmental effect; the specific wording of the section is not indicative of any intent of the Legislature to remove section 21080.5 projects in general from the impact of CEQA, save for those sections exempted by section 21080.5 itself.

(2c)We therefore hold, consistent with *Natural*

Resources, Gallegos, Guidelines section 15250 and established rules of statutory construction, that except for the specific exemptions discussed, CEQA and its substantive criteria for the evaluation of a proposed project's environmental impact apply to the timber harvesting industry, and are deemed part of the FPA and the Forestry Rules. While section 21080.5 may allow the industry to prepare abbreviated project plans instead of full-blown EIRs, it does not except the industry from adhering to the broad policy goals of CEQA as stated in section 21000, and to CEQA's substantive standards designed to fulfill the act's goal of long-term preservation of a high quality environment for the citizens of California. (§§ 21000, 21001.)

III

EPIC argues that the superior court erred by limiting the scope of its review to the administrative record. EPIC also argues that even without the additional evidence outside the record, the administrative record itself reveals that CDF did not proceed in a manner required by law, by failing to adhere to key procedural requirements in evaluating and approving the THP. Since CEQA and the Guidelines apply to the FPA and the Forestry Rules as discussed above, we conclude that the contentions based on the ***621** administrative record are alone sufficient to show a prejudicial abuse of discretion and are dispositive of this appeal. [FN9]

> FN9 At the hearing on the petition for writ of mandate, respondent Johnson testified that all proper procedures were followed. His testimony has been characterized as beyond the administrative record, see footnote 18, *infra.*, but also as merely summarizing that record by describing the procedures followed by CDF in approving the THP. Respondents rely on Johnson's testimony and declarations to refute EPIC's procedural challenges. Johnson did testify in a conclusory fashion that all applicable procedures were followed. His testimony reveals, however, that his definition of "applicable procedures" did not include CEQA and the Guidelines, but was limited to the FPA and Rules. Johnson's testimony thus does not conflict with our conclusion that certain requisite procedures were not followed.

A

Sections 4582.6 and 21080.5 require that a proposed THP be made available for public inspection, and require that the public be provided input into the evaluation process by raising significant environmental objections. Forestry Rules section 1037.7 requires the Director of CDF or the appropriate designee to issue a written response to significant environmental objections ("response") as part of the notice of approval of the plan. Rules section 1037.8 requires that the notice of approval, which must include the response, shall be issued no later than 10 days from the date of approval. A lawsuit to challenge the decision to approve a THP must be filed within 30 days of the date of notice of approval (§ 21080.5, subd. (g)), or within 30 days of the date the director's response is due.

EPIC asserts that it did not receive the response until September 20, 1983, 10 days and only 8 working days before the expiration of the 30 days within which to prepare and file a legal challenge to the approval decision. Respondents concede that Johnson's written response to the environmental objections was not made within the 10-day period, but argue that the failure to comply with the time period did not prejudice EPIC. Respondents point to the fact that notwithstanding the tardiness of the response, EPIC was able to file its suit within the 30-day deadline. Respondents also note that EPIC had sufficient time to obtain a restraining order against logging under the plan, and that any argument that EPIC was prejudiced by having to prepare its complaint in undue haste is dispelled by EPIC's obtaining leave to file an amended complaint, which was presumably prepared under less-pressured circumstances. The superior court agreed with respondents and concluded that EPIC was not prejudiced in its challenge to the THP approval.

Since respondents admit that CDF failed to proceed as required by law when it violated the Rule section, this court could find that violation an ***622** abuse of discretion. (5)It remains to determine whether the abuse of discretion is prejudicial, and should have been so found by the trial court. [FN10]

> FN10 Respondents argue that a violation of the 10-day rule would not as a matter of law invalidate a timber harvest plan because the violation occurs after the plan is approved.

> Respondents contend that such a violation would, at most, estop CDF from pleading violation of the 30-day statute of limitations under section 21080.5, subdivision (g), if a legal challenge to an approved plan was filed after the 30 days have run. We decline to take this narrow, mechanistic view of the approval process. The public's input into the plan approval process is mandated by law and supported by strong public policy. The written response is a keystone to the public's participation in the approval process, and an important element in the public's right to prepare and file a challenge within the maximum time allowed under the rules. Since an approved plan is not final and may be set aside by judicial decree, the 10-day rule is part and parcel of the process of plan approval.

Rules section 1037.8 provides that the response "shall" be given within 10 days, making the section a mandatory administrative regulation. (*Plaggmier v. City of San Jose* (1980) 101 Cal.App.3d 842, 852 [161 Cal.Rptr. 886].) EPIC argues that it need not demonstrate actual prejudice because the failure to adhere to a mandatory administrative regulation in the context of environmental law can itself be deemed a prejudicial abuse of discretion. A number of cases involving judicial review of administrative decisions involving EIRs and THPs have consistently regarded violations of mandatory CEQA regulations as prejudicial, without discussion of the question of whether prejudice is presumed. Indeed, the thread flowing through the cases seems to be the principle that failure to follow at least significant, mandatory CEQA regulations is by its nature prejudicial.

In *Gallegos* and in *Society for California Archaeology v. County of Butte* (1977) 65 Cal.App.3d 832, 839-840 [135 Cal.Rptr. 679], the reviewing courts found violation of the requirement of providing sufficient responses to the public's objections to be prejudicial, without discussion. In *No Oil, Inc. v. City of Los Angeles, supra.*, 13 Cal.3d 68, our Supreme Court found a violation of a basic CEQA provision to be a prejudicial failure to proceed as required by law, with virtually no discussion. Finally, in *Plaggmier*, the court, while not phrasing its discussion in terms of prejudice, found substantial rather than complete compliance with CEQA-mandated notice procedures to be an abuse of discretion requiring vacating of the administrative decision.

Full compliance with the letter of CEQA is essential to the maintenance of its important public purpose. (*Clearly v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357 [173 Cal.Rptr. 390].) Reviewing courts "have a duty to consider the legal sufficiency of the steps taken by [administrative] agencies [citation], and we must be satisfied that these agencies have fully complied ***623** with the procedural requirements of CEQA, since only in this way can the important public purposes of CEQA be protected from subversion." (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 71-72 [198 Cal.Rptr. 634].) At least, when these provisions go to the heart of the protective measures imposed by the statute, failure to obey them is generally "prejudicial"; to rule otherwise would be to undermine the policy in favor of the statute's strict enforcement. [FN11]

> FN11 In 1984, the Legislature enacted section 21005, which provides that courts reviewing CEQA decisions "shall continue to follow the established principle that there is no presumption that error is prejudicial." Judicial decisions indicate that the "established principle" in CEQA cases was not one of presumed prejudice from any error, but one involving the determination of prejudice from the violation of a fundamental regulatory provision. Absent additional guidance from the Legislature, and in light of the policy expressed in the cases discussed, we assume that the enactment of section 21005 was simply a reminder of the general rule that errors which are insubstantial or de minimis are not prejudicial. There is no inconsistency between this interpretation and the principle that prejudice generally flows from the violation of a significant CEQA regulation, given the fundamental right of the public to a protected environment and the policies underlying CEQA.

No less stringent standard should apply to the CEQA-governed THP process. The legislative emphasis on public participation in the THP evaluation process has already been noted. The public's interest in the forest resources and timberlands of this state

has been described as "fundamental." (*Gallegos v. State Bd. of Forestry*, *supra.*, 76 Cal.App.3d at p. 950; *Sierra Club v. California Coastal Zone Conservation Com*. (1976) 58 Cal.App.3d 149, 155 [129 Cal.Rptr. 743].)

The 10-day rule is a key regulation preserving the public's right to challenge a plan approval without the undue haste caused by CDF's violation of the rule. For this reason the 10-day time limit must be enforced, without after-the-fact speculations on ephemeral possibilities of prejudice or the lack thereof. The public has the right to bring a legal action to challenge a decision to approve a THP, and must do so within a limited time. One-third of that time must be spent awaiting the director's response to the significant environmental objections raised during the evaluation process. This response will obviously be of crucial assistance in the evaluation of any potential lawsuit, and in the structuring of arguments, pleading allegations and prayers for relief. The sufficiency of the responses may itself be a ground on which to challenge the decision of approval. (*Gallegos v. State Bd. of Forestry*, *supra.*, 76 Cal.App.3d 945.) The strong legislative policy set forth in CEQA requires that the public's right to vindicate its interest by bringing a legal action, such as the one in this case, must be stringently protected by strict compliance with the Rules. The public must be assured that it will ***624** have its full period within which to conduct the time-consuming task of preparing a lawsuit.

Realistically, it is difficult to fully gauge whether prejudice exists or not: Who can say whether a given suit might be more likely to succeed if its progenitors are given their full time period in which to prepare? Who can say whether other members of the public, or other public interest groups, perhaps with more funds or other resources than the actual eventual plaintiffs, may have decided not to become involved because of a lack of time? Faced with the ease of compliance with the time regulation, and the policies of CEQA, reviewing courts should not engage in this kind of speculation. The 10-day time period is a duty imposed by the regulations and must be strictly followed. The failure to proceed in the manner required by law by following the regulation is a prejudicial abuse of discretion. [FN12]

FN12 We need not address the question of actual prejudice. EPIC asserts that such prejudice exists because it did not have sufficient time within which to file a TRO before Rex Timber began logging, resulting in the cutting down of some trees on the grove. EPIC also asserts that it was placed under extreme time pressures because of the rule violation.

B

(6)EPIC argues that the administrative record shows that CDF and the author of Rex Timber's THP did not consider the cumulative impact of past logging activities, combined with the proposed harvest, on the ecology of the grove. The grove stands as the last substantially forested area in the vicinity, due to Rex Timber's past logging operations on surrounding sites. EPIC maintains that cumulative impact is especially important in this case because the trees of the grove, many of which are located on steep slopes with medium to high erosion hazard ratings, are providing the major root system "keystone" holding some hillsides intact. EPIC also argues that in light of the surrounding clearcut parcels, the cumulative effect of clearcutting the last remaining stand of trees must also be considered from an aesthetic and recreational point of view.

In its response to a public objection based on the failure to consider cumulative impact, CDF took the position that it does not have to consider cumulative impact in the evaluation of a THP. CDF cited section 4582.75 as limiting CDF's criteria to the Rules, and noting that "no specific rules have been adopted" regarding cumulative logging. CDF then stated that timber operations in general had to substantially lessen significant adverse impacts on the environment, and closed with this comment: "To address the cumulative effect issue the Department has taken the tact [*sic*] that if the adverse effects are minimized to the maximum on each individual operation, ***625** then the total effect in the surrounding area will also be minimized to an acceptable level."

This statement is at odds with the concept of cumulative effect, which assesses cumulative damage as a whole greater than the sum of its parts. The Guidelines define "cumulative effect" as "two or more individual effects which, *when considered together,* are considerable *or which compound or increase other environmental impacts*." (Guidelines, §

15355, italics added.) Such impacts may be of past, present or future existence. (*Ibid.*)

Respondents have consistently taken that position in this court, arguing-as did the CDF response to the objection-that the consideration of the cumulative impact of a proposed timber harvest is not required under the FPA or Forestry Rules. CEQA, however, requires that cumulative impact be considered as a substantive criterion for the evaluation of the environmental impact of a proposed project. (§ 21083, subd. (b); Guidelines, § 15130.) Since CEQA applies to the THP evaluation and approval process, it follows that CDF did not proceed in the manner required by law by failing to consider the impact of cumulative effects, or by considering such effects under the erroneous conception of cumulative impact recited by CDF and quoted above. [FN13] The failure to consider cumulative impact was a prejudicial abuse of discretion.

> FN13 Respondents contend that the issue of cumulative impact is not properly before us, claiming that the issue is not alleged in EPIC's petition as a ground for setting aside the THP. The petition does not use the phrase "cumulative impact," but does allege a prejudicial abuse of discretion for failure to consider the effects of past logging in the area. We consider this allegation sufficient. Moreover, we are empowered to consider for the first time on appeal the legal question of whether CDF had to consider cumulative impact, particularly since that question involves the significant public interest of environmental protection. (See *Bayside Timber Co. v. Board of Supervisors, supra.,* 20 Cal.App.3d at pp. 4-5.)

> Respondents Rex Timber and G-P argue in the alternative that CDF did in fact consider cumulative impact. They point to two pages of Johnson's testimony concerning postharvest inspection requirements, and a two-page excerpt from a report of a 1979 field trip to the general area. Respondents claim these matters demonstrate that cumulative impact was considered. We disagree: the evidence shows only that surrounding logged sites were visited in 1979, and have been revisited for purposes of postharvest stocking, not for the consideration of the logging's cumulative effect on the redwood grove involved in this case. The evidence is insufficient to establish that cumulative impact was considered, particularly in the face of the contrary position taken by CDF in its response to the public's objection.

C

(7)EPIC contends that CDF had a legal duty to consult with the Native American Heritage Commission, which has special expertise on the subject of Native American historical sites. The commission has jurisdiction to identify sites of special religious and spiritual significance to Native Americans ***626** and their heritage, to make recommendations regarding sacred places located on private lands, and to consider the environmental impact on property identified or reasonably identified as a place of special religious significance to Native Americans. (§§ 5097.94, 5097.95.) Although respondents address this issue only briefly, they argue, as they did below, that the only agencies they were required to consult are those designated in section 4582.6 of the FPA: the Department of Fish and Game, the appropriate regional water quality control board, and the county planning agency. [FN14] They also argue that under Forestry Rules section 898.1, subdivision (b), the director only has to consult with affected agencies if he or she is "in doubt as to the feasible alternative which best carries out the intent of the Act."

> FN14 EPIC argues that the administrative record fails to show that CDF consulted with other agencies, including the agencies listed in section 4582.6. The record adequately establishes that CDF did consult with these agencies.

Respondents' reliance on the FPA and Rules alone is of no avail in light of the applicability of CEQA to timber harvest regulations. CEQA provides that agencies evaluating a project for its environmental impact consult with all agencies having jurisdiction over affected natural resources, including archaeological sites. (§ 21080.4; Guidelines, § 15086.) The commission has that jurisdiction, and is specifically listed in appendix B to the Guidelines as a public agency with specific expertise regarding places of religious significance to Native Americans, including archaeological sites and burial grounds. Other provi-

sions of CEQA reflect a strong legislative policy choice in favor of the preservation of Native American archaeological sites, cemeteries, and other sacred grounds. (§ 21083.2; Guidelines, appen. K.) [FN15] The presence of the archaeological site on the site of the proposed timber harvesting mandated CDF consultation with at least the Native American Heritage Commission. This conclusion is consistent not only with the literal terms of CEQA and its guidelines, but with the acknowledged policy of interpreting CEQA's scope as broadly as possible to accomplish the ends of the act, using the widest definition of "natural resources" (*Friends of Mammoth v. Board of Supervisors*, *supra.*, 8 Cal.3d at p. 259). The term "environment" as used in the act has been held to encompass "objects of historic or aesthetic significance" (§ 21060.5), including archaeological sites. (§ 5097.9; *Society for California Archaeology v. County of Butte*, *supra.*, 65 Cal.App.3d at p. 837.) ***627**

> FN15 For a discussion of CEQA's policy of preservation of the archaeological sites of California Native Americans, see Comment, *Preserving Indian Archaeological Sites Through The California Environmental Quality Act* (1975) 6 Golden Gate L.Rev. 1. The author notes that the culture of California Native Americans is a significant part of California cultural history, and can only be studied through archaeology.

The Legislature has determined that the invaluable remnants of the vanished culture of the California Native Americans be protected as much as is feasible. Among these protective measures is the requirement of consultation with the Native American Heritage Commission before approval of any THP for a site bearing an archaeological site. CDF's failure to consult with the commission constitutes an abuse of discretion for failing to proceed in the manner required by law; that abuse of discretion is prejudicial.

D

During the evaluation process, members of the public raised an objection to the proposed THP, addressing the sufficiency of the measures to mitigate damage to the Native American archaeological site located in the grove. EPIC contends on appeal that the director's response to the objection is insufficient. (8) The insufficiency of the Director of Forestry's responses to environmental objections may be grounds for the issuance of a writ of mandate to set aside a decision approving a timber harvesting plan. (*Gallegos v. State Bd. of Forestry*, *supra.*, 76 Cal.App.3d at pp. 952-955.)

The public's objection was prompted by dissatisfaction with this description of the efforts to mitigate damage to the site, taken from the THP itself: "The site has been investigated by qualified archaeologists, and a report is being prepared. Logs will be removed by keeping tractors out of the site as flagged on the ground, but an existing skid trail will be used for tractors." The second sentence is itself alleged to be ambiguous and is the subject of another contention on appeal as to its exact meaning, including whether it actually bans the dragging of felled logs across the site.

EPIC was unable to obtain a copy of the archaeologist's draft report during the evaluation process, and was unable to assess the mitigation efforts of Rex Timber, or the precise vulnerability of the site to logging operations. CDF's response to EPIC's objection is as follows: "The archaeological site has been addressed. A private archaeologist was hired by Georgia-Pacific. The site has been excavated and a report is forthcoming. The Department of Forestry's archaeologist has reviewed a draft of the report and has visited the site and concurs with the protection measures imposed by Georgia-Pacific." Evidently, neither the draft report reviewed by the CDF archaeologist nor the final report was ever released to EPIC or, evidently, to any member of the public. [FN16] ***628**

> FN16 CDF asserts that the record shows EPIC, or at least one individual appellant, did eventually receive a copy of the report. The accompanying citation to a portion of the reporter's transcript does not bear out this assertion. The record indicates that EPIC never received a copy of either the draft report, relied on during the evaluation process, or the final report which was later completed.
>
> Rex Timber has argued that the issue concerning the archaeological report is framed differently on appeal than it was below. We conclude that the issue was argued below essentially as it is now framed.

Gallegos v. State Bd. of Forestry, supra., 76 Cal.App.3d 945, set forth the controlling standard for the sufficiency of the required written responses to significant environmental objections. Adapting the analogous criteria governing responses to objections to a proposed project requiring an EIR, the *Gallegos* court ruled that the responding agency (in that case, the State Board of Forestry) "need not respond to every comment raised in the course of the review and consultation process, but [the agency] must specifically respond to the most significant environmental questions raised in opposition to the project." (*Id.*, at p. 954; see *People v. County of Kern* (1974) 39 Cal.App.3d 830 [115 Cal.Rptr. 67].) Such responses must include a description of the issue raised "and must particularly set forth in detail the reasons why the particular comments and objections were rejected and why the [agency] considered the development of the project to be of overriding importance." (*Id.*, at p. 841.)

The purpose of this requirement is to provide the public with a good faith, reasoned analysis why a specific comment or objection was not accepted. (9) For this reason, conclusory responses unsupported by empirical information, scientific authorities or explanatory information have been held insufficient to satisfy the requirement of a meaningful, reasoned response: conclusory responses fail to crystallize issues, and afford no basis for a comparison of the problems caused by the project and the difficulties involved in the alternatives. (*Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411 [151 Cal.Rptr. 866], quoting *People v. County of Kern* , *supra.*, 39 Cal.App.3d at pp. 841-842; *Gallegos v. State Bd. of Forestry, supra.*, 76 Cal.App.3d at p. 954; *Society for California Archaeology v. County of Butte, supra.*, 65 Cal.App.3d at pp. 839-840.)

CDF's response was inadequate. The response contains no analysis of the issue of the protection of the archaeological site. It contains no specific information to communicate the basis for the rejection of the objection. It refers to a draft report relied upon by unknown archaeologists, one hired by the logging company and the other employed by the very agency whose actions have been questioned. It refers to a final report as "forthcoming"; EPIC's efforts to obtain a copy of the report were unsuccessful, mostly due to the logger's refusal to release the report on the ground that it was a "private" document. Reference to a report of unknown content, which the CDF refuses to divulge, cannot constitute a sufficient answer to an environmental ***629** objection under the *Gallegos* test. Indeed, CDF's response seems to hide behind vague officialese while relying on the contents of essentially classified documents.

The response to the significant issue of protection of the Sinkyone archaeological site is inadequate under the *Gallegos* standard. By failing to provide an adequate response to the public objection, to enable the objectors to intelligently assess the impact of the THP on the archaeological site, CDF failed to proceed in the manner required by law.

The nondisclosure of the archaeologist's report is itself characterized by EPIC as yet another instance of CDF's failure to abide by mandatory procedures. EPIC argues that public disclosure of the report was mandated by section 21080.5, which requires a project plan "or other written documentation required by the regulatory program" be available for public inspection. Although there is no FPA or CEQA provision requiring the preparation of an archaeological report, EPIC in effect contends that since CDF had a statutory duty to mitigate damage to the site as a "unique" natural resource (§ 4582, subd. (f); Rules, § 898, subds. (a)(2), (a)(3)), it had a duty to embody the mitigation measures in a written report.

CEQA does provide for the evaluation of a proposed project's effect on archaeological resources and provides for mitigation of the damage to be caused thereby. Neither statute explicitly requires the preparation of a written report. As such, public disclosure of the report was not required by section 21080.5.

This does not end the inquiry. A THP must be disclosed to the public, along with any documents which it incorporates by reference (§§ 4582.6, 21080.5, subd. (d)(3)(ii)). Although the report was not explicitly incorporated within the THP by reference, the plan de facto incorporates the report by referring to it as the substantive basis for its site-mitigation measures. In effect, both the plan and CDF's response essentially say, "[s]ee the report" in reply to the issue of site mitigation; under these circumstances, the nondisclosure of the report is fundamentally unfair to the rights of the public. We therefore hold that although not specifically required to prepare a report, neither a logging company nor CDF

may simply cite the report and fail to provide substantive, detailed responses to environmental objections regarding the report's subject matter. If the company or CDF rely on the report in this fashion and are unwilling to respond sufficiently to satisfy *Gallegos* without disclosure, then the report must be disclosed. Rex Timber's ***630** motives for not revealing the report, save for the fact that it was a "private" document, are less than clear. [FN17]

FN17 Respondents did advance a justification for nondisclosure based on the fear that if the site's location became public, it would be defiled by persons seeking souvenirs or artifacts. This concern is genuine, but has surfaced in a vacuum in this case. There has been no indication of any real danger of defilement. Certainly, appellants, who include a member of the very Native American nation who claims the site as a sacred ground, would be among the last to pose any danger to the sanctity of the site. There has been no indication that EPIC would have not acted responsibly in keeping the location of the site to itself had it received the archaeological report.

Failure to follow necessary procedures is a prejudicial abuse of discretion. EPIC alleges prejudice based on the perceived ambiguity of the THP'S description of logging operations on or near the site. The plan provided that tractors would be kept out of the site "as flagged on the ground," but that an existing skid trail would be used for tractors. We agree with EPIC that this statement is ambiguous regarding whether tractors would be excluded from all or only part of the site ("as flagged on the ground"), and that it is unclear whether the tractors could invade the sanctity of the site by using the "existing skid trail" or skirt the site but drag logs across it, a concern voiced by EPIC. The way EPIC and other members of the public could have evaluated this proposed mitigation of site damage, in light of CDF's insufficient response to their objection, was to view the report itself.

IV

We need not reach the other issues raised by the parties and amici curiae, including the issue of whether the trial court erred by limiting itself to the administrative record. [FN18] The order denying the petition for writ of mandate ***631** is reversed, and the cause remanded with instructions to grant the petition and set aside the timber harvesting plan. This disposition renders moot EPIC's application for a preliminary injunction against the logging operation on the grove since the setting aside of the plan prevents any logging until a new plan has been proposed, evaluated and approved.

EPIC has requested an award of attorney fees under the private attorney general theory, as discussed and expanded in *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311 [193 Cal.Rptr. 900, 667 P.2d 704]. Respondents have not addressed this contention or disputed EPIC's entitlement to fees. We agree that a fee award is proper. On remand, the superior court shall conduct a hearing for the limited purpose of making a fee award under *Lucky Stores*. The stay of logging operations heretofore imposed shall remain in effect until the finality of this opinion.

FN18 Although we do not reach this issue, we note the inaccuracy of respondents' contention that the superior court did not in fact limit itself to the administrative record. Although some of the proffered evidence outside the record appears to have been technically admitted, the trial court's comments make it quite clear that it felt confined to the record, and would not consider the evidence in determining the issues before it. The testimony of Johnson, see footnote 9, *ante*, appears to have been originally offered not to exceed the scope of the record, but to "explain" the record by setting forth the procedures shown by the record to have been followed. The superior court did not consider the evidence proffered by EPIC that went beyond the record's scope.

In the typical administrative mandamus proceeding reviewing the decision of an administrative agency, the court is generally limited to the evidence in the administrative record. (Code Civ. Proc., § 1094.5.) The parties agree that since no public hearing was provided prior to the adoption of the THP, section 1094.5 did not apply, and EPIC's petition necessarily sounded in traditional mandamus under Code of Civil Procedure section 1085. Under that section, ad-

> ditional evidence is generally considered; traditional mandamus proceedings, however, usually review quasi-legislative decisions of an administrative agency, not quasi-judicial ones such as the decision to approve a THP. Whether in a case such as this, a petitioner should be denied a hearing at both the administrative and the judicial levels is a significant issue, but one which must await a more appropriate case.

King, J., and Haning, J., concurred. ***632**

Cal.App.1.Dist.
Environmental Protection Information Center, Inc. v. Johnson
170 Cal.App.3d 604, 216 Cal.Rptr. 502

END OF DOCUMENT

88 Cal.App.3d 80, 151 Cal.Rptr. 508
(Cite as: 88 Cal.App.3d 80)

In re JOAQUIN S., a Person Coming Under the Juvenile Court Law.
THE PEOPLE, Plaintiff and Respondent,
v.
JOAQUIN S., Defendant and Appellant.

Civ. No. 18083.

Court of Appeal, Fourth District, Division 1, California.
Jan. 5, 1979.

SUMMARY

In proceedings to vacate an order committing a minor to the Youth Authority pursuant to Welf. & Inst. Code, § 778, the trial court refused to admit evidence of the results of two polygraph tests given the minor. Counsel had made an offer of proof that the minor was questioned by a polygraph operator concerning his participation in the two robberies that were the basis for his commitment, and that the polygraph operator would testify the minor had answered truthfully in stating he had not committed the robberies. The evidence was offered under the provision of Welf. & Inst. Code. § 778, authorizing the juvenile court to hear "new evidence" or "change of circumstances" to aid the court in determining whether it would be in the best interests of the minor either to modify or to terminate the Youth Authority commitment. The trial court denied the petition. (Superior Court of San Diego County, No. 102374, Richard L. Vaughn, Judge.)

The Court of Appeal affirmed. The court held that even if more liberal rules of evidence were applicable in postcommitment proceedings than in the jurisdictional hearing itself, the evidence still must be relevant and reliable, and that polygraph tests were not considered reliable enough to have probative value. The court pointed out the only new evidence introduced at the hearing was the polygraph examination bearing on the guilt question, and such evidence would not be admissible at trial and could not form a sufficient basis for modifying or vacating a commitment based on the guilt finding. The court also held that due process requires that evidence to be admitted in judicial proceedings must be relevant and reliable, and lie detector evidence did not meet those tests. (Opinion by Staniforth, J., with Brown (Gerald), P.J., and Harelson, J., [FN*] concurring.)

FN* Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Criminal Law § 403--Admissibility--Demonstrative Evidence--Polygraph Test Results--Proceedings to Vacate Youth Authority Commitment.

In a hearing on a minor's petition to vacate his order of commitment to the Youth Authority, pursuant to Welf. & Inst. Code, § 778, the trial court properly refused to admit evidence of the results of two polygraph tests given the minor, even though an offer of proof showed that the minor was questioned by the polygraph operator concerning his participation in two robberies, the basis for his commitment to the Youth Authority, and that the polygraph operator would testify the minor had answered truthfully in stating he had not committed the robberies. The only new evidence offered at the hearing was the polygraph examination bearing on the guilt question, which would not be admissible at trial and therefore could not form a sufficient basis for modifying or vacating a commitment based on the guilt finding. Moreover, due process requires that evidence to be admitted in judicial proceedings must be relevant and reliable, and lie detector evidence does not meet those tests.

[See**Cal.Jur.3d**, Criminal Law, § 1078; **Am.Jur.2d**, Evidence, § 831.]

COUNSEL

Appellate Defenders, Inc., under appointment by the Court of Appeal, J. Perry Langford and Harold F. Tyvoll for Defendant and Appellant.

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, Daniel J. Kremer, Assistant Attorney General, Bernard A. Delaney, Jr., and Robert M. Foster, Deputy Attorneys General, for Plaintiff and Respondent.

88 Cal.App.3d 80, 151 Cal.Rptr. 508
(Cite as: 88 Cal.App.3d 80)

STANIFORTH, J.

Joaquin S. contends abuse of discretion on the part of the trial court in refusing to admit polygraph evidence at a hearing to ***82** vacate his order of commitment to the California Youth Authority (CYA). Joaquin had been committed to the CYA on July 12, 1977, after a hearing and true findings he had committed two armed robberies (Pen. Code, § 211). Joaquin brought this petition to vacate or modify under Welfare and Institutions Code section 778 (all references are to this code unless otherwise specified). [FN1] This section authorized the juvenile court to hear "new evidence" or "change of circumstances" to aid the court in determining whether it would be in the best interest of the minor either to modify or to terminate the CYA commitment. After hearing, the juvenile court denied Joaquin's request to vacate the CYA commitment, whereupon he appealed.

FN1 Welfare and Institutions Code section 778 provides:

"Any parent or other person having an interest in a child who is a ward of the juvenile court or the child himself through a properly appointed guardian *may, upon grounds of change of circumstance or new evidence, petition the court* in the same action in which the child was found to be a ward of the juvenile court for a hearing *to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.* The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction.

"*If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction,* the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to such persons and by such means as prescribed by Sections 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes." (Italics added.)

Joaquin's evidence, introduced at the hearing, included written progress reports from Fred C. Nelles School relating that he was making a satisfactory adjustment to the program and had made encouraging progress. Joaquin testified he had had no disciplinary problems at the Nelles School and was doing well in his academic studies. The trial judge refused to permit him to testify that he had not committed the robberies-the offenses for which he was committed to CYA.

Further, the judge refused to admit evidence of the results of two polygraph tests given Joaquin. Counsel made an offer of proof: Joaquin was questioned by a polygraph operator concerning his participation in the two robberies, the basis for his commitment to the CYA; the polygraph operator would testify Joaquin had answered truthfully in stating he had not committed the robberies. This offer of proof also included qualifications of the person administering the polygraph tests and proffered evidence as to the reliability of the polygraph results. ***83**

(1)Joaquin concedes that California case law flatly prohibits the use of evidence of polygraph testing on the trial of a defendant's guilt or innocence. Joaquin contends that the proceeding under section 778 is a collateral proceeding not involving the guilt or innocence and that several out-of-state decisions uphold the admissibility of such evidence.

Joaquin asserts that in a postcommitment setting the more "liberal" rules of evidence should apply than those used during the jurisdictional hearing itself. In California more liberal evidentiary policies do apply in probation and parole revocation proceedings. (See for example, *People v. Vickers*, 8 Cal.3d 451, 456, 457 [105 Cal.Rptr. 305, 503 P.2d 1313].) However, even in such proceedings, with the relaxed standards of admissibility, the evidence must be relevant and reliable. (See *In re Thomas*, 27 Cal.App.3d 31, 34 [103 Cal.Rptr. 567]; *In re Cook*, 67 Cal.App.2d 20, 24-25 [153 P.2d 578].) Polygraph evidence has not yet been established in California courts to pass this rudimentary test of admissibility. "These tests do not scientifically prove the truth or falsity of the answers given during such tests." (*People v. Jones*, 52 Cal.2d 636, 653 [343 P.2d 577].)

And as was said in *People v. Thornton*, 11 Cal.3d 738, 764 [114 Cal.Rptr. 467, 523 P.2d 267]: "[L]ie detector tests themselves are not considered reliable enough to have probative value. ..."

Nor does *People v. Lara*, 12 Cal.3d 903, 909 [117 Cal.Rptr. 549, 528 P.2d 365], aid Joaquin. In *Lara* an investigating officer testified that a material witness on the issue of probable cause to arrest had submitted to a lie detector test. The Supreme Court, in response to Lara's complaint that the prosecutor had used lie detector evidence to establish probable cause for his arrest, stated (at page 909): "[W]hatever may be the rule on the admissibility of the *results* of a polygraph test as evidence of *guilt*-a question we do not reconsider today-we are cited to no authority holding such collateral use of the test for investigative purposes to be improper. Moreover, this court in fact placed no reliance on the foregoing testimony in determining there was probable cause for defendant's arrest." Lara's glancing nondeterminative comment upon the use for collateral purposes of polygraph evidence is no authority whatsoever for the proposition here urged. The California court's unwillingness to use polygraph tests is further shown in *People v. Paul*, 78 Cal.App.3d 32 [144 Cal.Rptr. 431], at page 39, where it was held: "It is well settled that neither the willingness nor the unwillingness of a witness to take a polygraph test is admissible. [Citations.] Likewise, the results of such a test are also inadmissible absent a stipulation by both parties. [Citation.]" ***84**

The question of whether polygraph evidence can be used on a motion to reconsider under section 778 is a question of first impression in this state. Where this question has been considered in a variety of collateral proceedings in other jurisdictions, the underlying premise of unreliability of polygraph evidence has led to the refusal to admit such evidence. (See *People v. Allen*, 49 Mich.App. 148 [211 N.W.2d 533, 535, 536]; *State v. Laforest*, 106 N.H. 159 [207 A.2d 429, 431]; *Watkins v. State* (Tex.Crim.App.) 438 S.W.2d 819, 822; *United States v. Stromberg* (S.D.N.Y. 1959) 179 F.Supp. 278, 279-280.)

Joaquin cites *People v. Barbara*, 400 Mich. 352 [255 N.W.2d 171, 197], as authority for the proposition that polygraph evidence may be admitted in the trial court's discretion in a postconviction setting a motion for new trial. *People v. Barbara*, *supra.*, at page 197, approved use of polygraph test evidence for a limited collateral purpose, yet the Michigan court stated in footnote 45: "Some other states which have considered the issue have done so only in the context of whether the polygraph evidence itself would be admissible at a new trial. However, our decision today is based precisely on the difference between a post-conviction motion for a new trial and the trial itself. If the only new evidence is the polygraph examination, this of course would be inadmissible at trial and would not be a sufficient basis for granting a new trial. ..." Therefore, *Barbara* lends Joaquin no succor.

Equally nonpersuasive is *State v. Brown* (Fla.App.) 177 So.2d 532. [FN2] Closer in point of fact is *United States v. Stromberg*, *supra.*, at page 280, where the court rejected the use of polygraph evidence on a motion for a new trial, because the evidence would not have been admissible at trial. The results of the polygraph simply supported defendant's story that he had not been involved in the conspiracy of which he had been convicted and did not relate to new witnesses or other new evidence. To have made a difference in the outcome of a trial, the polygraph test would itself have to be admitted into evidence. This the trial court was not prepared to do. See also *State v. Scott*, 210 Kan. 508 [502 P.2d 753, 760], holding polygraph evidence inadmissible on a motion for new trial stating ***85** "Newly discovered evidence must be admissible to form a basis for granting a new trial."

> FN2 Joaquin also cites *States v. Jones*, 110 Ariz. 546 [521 P.2d 978, 983]; *State v. Watson*, 115 N.J.Super.Ct. 213 [278 A.2d 543, 546]; *People v. Duck Wong*, 18 Cal.3d 178, 189 [133 Cal.Rptr. 511, 555 P.2d 297]; *People v. Adams*, 53 Cal.App.3d 109, 112-119 [125 Cal.Rptr. 518]; *People v. Jones*, *supra.*, 52 Cal.2d 636, 653; *People v. Thornton*, *supra.*, 11 Cal.3d 738, 764; *State v. Molina*, 117 Ariz. 454 [573 P.2d 528].)
>
> A careful reading of these cases leads to this conclusion: none support Joaquin's position here. *State v. Dorsey*, 88 N.M. 184 [539 P.2d 204] supports Joaquin but is unpersuasive.

In his effort to avoid the impact of decisional law, Joaquin professes not to be attacking the true

finding made on the robbery charges. Yet by the questions put, the answers sought to be elicited, he seeks to establish that he had not perpetrated the crimes for which he was convicted. He would argue therefore he is not in need of rehabilitation. By whatever name it is called, Joaquin's efforts have one purpose: to prove his innocence, his noninvolvement in the robberies for which he was committed. The polygraph is not a truth machine. It does not supplant the finder of fact or breathe life into a defense already rejected by the trial court. This is but an oblique approach to retrial of the guilt issue. The only new evidence is the polygraph examination bearing upon the guilt question, this would not be admissible at trial and should not form a sufficient basis for modifying or vacating a commitment based upon the guilt finding.

A second and more fundamental objection bars the proffered evidence. The requirement rooted in due process is that evidence to be admitted in judicial proceedings must be relevant and reliable. Lie detector evidence has yet to pass these tests in California courts.

Judgment affirmed.

Brown (Gerald), P. J., and Harelson, J., [FN*] concurred.

FN* Assigned by the Chairperson of the Judicial Council.

A petition for a rehearing was denied January 22, 1979, and appellant's petition for a hearing by the Supreme Court was denied March 14, 1979. ***86**

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In re Joaquin S.
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(Cite as: 63 Cal.App.4th 462)

In re MICHAEL I., a Minor, on Habeas Corpus.

No. B116902.

Court of Appeal, Second District, Division 1, California.
Apr 21, 1998.

SUMMARY

The juvenile court committed a delinquent ward to the California Youth Authority (CYA). The ward's mother retained counsel to represent the ward at his annual review that would determine if he would be released on parole. Despite counsel's repeated efforts, CYA did not permit him to meet with the ward until the afternoon before the hearing, and did not make the ward's file available until a month after the hearing. At the ward's hearing, CYA denied him parole and extended his period of confinement an additional month. The ward filed a petition for a writ of habeas corpus.

The Court of Appeal granted the writ, and ordered CYA to vacate the annual review, to schedule a new review within 30 days, to make the ward's file available to counsel at least 20 days before the new hearing, and to permit the ward and counsel to meet at least 10 days before the new hearing. The court held that the ward was entitled to a new review, preceded by adequate time to meet with counsel and review his file, since CYA frustrated all attempts made by counsel to review the file and arrange for a meeting with the ward. The brief meeting allowed with counsel less than 24 hours before the hearing, without access to the file, rendered the ward's retention of counsel worthless. CYA cannot deliberately structure procedures that prevent counsel retained at a ward's expense from reviewing the ward's file and consulting with the ward before an annual review. (Opinion by Ortega, J., with Spencer, P. J., and Vogel (Miriam A.), J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Delinquent, Dependent, and Neglected Children § 122--Delinquent Children--Commitment to California Youth Authority--Judicial Review.

An appellate court cannot reverse a California Youth Authority decision regarding a ward unless it appears that the California Youth Authority has failed to comply with law or has abused its discretion in dealing with a ward in its custody.

(2) Delinquent, Dependent, and Neglected Children § 111--Delinquent Children--Commitment to California Youth Authority.

In order to achieve its treatment and rehabilitative goal, the California Youth Authority has wide latitude, and broad discretionary powers in the treatment and discharge of persons committed to it, including instant status reexaminations.

(3) Penal and Correctional Institutions § 24--Revocation of Parole--Due Process--Right to Counsel.

Although a decision to deny parole is not a part of the criminal prosecution, the loss of liberty entailed is a serious deprivation requiring that the parolee be accorded due process. Although there is no absolute constitutional right to counsel at parole revocation hearings, the decision as to the need for counsel must be made on a case-by-case basis in the exercise of sound discretion by the state authority charged with responsibility for administering the probation and parole system. Although the presence and participation of counsel will probably be both undesirable and constitutionally unnecessary in most revocation hearings, there will remain certain cases in which fundamental fairness, the touchstone of due process, will require that the state provide at its expense counsel for indigent probationers or parolees. Such a right exists when the parolee denies that he or she committed the violations and when, even though the parolee does not contest the existence of the violation, he or she asserts complex matters in mitigation.

(4) Delinquent, Dependent, and Neglected Children § 116--Delinquent Children--Commitment to California Youth Authority--Parole Consideration Hearing--Representation by Counsel--Due Process.

Because the California Youth Authority frustrated all attempts made by counsel to review the juvenile ward's file and arrange for a meeting with the ward prior to his annual review that would determine if he would be released on parole, the ward was entitled to a new review preceded by adequate time to

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meet with counsel and review his file. The brief meeting allowed with counsel less than 24 hours before the hearing, without access to the file, rendered the ward's retention of counsel worthless. The California Youth Authority cannot deliberately structure procedures that prevent counsel retained at a ward's expense from reviewing the ward's file and consulting with the ward before an annual review.
[See 6 Witkin & Epstein, Cal. Criminal Law (2d ed. 1989) § 3359.]
COUNSEL

Mark Raymond McDonald for Petitioner. ***464**

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Peter J. Siggins, Assistant Attorney General, Darrell L. Lepkowsky and Sara E. Turner, Deputy Attorneys General, for Respondent.

ORTEGA, J.

In 1994, the juvenile court committed Michael I. to the California Youth Authority (CYA). In March 1997, Michael hired Attorney Mark McDonald to help him prepare for his upcoming annual review which would determine if he would be released on parole. CYA wards are not absolutely entitled to have counsel present at such hearings, but they can hire counsel to help prepare for such hearings.

Despite McDonald's repeated efforts, CYA did not permit McDonald to meet with Michael until the afternoon before the review hearing, and did not make Michael's file available for McDonald's review until a month after the hearing. At his hearing, the Youthful Offender Parole Board (YOPB) denied Michael parole and extended his period of confinement an additional month, based on failures to complete ordered programs and assaultive disciplinary violations. YOPB denied Michael's administrative appeal.

Michael petitioned for habeas corpus, seeking release from custody or a new hearing with adequate time to consult with McDonald beforehand with a copy of his file. Michael concedes he is not entitled to counsel's assistance at the hearing, but argues due process requires adequate opportunity to consult with his lawyer before the hearing and timely prehearing access to his file for himself and McDonald. We issued an order to show cause.

Because the hearing evidence supports YOPB's decision to deny Michael's release and extend his confinement time, we do not order his release. However, we agree he is entitled to a new hearing preceded by adequate opportunity to consult with McDonald with both having access to his file. We issue the writ and order YOPB to vacate its denial of Michael's release and extension of his confinement period, and hold a new hearing preceded by these safeguards.

Facts and Procedural History

Michael was found to be a delinquent ward on May 27, 1993, and committed to camp community placement. On July 21, 1994, the juvenile court sustained supplemental petition allegations that Michael possessed drugs and drug paraphernalia, committed petty theft, failed to obey his ***465** parents, and admitted to using marijuana and methamphetamine, all in violation of his earlier probationary conditions. The juvenile court committed Michael to CYA.

Michael repeatedly failed to complete drug, gang, and violence counseling programs and committed a series of assaults. Michael was transferred to El Paso de Robles School in April 1995, and transferred to the Heman G. Stark Youth Training School in Chino in May 1996. At a March 13, 1997, hearing, the validity of which is not before us, YOPB found Michael possessed weapons on November 5, 1996, and January 7, 1997.

A March 13, 1997, case report was prepared for Michael's upcoming April 1997 annual review. The report narrated Michael's failure to complete the drug, gang, and victim impact programs to which he had been assigned, failure to complete any remaining high school graduation requirements, repeated disciplinary violations involving weapons, assaults, and drugs, his avowed Nazism, and membership in a White supremacist gang. Michael had repeatedly failed in various placements and had been transferred. The report recommended against parole. This report formed the basis for the challenged YOPB decision to deny parole and extend Michael's commitment time by a month.

Michael was present at his previous, April 1996, annual review. On March 24, 1997, Michael's mother hired McDonald to help Michael prepare for his upcoming April 1997 annual review. [FN1] On April 2, McDonald's office telephoned CYA. In response to McDonald's inquiries, CYA told him Michael's annual

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review hearing date had not been set, wards generally received 24 hours' notice of their hearings, wards' parents and attorneys are allowed to attend such hearings, a copy of the current inmate's handbook which detailed hearing procedures was unavailable because it was being revised, and requests to view an inmate's file must be written. In fact, CYA's ward handbook states that wards are entitled to (1) five days' hearing notice and (2) view their files without written requests. The handbook also provides that parents or guardians, but not attorneys, for wards such as Michael who are over 18 years old, must submit written requests to see a ward's file. Unbeknownst to McDonald, sometime between April 2 and April 6, CYA told Michael his annual review was scheduled for April 18. McDonald did not learn of this communication until nearly a month after the April 18 annual review. Michael was in solitary confinement from the first of the year until his hearing, and unable to send or receive telephone calls and mail. CYA did not seek to obtain Michael's written consent for McDonald to view Michael's file until April 17. ***466**

FN1 Unless otherwise noted, all further dates refer to 1997.

After two days of repeated requests, on April 4, CYA provided McDonald a fax number for receipt of a written file view request. About 5:30 p.m. on April 4, a Friday, McDonald faxed a written request to see Michael's file on April 8. On April 7, CYA telephoned McDonald and told him he could not view Michael's file on April 8 because there was insufficient time to obtain Michael's written release and remove any privileged material. CYA also told McDonald Michael's annual review had not yet been scheduled.

On April 10, CYA contacted McDonald and scheduled April 18 for McDonald to view Michael's file. On April 10 and April 14, CYA told McDonald Michael's annual review was not yet scheduled. On April 17, CYA contacted McDonald and told him he would not be permitted to view Michael's file, because the board needed to review it, and that Michael's annual review was scheduled for noon the next day, April 18.

McDonald went to CYA on the afternoon of April 17 and was permitted a “brief” meeting with Michael. McDonald returned on the morning of April 18 but was denied any further chance to meet with Michael, although he did meet with Michael's mother and CYA staff.

The hearing was held about 1 p.m. on April 18. McDonald was not present. At the hearing, as discussed above, YOPB denied Michael parole and extended his confinement time one month. As a result, Michael will not be eligible for release until September 14, 1998, when he will have exhausted his custody time and otherwise would be entitled to discharge. McDonald was unable to see Michael's file until May 12. Michael administratively appealed the hearing decision on September 19. On October 20, YOPB denied the appeal. Michael filed this writ petition on November 6. After considering CYA/YOPB's December 18 return and Michael's December 31 reply, we issued the order to show cause on January 9, 1998, for March 25, 1998. The parties timely submitted their supplemental return and reply. [FN2]

FN2 On November 13, we requested CYA/YOPB file any opposition by November 24. On December 4, we granted CYA/YOPB's request that time to file its opposition be extended until December 18, when CYA/YOPB filed its return. In his December 31 reply, Michael objected to CYA/YOPB's delay, noting that delay could result in Michael serving his entire commitment period even if we found his claim meritorious. Despite this chronology, in its February 2, 1998, supplemental return, CYA/YOPB incorrectly stated that the December 18, 1997, response date was “the first request to respond that was received by counsel for Respondent.”

Discussion

Michael's challenged annual review was pursuant to Welfare and Institutions Code section 1720, subdivision (b): “The [Youthful Offender Parole] board shall periodically review the case of each ward for the purpose of ***467** determining whether existing orders and dispositions in individual cases should be modified or continued in force. These reviews shall be made as frequently as the board considers desirable and shall be made with respect to each ward at intervals not exceeding one year.”

(1) We cannot reverse a CYA decision regarding a ward “unless it appears CYA has failed to comply

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with law or has abused its discretion in dealing with a ward in its custody." (*In re Owen E.* (1979) 23 Cal.3d 398, 406 [154 Cal.Rptr. 204, 592 P.2d 720] [reversing juvenile court's order paroling a ward after CYA denied parole].)

(2) "In order to achieve its treatment, rehabilitative goal, [CYA] has wide latitude, broad discretionary powers in the treatment and discharge of persons committed to it, including instant status reexaminations. [Citations.]" (*In re Robert D.* (1979) 95 Cal.App.3d 767, 775 [157 Cal.Rptr. 339].)

We begin by disposing of several nonissues to which CYA/YOPB devotes most of its returns. First, Michael does not contend he is absolutely entitled to have McDonald present at his hearing, and does not ask us to so order. (See 1 Cal. Juvenile Court Practice, Delinquent Minors (Cont.Ed.Bar 1981) Youth Authority, § 10.26, p. 298 [attorney not permitted to be present at board hearing setting initial parole eligibility date].) Second, Michael does not claim the evidence presented at the challenged annual review was insufficient to support YOPB's decision to deny him parole and extend his commitment time, nor does he ask us to violate the established rules limiting our review of that decision by ignoring or reweighing that evidence. Given these concessions, as noted in the introduction, we reject without further discussion Michael's request that we order his immediate release.

(3) Although a decision to deny parole "is not a part of the criminal prosecution, ... the loss of liberty entailed is a serious deprivation requiring that the parolee be accorded due process." (*Gagnon v. Scarpelli* (1973) 411 U.S. 778, 781 [93 S.Ct. 1756, 1759, 36 L.Ed.2d 656], relying on *Morrissey v. Brewer* (1972) 408 U.S. 471 [92 S.Ct. 2593, 33 L.Ed.2d 484].) *Gagnon* held that although there was no absolute constitutional right to counsel at parole revocation hearings, "... the decision as to the need for counsel must be made on a case-by-case basis in the exercise of a sound discretion by the state authority charged with responsibility for administering the probation and parole system. Although the presence and participation of counsel will probably be both undesirable and constitutionally unnecessary in most revocation hearings, there will remain certain cases in which fundamental fairness-the touchstone of due process-will require that the ***468** State provide at its expense counsel for indigent probationers or parolees." (*Gagnon v. Scarpelli*, *supra*, 411 U.S. at p. 790 [93 S.Ct. at p. 1763].)

In re Love (1974) 11 Cal.3d 179 [113 Cal.Rptr. 89, 520 P.2d 713] applied *Gagnon* and held it was a denial of due process to withhold from a parolee nonprivileged portions of the report outlining the bases for a recommendation to deny parole. *Love* also held that while there was no absolute right to counsel at such hearings, "[s]uch a right exists where the parolee denies that he committed the violations and where, even though he does not contest the existence of the violation, he asserts complex matters in mitigation. (*Gagnon v. Scarpelli*, *supra*, 411 U.S. 778, 790 ....) The court further indicated that when, as in *Gagnon*, the parolee admitted to the violation but asserted that the admission was coerced, the counsel question should be seriously considered." (*In re Love*, *supra*, 11 Cal.3d at p. 186; see *People v. Ojeda* (1986) 186 Cal.App.3d 302, 306-308 [230 Cal.Rptr. 609] [no absolute right to counsel at parole revocation hearing, reversing contrary trial court ruling; remanded for prison authorities to consider if counsel is required in particular case].)

(4) As noted above, Michael does not demand that McDonald be permitted to be present at his annual review. Likewise, he does not demand that the state provide him appointed counsel to prepare him for or be present at such hearings. Thus, those issues are not before us. However, if due process is to mean anything, CYA cannot deliberately structure procedures which prevent counsel retained at a ward's expense from reviewing the ward's file and consulting with the ward before such a hearing. Here, CYA frustrated all of McDonald's reasonable and timely attempts to review Michael's file and arrange for a prehearing meeting so he and Michael could review its contents, discuss challenges thereto, if any, explore possible mitigating evidence, and arrange to present such challenges and evidence to the board. A "brief" meeting less than 24 hours before the hearing, without access to the file that outlined the recommendation and its factual support, renders Michael's retention of counsel worthless. CYA does not dispute Michael's factual claims; in fact, it concedes that such snafus are quite possible. Moreover, one of the factors discussed above in determining whether counsel should be permitted to be present at the review is whether Michael planned to contest the allegations, present complex mitigating evidence, or claim any admissions

were coerced. Without the ability to review his file and discuss its contents and any response with his lawyer, Michael and CYA could not know whether he would be entitled to McDonald's presence.

Despite its printed and stated policy of permitting counsel to be present, and to review a ward's file, CYA deliberately frustrated repeated, Herculean ***469** efforts by McDonald to do so. As such, Michael is entitled to a new review preceded by adequate time to meet with McDonald and review his file. Because of CYA's history of frustrating reasonable attempts to do so before the earlier review, and the short time remaining before Michael will be required to be released, we order YOPB to schedule the new review within 30 days of the date of this opinion. YOPB and/or CYA must make Michael's file available to McDonald at least 20 days before the hearing, and CYA must allow McDonald to meet with Michael at least 10 days before the hearing. (See *In re La Croix* (1974) 12 Cal.3d 146, 155, fn. 7 [115 Cal.Rptr. 344, 524 P.2d 816] [on habeas corpus petition, court may order correctional authorities who have failed to provide a required hearing to do so "timely[.]"]; 6 Witkin & Epstein, Cal. Criminal Law (2d ed. 1989) Extraordinary Writs, § 3359, p. 4168.)

Disposition

We issue the writ, order YOPB to vacate the April 18, 1997, annual review, and to schedule a new review within 30 days of the date of this opinion. YOPB and/or CYA must make Michael's file available to McDonald at least 20 days before the new hearing. CYA must permit Michael and McDonald to meet at least 10 days before the new hearing.

This opinion to become final forthwith.

Spencer, P. J., and Vogel (Miriam A.), J., concurred.

A petition for a rehearing was denied May 12, 1998. ***470**

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Not Reported in Cal.Rptr.3d, 2007 WL 4555337 (Cal.App. 5 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2007 WL 4555337 (Cal.App. 5 Dist.))


Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fifth District, California.
In re MICHAEL M., a Person Coming Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
Michael M., Defendant and Appellant.

No. F051803.
(Super.Ct.No. 24546).
Dec. 28, 2007.

APPEAL from a judgment of the Superior Court of Merced County. Thomas S. Burr, Commissioner.
Tim Warriner, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Janis Shank McLean and Alice Su, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION

WISEMAN, J.

PROCEDURAL AND FACTUAL HISTORIES

***1** In July 2004, Michael M. entered a plea of no contest to two counts of taking and operating a vehicle without permission of the owner, one count of carjacking (involving a knife), and four counts of minor Vehicle Code violations. At the time, Michael was a juvenile within the meaning of Welfare and Institutions Code section 602.[FN1] On the basis of the plea, the juvenile court found true the allegation that Michael had violated the terms of his probation. The facts of the offenses are not relevant to the appeal. As its dispositional order, the juvenile court committed Michael to the California Department of Corrections and Rehabilitation, Juvenile Justice (Juvenile Justice Division),[FN2] for a maximum period of confinement not to exceed 12 years, eight months. The court explained that it was sending Michael to a juvenile justice correctional facility because it believed Michael could benefit from the services available there, although it also noted that Michael's success depended on Michael's willingness to participate in the opportunities provided and that if he did not participate, he could "absorb nothing."

FN1. All further statutory references are to the Welfare and Institutions Code.

FN2. Formerly known as the California Youth Authority.

Michael was housed at Preston Youth Correctional Facility from August 18, 2004 to July 19, 2005, when he was transferred to N.A. Chaderjian Youth Correctional Facility. In December 2005, after an altercation with a fellow ward, Michael pled no contest to possession of a weapon. Michael had reached the age of majority by this time and was sentenced to an adult facility to serve his term. After completing his time on the adult conviction, Michael elected, pursuant to section 1732.8, to serve the remainder of his juvenile time in the adult facility. He remains housed at Soledad State Prison.

On October 4, 2006, Michael filed a petition pursuant to section 779, asking the court to set aside or modify his commitment on the grounds that he had been denied services and was subject to abuse while housed in the juvenile facilities. At the hearing, Michael testified that he had not graduated from high school, had not been provided appropriate counseling services, had been denied medical attention when he had the flu, and had been left in a room wet after arguing with staff about his need for medical attention.

The juvenile court denied the petition, finding that the records of the juvenile facilities refuted Michael's claim that he had not received counseling, that Michael had been placed in a vocational training program, and that his behavioral issues might explain why he had not yet graduated from high school. The court also noted that Michael had an extensive disciplinary record while in the juvenile facilities and concluded that services had been offered, but that Michael was resistive. The court, finding no evidence

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that the Juvenile Justice Division had abused its discretion, refused to modify the prior commitment order.

DISCUSSION

Michael raises a single issue on appeal. He contends that, in denying his motion to modify or set aside his commitment, the juvenile court found insufficient evidence that the Juvenile Justice Division was abusing its discretion in meeting Michael's rehabilitative needs. Michael argues that this is an incorrect legal standard. The statute does not require a showing that the Juvenile Justice Division abused its discretion, but only a showing of good cause. We affirm.

***2** Generally speaking, the juvenile court has continuing jurisdiction over a ward, even after the commitment order. However, the commitment order removes the ward from the direct supervision of the juvenile court. (*In re Allen N.* (2000) 84 Cal.App.4th 513, 515.) Afterward, the ward's care and rehabilitation rest solely in the hands of the Juvenile Justice Division. (*Ibid.*) Section 779, however, authorizes the juvenile court to change, modify, or set aside a prior order of commitment. The section provides:

> "In changing, modifying, or setting aside the order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as provided in this section, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section, this chapter does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734." [FN3]

> FN3. Section 734 provides, "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."

In *In re Owen E.* (1979) 23 Cal.3d 398 (*Owen*), the California Supreme Court addressed the interplay between the Juvenile Justice Division and the juvenile court after commitment. In *Owen,* the ward applied for, but was denied, parole. The ward's mother then petitioned the juvenile court to vacate his commitment. The basis for the petition was the ward's claim that the Juvenile Justice Division could no longer serve his rehabilitative needs. He testified that he participated in a college program at his facility and had completed 39 units, but had been denied permission to attend off-grounds college courses. He also complained that he wished to pursue a professional baseball career, and he could not do this while confined. He, like Michael, [FN4] offered evidence of a rehabilitative program that might better serve his needs, if he were released early through modification of the commitment order. (*Id.* at p. 401.) The Juvenile Justice Division disagreed with the ward's assessment as to how his needs might best be met. It concluded that the ward lacked insight into the criminal nature of his conduct, had failed to acknowledge his wrongdoing, and had a tendency to excuse or justify his conduct. (*Id.* at p. 402.) However, the juvenile court agreed with the ward and concluded that his rehabilitative needs would best be satisfied if he were released from custody. (*Id.* at pp. 400-401.) The Supreme Court reversed the juvenile court's order. It held that section 779 does not constitute authority for a juvenile court to set aside a commitment order merely because the juvenile court's view of the rehabilitative progress and continuing needs of the ward differ with the determinations of the institution. It held that, in these matters, "the critical question is thus whether [the Juvenile Justice Division] acted within the discretion conferred upon it...." (*Owen, supra,* 23 Cal.3d at p. 405.) If so, the court held that there is no basis for judicial intervention. (See also *In re Allen N., supra,* 84 Cal.App.4th at p. 515.)

> FN4. In support of his petition, Michael submitted a letter from Amity Foundation

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> stating that Michael had been accepted into Nirvana Residential Aftercare Facility. He also testified at the hearing that the aftercare program was for parolees only and if Michael served his entire commitment, he would not be eligible for their services.

***3** *Owen* was decided before section 779 was amended in 2003 to add the sixth sentence to the statute, upon which Michael relies. (§ 779, as amended by Stats.2003, ch. 4, § 2.) According to the legislative history, the statute's amendment was intended to clarify that the juvenile court has the authority to change, modify, or set aside an order of commitment upon a showing of good cause that the Juvenile Justice Division is unable to, or is failing to, provide treatment as required by law. (See Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 459 (2003-2004 Reg. Sess.) Apr. 4, 2003, pp. 4-5.) We agree with Michael that the added sentence does not use "abuse of discretion" language and reaffirms the juvenile court's authority to inquire into the services being provided.

The statute authorizes the juvenile court, notwithstanding the discretion granted the Juvenile Justice Division, to modify a prior commitment order upon a "showing of good cause" where there is evidence accepted by the juvenile court to show that services required by law are not being provided. (§§ 779, 734.) However, nothing in the legislative history suggests an intent to usurp the authority given to the Juvenile Justice Division to determine what is in the best interest of a ward's rehabilitative goals. There is also no evidence in the legislative history of an intent to nullify the decision in *Owen* or to change the law, which had to that date left the Juvenile Justice Division with the primary responsibility for determining how to meet a ward's treatment and training needs and for determining whether the ward has been rehabilitated. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1479 [in adopting legislation, Leg. is presumed to have knowledge of existing case law and to have amended statutes in light of decisions having direct bearing on them].) In any event, we see little difference in the two standards expressed in this section as applied in this case. If the Juvenile Justice Division is failing to provide treatment required by law or has inflicted physical abuse upon Michael, it surely has abused its discretion. (See *Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 622 [failure to abide by mandated regulation is abuse of discretion].) This is the essence of the standard identified in *Owen.*

Even if there is a difference in the standards of review as applied in this case, it is of no consequence. Under the language of the statute, Michael must show that he is not being provided services as required by law-not simply that he is not being provided the services he deems most appropriate. (§ 779.) Whether the required services are being provided is a question of fact, which in this case has been resolved against Michael. The juvenile court stated that, although Michael was claiming he had not been getting counseling or other services, the reports filed by the Juvenile Justice Division regarding Michael's status show otherwise. The court pointed out that Michael had been assigned to a vocational program, the Culinary Arts Program. Michael testified he was kicked out of the program because of a fight. The record also establishes that Michael completed 4.5 credits toward high school graduation while at Preston and that he continued to earn credits while at Chaderjian. Classes clearly were available. He also completed a variety of counseling units and individual counseling sessions on anger management, victim impact, family dynamics, gang prevention, and handling difficult feelings. He worked closely with the protestant chaplain and completed weekly assignments. The report states that Michael was involved in group sessions as well as individual sessions. By Michael's own admission, he was given a packet of information to read, digest, and discuss with his counselor. Although Michael may not believe this type of counseling service to be adequate, there is no evidence to suggest this is not an appropriate way to have wards address these issues. The law is clear: Meeting the rehabilitative needs of a ward is left to the discretion of the Juvenile Justice Division. (*Owen, supra,* 38 Cal.3d at p. 405.)

***4** Michael was transferred from Preston to Chaderjian as a "program failure," mostly due to Michael's sustained behavior problems. While at Preston, Michael suffered 13 level-two disciplinary infractions and at least one level-three infraction. At Chaderjian, Michael suffered nine additional level-two disciplinary infractions and four level-three disciplinary infractions between mid-August and mid-December 2005. He was ultimately convicted of possession of a weapon and sentenced to adult time for this offense, which precipitated the transfer to Sole-

Not Reported in Cal.Rptr.3d, 2007 WL 4555337 (Cal.App. 5 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2007 WL 4555337 (Cal.App. 5 Dist.))

dad. A reasonable inference from this evidence is that any failure in treatment was related to Michael's own behavior, not a failure on the part of the Juvenile Justice Division to provide services.

It can also be inferred from the court's ruling that it did not believe Michael's assertion that he was subjected to abuse. The record provides scarce support for this assertion. Michael's mother filed a declaration claiming a number of things, including that Michael was pepper sprayed and put in the shower in handcuffs. However, her declaration is of little evidentiary value as it lacks foundation and is hearsay. (See *People v. Smith* (2007) 40 Cal.4th 483, 524, fn. 12.) In addition, the incidents listed can be explained by looking to Michael's disciplinary record. When asked to identify incidents of abuse, Michael testified about two incidents only. He was left wet, in a room overnight, in boxer shorts, after fighting with staff over what he characterizes as lack of medical attention. He also claims that on one occasion staff refused to call a nurse when he was sick with what he characterizes as the flu. It is unclear whether these are the same incidents or different occasions. Neither of these incidents establishes abuse. Michael apparently suffered no harm from any of them.

Under the statutory language, in addition to showing that treatment was not provided, Michael must show good cause for modifying, changing, or setting aside the original commitment order. When a trial court is charged with determining what constitutes good cause, the determination lies well within the court's discretion. (See *People v. Smith* (2005) 35 Cal.4th 334, 349 [inquiry into juror misconduct]; *People v. Szeto* (1981) 29 Cal.3d 20, 29 [delay of trial]; *Lopez v. Larson* (1979) 91 Cal.App.3d 383, 400 [failure to serve].) We do not believe Michael can show good cause, given that he currently is housed by his own election in an adult correctional facility and by his own testimony is getting the services to meet his needs.[FN5] The statutory language is in the present tense. The petition must show that the Juvenile Justice Division is "unable or failing to provide" the necessary services, not that, in the past, services were lacking. Courts are to give a statute's words their plain, commonsense meaning. (*Bonnell v. Medical Board* (2003) 31 Cal.4th 1255, 1261 .) Therefore, even if Michael shows that, in the past, his treatment was lacking due to no fault of his own, he still has to show that *current* conditions provide good cause for modification of the previous order.

FN5. Despite Michael's testimony to the contrary, the record includes an updated progress analysis suggesting that Michael is still resistive to the treatment offered.

***5** Finally, Michael cannot show prejudice. Although the court noted there was no evidence the Juvenile Justice Division had abused its discretion, it also evaluated Michael's claim independently, carefully evaluating the evidence before making its ruling. It found that the institution had tried to give Michael the services he needed, but his own behavior and attitude had stood in the way. It did not defer entirely to the Juvenile Justice Division's assessment of Michael's needs. Even if we were to reverse and ask the court to consider the motion on a slightly different standard more closely tied to the statutory language, we are confident the result would be the same.

DISPOSITON

The order denying the petition for modification of the commitment order is affirmed.

WE CONCUR: VARTABEDIAN, Acting P.J., and LEVY, J.

Cal.App. 5 Dist.,2007.
In re Michael M.
Not Reported in Cal.Rptr.3d, 2007 WL 4555337 (Cal.App. 5 Dist.)

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In re OWEN E., a Person Coming Under the Juvenile Court Law. OWEN E., Plaintiff and Respondent,
v.
PEARL S. WEST, as Director, etc., Defendant and Appellant

Crim. No. 20219.

Supreme Court of California
February 22, 1979.

SUMMARY

A minor was committed to a California Youth Authority (CYA) facility after being declared a ward of the juvenile court, based on a finding he had killed his father. Approximately two years after his commitment, CYA denied the minor's application for parole because in its view he had not yet accepted the responsibility for his actions resulting in his commitment and did not fully appreciate his obligations to society. Shortly thereafter and without pursuing an administrative appeal from the denial, the minor's mother petitioned the juvenile court to vacate the commitment (Welf. & Inst. Code, § 778). The juvenile court, considering the same matters deemed by CYA to necessitate a continuation of the minor's participation in its program, concluded his rehabilitative needs would best be satisfied if he were released from custody. It set aside its original order of commitment and placed the minor on probation in the custody of his mother and ordered continuing therapy in an outpatient program. (Superior Court of Santa Barbara County, No. JSM2316, Arden T. Jensen, Judge.)

The Supreme Court reversed. The court held that in enacting Welf. & Inst. Code, § 779, authorizing the juvenile court to change, modify, or set aside the order of commitment, in context with the Youth Authority Act, the Legislature did not intend to authorize the juvenile court to substitute its judgment for that of CYA, and that a juvenile court may not act to vacate a proper commitment to CYA unless it appears CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody. Noting that the record disclosed a debatable question whether the minor's rehabilitative needs could best be served by his continued commitment, the court held CYA acted well within the law and the discretion vested in it by the Legislature in denying the minor's application for parole. The court held that Welf. & Inst. Code, § 779, did not authorize judicial intervention into the routine parole function of CYA, as was done in the present case. (Opinion by Clark, J., with Mosk, Richardson and Manuel, JJ., concurring. Separate dissenting opinion by Bird, C. J., with Tobriner and Newman, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Delinquent, Dependent and Neglected Children § 26--Opening, Modification and Vacation of Judgment or Orders--Commitment to California Youth Authority--Power of Juvenile Court.

Welf. & Inst. Code, § 779, providing that the juvenile court may “change, modify, or set aside” an order of commitment to the California Youth Authority (CYA), did not authorize the juvenile court to set aside an order committing a minor ward to CYA, where the record disclosed a debatable question whether the minor's rehabilitative needs could best be served by his continued commitment to CYA, and where CYA had acted well within the law and the discretion vested in it by the Legislature in denying the minor's application for parole. In enacting Welf. & Inst. Code, § 779, in context with the Youth Authority Act, the Legislature did not intend to authorize the juvenile court to substitute its judgment for that of CYA in such circumstances. That the question of release was debatable tended to give conclusive effect to CYA's determination. The juvenile court may not act to vacate a proper commitment to CYA unless it appears CYA failed to comply with law or abused its discretion in dealing with a ward in its custody; the statute does not authorize judicial intervention into the routine parole function of CYA.

[See **Cal.Jur.3d,** Delinquent and Dependent Children, § 124; **Am.Jur.2d,** Juvenile Courts and Delinquent and Dependent Children, § 57.]

(2) Delinquent, Dependent and Neglected Children § 36--Proceedings--Youth Correction--Commitment to California Youth Authority--Parole.

In deciding whether to release or retain a ward in custody, the California Youth Authority, in addition to considering the minor's rehabilitative needs, must also

consider the safety of the public.

COUNSEL

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, S. Clark Moore, Assistant Attorney General, Frederick R. Millar, Jr., Beverly K. Falk and Alexander W. Kirkpatrick, Deputy Attorneys General, for Defendant and Appellant.

Olsen & Sorrentino, Christopher M. Gilman and Gary K. Olsen for Plaintiff and Respondent.

CLARK, J.

Director of California Youth Authority (CYA) appeals from juvenile court order vacating order of commitment of Owen E. to CYA custody. Director contends the juvenile court erred in redetermining a ward's rehabilitative needs, CYA having properly determined the ward's application for parole be denied in his best interests. We agree with the director and reverse the order.

Understanding of the posture of the cause before us is essential to our resolution of the issues. Owen was properly committed to a CYA facility in August 1974. [FN1] For 18 months he participated in an educational program, making normal progress towards rehabilitation. In fall 1976 CYA denied Owen's application for parole because in its view he had not yet accepted responsibility for his actions resulting in his commitment and did not fully appreciate his obligations to society. Shortly thereafter and without pursuing an administrative appeal from the denial, Owen's mother petitioned the juvenile court to vacate the 1974 commitment. (§ 778.) [FN2] The juvenile court, considering the same matters deemed by ***401** CYA to necessitate a continuation of Owen's participation in its program, concluded his rehabilitative needs would best be satisfied if he were released from custody. It set aside its original order of commitment and placed Owen on probation in the custody of his mother and ordered continuing therapy in an outpatient program.

> FN1 In August 1974 Owen, then 17 years of age, intentionally shot and killed his father after an argument at the family home. Owen first denied then several days later admitted the killing. Following hearing and stipulation to the facts he was declared a ward of the juvenile court. (Welf. & Inst. Code, § 602.) He was committed to CYA in March 1975.
>
> Unless otherwise specified, all following statutory references are to sections of the Welfare and Institutions Code.
>
> FN2 Section 778 provides: "Any parent or other person having an interest in a child who is a ward or dependent child of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstances or new evidence, petition the court in the same action in which the child was found to be a ward or dependent child of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition ... shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change or order or termination of jurisdiction.
>
> "If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to such persons and by such means as prescribed by Sections 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes."

This is not a case wherein Owen challenges the propriety of the order finding him a ward of the court or of the order of commitment in the first instance. Nor is any claim made that because of the availability of new facts or information the order of commitment should be reconsidered as having been improvidently made. Nor does Owen seek relief on any ground for which the writ of habeas corpus might lie. He does not complain that the length of his confinement is disproportionate to the gravity of his misconduct or to his rehabilitative needs. He does not complain that conditions of his confinement are so onerous as to deny him any protected right - in fact, both Owen and CYA agree Owen has adapted well to its program.

Owen's sole complaint is simply that CYA has

abused its discretion in denying him immediate relief from commitment. He seeks in effect to establish the juvenile court's superior authority to reconsider and overrule a discretionary determination made by CYA pursuant to authority vested in CYA by the Legislature. [FN3]

FN3 We note that during the pendency of these proceedings the juvenile court order appealed from has been stayed but CYA, in recognition of Owen's continuing progress toward rehabilitation, has released him on parole.

Factual Basis for Granting Parole or Vacating Commitment

At the juvenile court hearing on the motion to vacate his commitment, Owen claimed CYA could no longer serve his rehabilitative needs. [FN4] Owen testified he was entered in a college program at a CYA facility and had completed 39 units, [FN5] but had been denied permission to attend ***402** off-grounds college courses. He further testified he wished to pursue a professional baseball career, but baseball (hardball) facilities were not available at the facility. [FN6]

FN4 Owen's petition was supported by the testimony of a private psychiatrist, who stated there was only a "remote" likelihood of a repetition of Owen's behavior and that Owen could be reached through therapy as an outpatient for his continuing therapeutic needs. The witness also stated Owen had benefited by his commitment to CYA; however, he gave equivocal testimony concerning Owen's continuing benefit under CYA's program.

FN5 Owen had achieved a 3.02 grade point average on a maximum 4.0 scale.

FN6 It appears that the denial of off-grounds course participation and the unavailability of baseball facilities precipitated application for parole and, upon denial of such application, the filing of the instant petition.

A psychiatrist, a clinical psychologist intern, a social worker and parole agent, and a program administrator, all CYA staff members who had worked with Owen, testified he had continuing rehabilitative needs best served by the CYA program. They testified to CYA concern for Owen's lack of insight into the criminal nature of his conduct, his failure to acknowledge his role as a wrongdoer, and a tendency to excuse or justify his conduct. In their views Owen's continued confinement to an environment which required him to recognize and conform to standards approved by society would be beneficial to him and would foster further rehabilitation. On the other hand, an early release as on parole would tend to give support to his attitude of having committed an excusable or justifiable act.

There was also testimony that, after the possibility arose Owen would be transferred to another facility when found to have possession of marijuana during the pendency of the instant petition, he stated the school program had been of benefit to him and he wished to remain there.

Applicable Law

Owen contends the juvenile court is vested with final authority to determine his rehabilitative needs. He asserts the juvenile court's authority to vacate his commitment to CYA derives from section 779. [FN7] That portion of section 779 limiting the court's authority to "change, ***403** modify, or set aside" an order of commitment by requiring that it give "due consideration to the effect" of such an order "on the discipline and parole system of the Youth Authority," is critical to our resolutions herein.

FN7 Section 779 provides in pertinent part: "The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside such order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, or the parole and discharge of wards of the ju-

> venile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority."

Director claims the juvenile court may preempt CYA only when the court can identify a clear abuse of discretion. Owen, on the other hand, maintains the juvenile court judge, before exercising authority conferred by section 779, need only take CYA determinations into account, and that it had a right to "second guess" CYA. When reminded that section 779 required it to consider the effect of its order on CYA parole and discipline, the court in this case commented "I assure you that I have considered that and I have given it some thought, because I don't think that I should close my mind to the possibilities of my action, I think at the beginning of this hearing I should be aware of what possibilities might occur, what the effect of a court's order might be. [¶] Now, certainly I would agree that a Court should not step in in case after case with the Youth Authority unless there is a serious reason for it."

It is manifest that when the juvenile court grants relief pursuant to sections 778 and 779, and places a ward on probation, it necessarily makes a judgment which CYA is charged with making, based on the same evidence. Such action by the court is tantamount to the granting of parole, again on the basis of the same matters considered by CYA. When as here such court action is taken in response to CYA's refusal to grant parole, it is inescapable the court has substituted its judgment for that of CYA.

The Legislature has not clearly defined the circumstances under which a juvenile court may intervene in a matter concerning the rehabilitative needs of a ward it has committed to CYA. The only express direction is contained in section 779 that the court "shall give due consideration to the effects [of setting aside an order of commitment] upon the discipline and parole system of" CYA, and that the authority to set aside an order of commitment "shall not be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of" CYA. (See fn. 7, *ante*.) CYA thus argues section 779 authorizes a juvenile court to intervene only when to do so does not interfere with CYA's proper administration of paroles and discharges.

Although dealing with revocation rather than granting of parole, support for CYA's position is found in *In re Ronald E*. (1977) 19 Cal.3d ***404** 315 [137 Cal.Rptr. 781, 562 P.2d 684]. In that case a juvenile, already a ward of the court committed to CYA, engaged in other criminal activity while on parole. After making initial findings on charges under supplemental petitions (§ 707), but without issuing a dispositional order, the juvenile court referred the matter to CYA "for final disposition." CYA then relied on juvenile court findings in considering the question of parole revocations. We held the juvenile court proceedings were inappropriate to initiate revocation of CYA parole. "Examination of the statutes governing Youth Authority parole and revocation procedure indicates that the juvenile court should play no part in the parole revocation process. The Youth Authority Act provides that the board has the power to grant and revoke parole. (§ 1711.3.) ... [¶] No role is specified for the juvenile court with respect to revocation of parole. The reason is clear: the Youth Authority Act contemplates that the board or its representative is to conduct the parole revocation hearing, and then itself determine whether a parole violation in fact occurred and take appropriate action with respect to revocation or continuation of parole. The juvenile court is not authorized to act essentially in the role of a Youth Authority parole revocation hearing officer, as it did in this case." (*Id*., at p. 327.) [FN8]

> FN8 We further held in *Ronald E*. that CYA could not rely "for any purpose" - including purposes of parole revocation - on juvenile court determinations not resulting in appealable orders.

While *Ronald E*. deals only with parole revocation, our courts have also held the juvenile court is without jurisdiction to release a ward on parole from CYA. (*Breed v. Superior Court* (1976) 63 Cal.App.3d 773, 778 [134 Cal.Rptr. 228].) In so holding the court particularly relied on that provision of section 779 precluding a juvenile court from interfering with the CYA's "system of parole and discharge now or hereafter established by law, or by rule of" CYA. (*Id*., at pp. 787-788.) The court also stated the "Legislature

has properly delegated to the Youth Authority the discretion to determine whether its faculties will be or are of benefit to the ward." (*Id*., at pp. 784-785.) *Breed* is consistent with our expression in *In re Arthur N*. (1976) 16 Cal.3d 226 [127 Cal.Rptr. 641, 545 P.2d 1345] that commitment to CYA "removes the ward from the direct supervision of the juvenile court" and that it was the function of CYA to determine the proper length of its jurisdiction over a ward. (*Id*., at pp. 237-238.)

In the related field of jurisdiction to determine the rehabilitative needs of persons convicted of crimes, we have concluded the Adult Authority had the exclusive power to determine questions of rehabilitation. "If ... the court were empowered ... to recall the sentence and grant probation if the court found that the defendant had become rehabilitated after his ***405** incarceration, there manifestly would be two bodies (one judicial and one administrative) determining the matter of rehabilitation, and it is unreasonable to believe that the Legislature intended such a result." (*Holder v. Superior Court* (1970) 1 Cal.3d 779, 782 [83 Cal.Rptr. 353, 463 P.2d 705]; see also *Alanis v. Superior Court* (1970) 1 Cal.3d 784, 786-787 [83 Cal.Rptr. 355, 463 P.2d 707].) While different statutes - even different codes - regulate the division of responsibility between the concerned administrative agency and court, it appears to be as unreasonable to assume the Legislature intended that both the juvenile court and CYA are to regulate juvenile rehabilitation as it is to assume that both the superior court and Adult Authority are to regulate criminal rehabilitation.

(1a) In view of the foregoing it appears section 779 does not constitute authority for a juvenile court to set aside an order committing a ward to CYA merely because the court's view of the rehabilitative progress and continuing needs of the ward differ from CYA determinations on such matters arrived at in accordance with law. The critical question is thus whether CYA acted within the discretion conferred upon it in rejecting Owen's application for parole. If so, there is no basis for judicial intervention by the juvenile court.

Conclusion

Owen's petition is supported by little more than a showing that after 18 months of confinement he had made good progress toward parole or outright release, that he had legitimate ambitions which he claimed could best be achieved if not confined, and a lone expert opinion that rehabilitation could best be accomplished in some other environment. But even that expert recognized Owen's need for continued psychiatric treatment and acknowledged release might have a detrimental effect upon the therapeutic benefit derived from working toward a regular grant of parole. He also gave conflicting testimony as to whether Owen would continue to benefit by treatment in CYA facilities.

Witnesses for CYA raised serious questions whether Owen had assumed a proper degree of responsibility for his grievous misconduct. They were unanimously of the opinion his early release would tend to be viewed by Owen as approval of such misconduct, thereby damaging rehabilitative efforts. They were also of the view that while Owen had made a good adjustment during his 18 months of commitment, he would continue to benefit by other adjustments, particularly through recognition of the anti-social nature of his offense. ***406**

It fairly appears the record in the instant case discloses a debatable question whether Owen's rehabilitative needs could best be served by his continued commitment to CYA. (2)**(See fn. 9.)** CYA acted well within law and discretion vested in it by the Legislature in denying Owen's application for parole in 1976. [FN9] (1b) In enacting section 779 in context with the Youth Authority Act the Legislature did not intend to authorize the juvenile court to substitute its judgment for that of CYA in such circumstances. The fact the question of release is debatable does not invoke judicial intervention - such circumstance tends instead to give conclusive effect to CYA's determination.

FN9 Although testimony at the hearing focused on Owen's rehabilitative needs, a second factor which CYA must consider in its decision to release or retain a ward in custody is the safety of the public. (§§ 1700, 1765; see *In re Martinez* (1970) 1 Cal.3d 641, 650 [83 Cal.Rptr. 382, 463 P.2d 734].) Here Owen stipulated to having fired a rifle bullet from a bedroom window into his father's head at a distance of 35 feet. CYA's program was designed not only for Owen's needs, but also to insure the public's safety upon his release, and Owen's failure to accept responsibility for his criminal conduct was a factor which was a legitimate concern to

CYA.

Giving meaning to the intendment of section 779 together with policies set forth in the balance of the Youth Authority Act, we hold a juvenile court may not act to vacate a proper commitment to CYA unless it appears CYA has failed to comply with law or has abused its discretion in dealing with a ward in its custody. Section 779 does not authorize judicial intervention into the routine parole function of CYA, as was done in this case.

The order appealed from is reversed.

Mosk, J., Richardson, J., and Manuel, J., concurred.

BIRD, C. J.

I must respectfully dissent.

The majority today strip juvenile courts of their statutory power to vacate Youth Authority commitments when, in the court's judgment, such action would be in a ward's best interests. In so holding, the majority override the legislative mandate of Welfare and Institutions Code sections 775, 778 and 779. Adherence to these statutes requires this court to affirm the juvenile court's order.

The Legislature has vested in juvenile courts broad powers to amend dispositional orders. Welfare and Institutions Code section 775, ignored by the majority, provides that "[*a*]*ny* order made by the [juvenile] court in ***407** the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, *as the judge deems meet and proper* ...." [FN1] (Italics added.) Further, section 778 allows the ward, a parent, or an interested party to petition the juvenile court to amend or set aside a previous order on the grounds of "new evidence" or "change of circumstance." [FN2] That same statute provides that the court shall hold a hearing on the petition if it appears that the proposed change may promote the ward's "best interests." Finally, section 779 specifically empowers the juvenile court to "change, modify, or set aside" a previous order committing a minor to the Youth Authority. [FN3] (See *In re Arthur N.* (1976) 16 Cal.3d 226, 238, fn. 15 [127 Cal.Rptr. 641, 545 P.2d 1345].) These three sections authorize a juvenile court to vacate a Youth Authority commitment whenever changed circumstances convince the court that a different disposition would be in a ward's best interest.

FN1 From the italicized language, it is evident that the Legislature intended to give juvenile court judges wide discretion to amend or vacate their previous orders, including dispositional orders.

All statutory references are to the Welfare and Institutions Code.

FN2 Section 778: "Any parent or other person having an interest in a child who is a ward of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction.

It if appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to such persons and by such means as prescribed by Sections 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes."

FN3 Section 779 provides in pertinent part: "The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside such order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth

> Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority."

The majority reject this clear grant of authority by focusing on two cautionary statements in section 779. The first requires juvenile court ***408** judges who amend or vacate a commitment order to "give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority ...." However, the absence of prohibitory language in the sentence underscores the fact that the Legislature did not intend to prevent juvenile courts from setting aside commitment orders. Rather, the Legislature merely sought to have the court deliberate upon the effect of vacating a commitment, to insure that the court does not hastily or unnecessarily interfere with parole determinations. [FN4]

> FN4 In this case, the judge expressly considered the effect of his order. He acknowledged that "a court should not step in in case after case with the Youth Authority unless there is a serious reason for it." He concluded that under the proper circumstances, vacating an earlier commitment would not intrude on the Youth Authority's parole system or treatment plan.

The majority also focus on the fourth sentence of section 779. There, after having given juvenile courts the power to set aside Youth Authority commitments, the Legislature states: "*Except as in this section provided*, nothing in this chapter shall be deemed to interfere with the [Youth Authority's] system of parole and discharge ...." (Italics added.) It is curious that in describing this provision, the majority omit reference to the italicized introductory clause. [FN5] (Maj. opn., *ante*, p. 403.) That clause plainly signifies a legislative recognition that by authorizing juvenile courts to set aside commitment orders, the Legislature was creating an exception to the Youth Authority's exclusive discretion in parole matters. If the Legislature had not intended to allow the exercise of judicial discretion in this area, it would not have written the introductory clause. In omitting that clause from their analysis, the majority are less than faithful to the plain language and meaning of the statute.

> FN5 It is also curious that the majority overlook section 1704, which provides that "[n]othing in [the Youth Authority Act] shall be deemed to interfere with or limit the jurisdiction of the juvenile court." Under this provision, the Legislature's grant of discretion in parole matters to the Youth Authority (§§ 1711.3, 1765, 1766) cannot be deemed to interfere with or limit the juvenile court's continuing jurisdiction over wards committed to the Youth Authority (§ 607). Yet this is precisely what the majority do in holding that the juvenile court's jurisdiction to set aside a commitment order is limited to situations where the Youth Authority has abused its discretion.

To reach their result, the majority also take great liberty with the case law. The majority quote *In re Arthur N.*, *supra*, 16 Cal.3d at pages 237-238 for the proposition that commitment to the Youth Authority "removes the ward from the direct supervision of the juvenile court." (Maj. opn., *ante*, p. 404.) However, the majority ignore the footnote qualifying that statement: "The court may, however, set aside the commitment on notice and hearing and return the minor to the former wardship status. (§ 779.)" (16 Cal.3d at p. 238, fn. 15.) ***409**

Further, the majority's summary description of *Breed* v. *Superior Court* (1976) 63 Cal.App.3d 773 [134 Cal.Rptr. 228], on which they heavily rely, is misleading. (Maj. opn., *ante*, p. 404.) In *Breed*, the Youth Authority returned a difficult ward to the juvenile court. After the court declined to set aside the original order committing the ward to the Youth Authority, the Youth Authority refused to accept his return. The juvenile court then released the ward from his interim custody until the Youth Authority agreed

to accept his return.

On these facts, the Court of Appeal held that the juvenile court's temporary release of the minor was "a technical error" since section 779 prohibits juvenile courts from interfering with the Youth Authority's system of discharge *except* where the court changes, modifies or sets aside the original order of commitment. (*Id*., at pp. 781, 788.) The ward's release in *Breed* did not result from a change, modification, or setting aside of the original commitment. Indeed, the judge expressly declined to do so. (*Id*., at pp. 782, 785.) Thus, *Breed* differs critically from this case and in no way limits the power of juvenile courts to discharge wards from the Youth Authority under the first sentence of section 779. [FN6]

> FN6 The majority also quote out of context *Breed's* statement that "[t]he Legislature has properly delegated to the Youth Authority the discretion to determine whether its facilities will be or are of benefit to the ward." (*Id*., p. 785; maj. opn., *ante*, p. 404.) The majority omit the statutory authority *Breed* cites for this proposition: sections 736 and 780. These statutes respectively describe (1) the kinds of persons whom the Youth Authority shall accept (§ 736), and (2) the kinds of persons whom the Youth Authority may return to the committing court (§ 780). Neither provision is involved in this case. Neither provision in any way limits section 779's grant of authority to juvenile courts to set aside an original order committing a minor to the Youth Authority.

Again, in citing *In re Ronald E*. (1977) 19 Cal.3d 315 [137 Cal.Rptr. 781, 562 P.2d 684], the majority rely on a case which is inapposite. *Ronald E*. holds that in the absence of authorizing legislation, parole revocation proceedings may not be initiated in juvenile court. (*Id*., at p. 326.) This holding is entirely consistent with the juvenile courts' power to set aside Youth Authority commitments since section 779 expressly authorizes such action.

Finally, the majority seek support in *Holder v. Superior Court* (1970) 1 Cal.3d 779 [83 Cal.Rptr. 353, 463 P.2d 705] and *Alanis v. Superior Court* (1970) 1 Cal.3d 784 [83 Cal.Rptr. 355, 463 P.2d 707]. *Holder* and *Alanis* are readily distinguished from the present case since they both involve interpretation of the adult sentencing law as opposed to the Juvenile Court Law. The adult law includes no provisions comparable to sections 775, 778 and 779. The courts' broad powers to change *juvenile* dispositions ***410** under these sections are in keeping with the special concern of the Juvenile Court Law with the welfare and rehabilitation of young people under its jurisdiction. (§ 202; see, e.g., *T.N.G.* v. *Superior Court* (1971) 4 Cal.3d 767, 775 [94 Cal.Rptr. 813, 484 P.2d 981].)

Clearly, the case law does not support the majority's conclusion that the Legislature did not mean what it plainly stated in sections 775, 778 and 779. These statutes give juvenile courts the authority to set aside Youth Authority commitments to promote a ward's best interests. Nothing in these statutes purports to limit this power to situations where the Youth Authority "has failed to comply with law or has abused its discretion." (Maj. opn., *ante*, p. 406.) To the contrary, the *court* is accorded great discretion in determining whether the circumstances justify a change in disposition or total termination of the court's jurisdiction. [FN7] (See fn. 1, *ante*; *In re W.R.W*. (1971) 17 Cal.App.3d 1029, 1037 [95 Cal.Rptr. 354].) "[I]n the absence of a clear showing of abuse of discretion, an appellate court is not free to interfere with the trial court's order." (*In re Corey* (1964) 230 Cal.App.2d 813, 831-832 [41 Cal.Rptr. 379].)

> FN7 Indeed, the court has a *duty* to terminate its jurisdiction when it becomes convinced on the evidence that the ward no longer requires the court's supervision. (See,e.g., *In re Francecisco* (1971) 16 Cal.App.3d 310, 314 [94 Cal.Rptr. 186].)

In the present case, a review of the evidence establishes that the juvenile court did not abuse its broad discretion in finding "a very great change of circumstances" and in setting aside Owen's Youth Authority commitment. The annual review made by Owen's immediate supervisors at the Youth Authority indicated that Owen had made "superior progress" in achieving the goals set in his rehabilitation program, and that his schoolwork was "outstanding." The report also stated that Owen "possessed leadership qualities," avoided negative influences, and was a "self-starter." The report concluded that "he should have no problem whatsoever maintaining any job he should happen to have." Owen's evaluators recom-

mended his release.

In addition, a psychiatrist testifying on Owen's behalf stated that Owen had arrived at a philosophical understanding of his role in his father's death and that the chance of a recurrence of such violence was remote. The Youth Authority's experts agreed that the killing was an isolated incident and that Owen was not a hazard to the community.

Further, the evidence was uncontradicted that Owen had the potential ability to play professional baseball. However, the Youth Authority facilities where he was confined were inadequate to develop this talent. ***411**

On this record, it is clear that substantial evidence supported the trial judge's determination in this case. The evidence showed that Owen had made significant progress in the Youth Authority, that he was not a threat to the safety of the public, and that his educational and professional opportunities would be enhanced by his release. Experts for both Owen and the Youth Authority testified that denial of release could impede his progress. The trial court's decision to set aside the Youth Authority commitment and to order outpatient psychiatric care for Owen was well within its discretion.

The trial court's order should be affirmed.

Tobriner, J., and Newman, J., concurred.

Respondent's petition for a rehearing was denied March 29, 1979. Bird, C. J., and Tobriner, J. were of the opinion that the petition should be granted. ***412**

Cal.
In re Owen E.
23 Cal.3d 398, 592 P.2d 720, 154 Cal.Rptr. 204

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MAJOR ISSUES

Judiciary and Criminal Justice

☑ Prison Inmate Growth Slows

- Although the state's prison inmate population is projected to grow over the next five years, the rate of growth is much slower than in recent years. The reasons include reductions in the number of parolees being returned to prison after failing while on parole and the number of parolees being sent back to prison for new violations of law.
- Even with the lower projections, however, the prison system will run out of bed space by 2001. We recommend that the Legislature take a balanced approach to accommodating future inmate population growth, weighted evenly between adding new prison capacity and enacting policy changes to reduce the expected growth.
- Our review indicates that the projected inmate population for the current and budget years is overbudgeted by a total of $67 million (see pages D-60 to D-69).

☑ Legislature Should Adopt "Containment" Strategy for Adult Sex Offenders

- About half of the 7,300 adult sex offenders now on parole are considered to pose a high risk of committing new sex crimes and other violent acts. Very few of these offenders received any treatment services while in prison to curb their pattern of criminal activity and only a fraction receive intensive supervision on parole.
- We recommend that the Legislature implement a more cost-effective strategy of "containment" of high-risk adult sex offenders. This strategy includes longer and more

intensive supervision of high-risk sex offenders on parole, regular polygraph examinations of sex offenders, and pre- and post-release treatment to help control the behavior of these offenders (see pages D-11 to D-38).

New Youth Authority Fees Achieving Intended Objectives

- Legislation to increase the fees paid by counties for committing less serious offenders to the Youth Authority appears to be having its desired effects. Counties are sending significantly fewer less serious offenders to the Youth Authority. Counties are also moving to increase their menu of local programming options for these offenders.
- We recommend a number of steps to improve the current fee system, including giving counties more input into decisions regarding the length of stay of less serious offenders in the Youth Authority and adjusting the state's fees periodically to account for the effects of inflation.
- We find that the Youth Authority still has an important role to play in the treatment of less serious offenders. We recommend that the Youth Authority report on the feasibility of developing programming targeted to chronic and intractable offenders who are in the less serious categories (see pages D-95 to D-109).

Proposed Budget Not Consistent With Legislative Direction in Several Areas

- The budget proposal does not fully implement several programs as intended by the Legislature. This includes: (1) a 1998 legislative agreement to balance expansion of prison capacity with new programs intended to reduce recidivism rates of offenders on parole (see pages D-69 to D-72); (2) the lack of any proposed expansion for juvenile crime programs (see pages D-81 to D-84); and (3) the proposal to reduce the county share of costs for trial courts by half of the amount required in law (see pages D-118 to D-120).

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Judiciary and Criminal Justice

OVERVIEW

Judiciary and Criminal Justice

Total expenditures for judiciary and criminal justice programs are proposed to increase slightly in the budget year. The principal reasons for the increase are (1) recent legislation that required the state to take on the primary responsibility for funding the trial courts, and (2) continuing, but slower, increases in the state's prison and parole populations. The additional costs are partially offset by federal fund reimbursements for incarceration and supervision of undocumented immigrants which the budget assumes will increase significantly in the budget year. The budget proposes few new programs and does not fully implement a number of programs as directed by the Legislature last year.

The budget proposes total expenditures of $6.6 billion for judiciary and criminal justice programs in 1999-00. This is an increase of $214 million, or 3.4 percent, above estimated current-year spending. The increase is due primarily to increases in the state's costs for supporting the trial courts and the projected increase in the state's prison inmate and parole populations. These increases are partially offset by federal fund support that the budget assumes the state will receive to pay the costs of incarcerating undocumented felons in state prison.

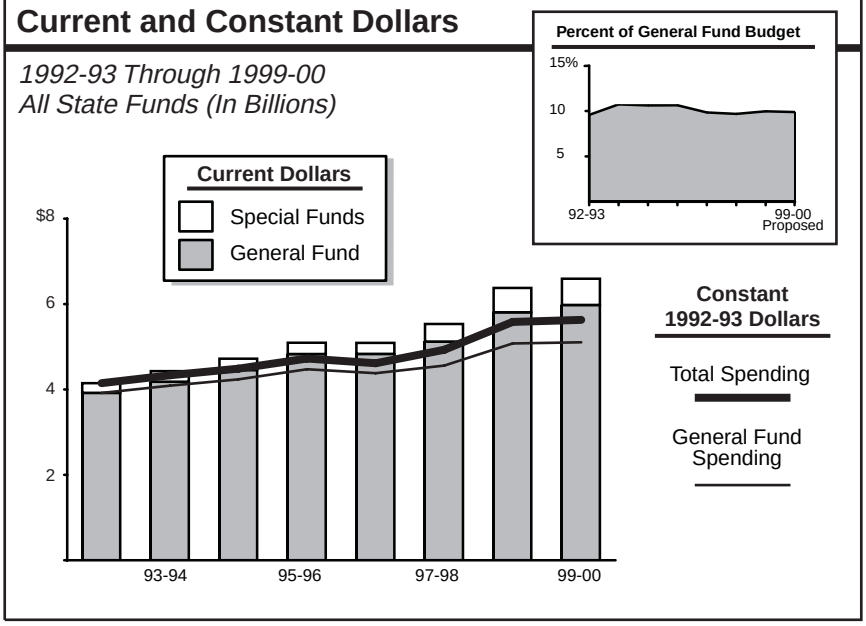
The budget proposes General Fund expenditures of $6 billion for judiciary and criminal justice programs, an increase of $171 million, or 2.9 percent, above estimated General Fund expenditures in the current year.

Figure 1 (see next page) shows expenditures from all state funds for judiciary and criminal justice programs since 1992-93. Expenditures for 1994-95 through 1999-00 have been reduced to reflect federal funds the state received or is expected to receive to offset the costs of incarceration and parole of undocumented felons. As Figure 1 shows, total expenditures for judiciary and criminal justice programs have increased by $2.4 billion since 1992-93, representing an average annual increase of 6.9 percent.

Figure 1

Judiciary and Criminal Justice Expenditures
Current and Constant Dollars

1992-93 Through 1999-00
All State Funds (In Billions)



SPENDING BY MAJOR PROGRAM

Figure 2 shows expenditures for the major judiciary and criminal justice programs in 1997-98, 1998-99, and as proposed for 1999-00. As the figure shows, the California Department of Corrections (CDC) accounts for the largest share of total spending in the criminal justice area.

MAJOR BUDGET CHANGES

Figure 3 (see page 8) presents the major budget changes resulting in a net increase of $214 million in total state spending for judiciary and criminal justice programs. Generally, the major changes can be categorized as follows:

The Budget Proposes to Provide Full Funding for Caseload Increases, But Assumes Slower Growth in Caseloads. This includes funding for projected growth in the state's prison, ward, and parole populations. The budget contains no proposals that would result in any significant reduction

Figure 2

Judiciary and Criminal Justice Budget

1997-98 Through 1999-00
(Dollars in Millions)

	Actual 1997-98	Estimated 1998-99	Proposed 1999-00	Change From 1998-99 Amount	Change From 1998-99 Percent
Department of Corrections					
General Fund	$3,621.3	$3,900.4	$4,035.8	$135.4	3.5%
Special funds	41.8	43.3	45.8	2.6	5.9
Reimbursements and federal funds	111.2	80.6	69.3	-11.3	-14.0
Totals	**$3,774.3**	**$4,024.3**	**$4,150.9**	**$126.6**	**3.1%**
Department of the Youth Authority					
General Fund	$329.6	$315.9	$320.4	$4.5	1.4%
Bond funds and special funds	12.9	6.3	2.0	-4.3	-68.2
Reimbursements and federal funds	48.0	66.6	69.5	2.9	4.3
Totals	**$390.5**	**$388.8**	**$391.9**	**$3.1**	**0.8%**
Federal offset for undocumented felons	$241.0	$172.7	$272.7	$100.0	57.9%
Trial Court Funding					
General Fund	$399.2	$699.2	$814.8	$115.6	16.5%
Special funds	278.8	411.4	454.4	43.0	10.5
County contribution	415.9	555.2	504.3	-50.8	-9.2
Totals	**$1,093.9**	**$1,665.8**	**$1,773.6**	**$107.8**	**6.5%**
Judicial					
General Fund	$187.9	$213.2	$237.8	$24.6	11.5%
Other funds and reimbursements	35.8	48.6	51.1	2.5	5.1
Totals	**$223.7**	**$261.8**	**$288.9**	**$27.1**	**10.4%**
Department of Justice					
General Fund	$247.0	$263.8	$237.5	-$26.3	-10.0%
Special funds	73.2	79.9	81.1	1.2	1.5
Federal funds	25.0	36.1	40.7	4.6	12.8
Reimbursements	94.6	104.4	120.9	16.6	15.9
Totals	**$439.8**	**$484.2**	**$480.3**	**-$3.9**	**-0.8%**

Figure 3

Judiciary and Criminal Justice
Proposed Major Changes for 1999-00
All State Funds

Department of Corrections	**Requested:**	**$4.2 billion**	
	Increase:	**$127 million**	**(+3.1%)**

- ✚ $67.3 million for inmate and parole population increases
- ✚ $31.4 million for employee compensation adjustments
- ✚ $43.6 million for various program changes

- ▬ $37.5 million for various one-time expenditures

Trial Court Funding	**Requested:**	**$1.8 billion**	
	Increase:	**$108 million**	**(+6.5%)**

- ✚ $48 million to reduce county share of costs
- ✚ $20 million for salary increases for local court employees
- ✚ $19.2 million for county-provided services charged back to trial courts
- ✚ $10 million to promote improvements and efficiencies in courts

Department of Justice	**Requested:**	**$480 million**	
	Decrease:	**$3.9 million**	**(-0.8%)**

- ✚ $6.9 million for staffing and equipment for lab work on DNA samples
- ✚ $5 million for continued defense in the *Stringfellow* case
- ✚ $4.5 million to share criminal history information with other states
- ✚ $4 million for equipment and vehicle replacement

- ▬ $15.5 million for lab work that would be charged to users
- ▬ $9.2 million for tobacco litigation expenses

in the growth in these populations. However, the budget assumes that the prison inmate population will grow at a significantly slower rate than in recent years, based on the most recent trends. (We discuss inmate population trends in detail in our analysis of CDC later in this chapter.)

The budget does not propose to construct any new state-operated prisons but does propose to move forward with projects authorized last year that would build 1,000 additional prison beds on the grounds of existing prisons (these facilities would not come on-line during the budget year, however). The budget also proposes staffing to contract for an additional 2,000 beds in privately operated detention facilities that were authorized last year.

In addition, the budget proposes to provide full funding for workload increases in other judicial and criminal justice programs, such as the Judicial Council's Court-Appointed Counsel Program and various programs in the Department of Justice (DOJ).

The Budget Assumes a Substantial Increase in Federal Fund Reimbursements for Incarceration and Parole of Undocumented Immigrant Offenders. The budget assumes that the state will receive $273 million in federal funds in 1999-00 to offset the state's costs to incarcerate and supervise undocumented immigrants in CDC and the Department of the Youth Authority. This is an increase of $100 million, or 58 percent, above the administration's estimate of federal funds for the current year. These federal funds are counted as offsets to state expenditures and are not shown in the budgets of CDC and the Youth Authority, or in the budget bill. (We discuss the Governor's budget assumption regarding the projected increase in our analysis of CDC.)

The Budget Is Not Consistent With Provisions of Current Law and Legislative Direction in Several Areas. The Governor's budget proposal does not fully implement several programs as intended by the Legislature. For example, legislation enacted last year reduced the amounts that 38 counties are required to pay the state to support the trial courts beginning in 1999-00, for a savings to counties (and corresponding costs to the General Fund) of $96 million. The Governor's budget, however, makes only half of the required reduction in county contributions, resulting in General Fund savings to the state of $48 million in the budget year. The budget indicates that a budget trailer bill will make the change in law to allow the lower reduction in county contributions. (We discuss this issue in our analysis of Trial Court Funding.)

In addition, the Governor's budget does not fully implement a number of state and local programs enacted in legislation last year that were de-

signed to slow the growth in prison population and assist local criminal justice agencies. Although some of the slow-down in implementation is due to technical reasons, others are the result of policy decisions by the administration. (We discuss these issues in our analyses of CDC and the Board of Corrections.)

The Budget Proposes Relatively Few Significant Program Initiatives. Like the overall budget proposal, the budget for judiciary and criminal justice programs can be characterized as a "workload" budget that provides funds to support workload growth but does not contain many new program initiatives. In addition, many of the program initiatives proposed, such as augmentations for various consumer-oriented legal programs in the DOJ, are relatively small. Other initiatives involve redirection of existing resources or changes in program content, such as the proposed changes in the COPS (Citizens' Option for Public Safety) program which provides funds on a per capita basis to local governments for criminal justice programs (we discuss this program in our analysis of "Local Government Finance" in the General Government Chapter of this *Analysis*). Finally, some initiatives actually result in General Fund savings, such as the proposal to charge fees to state and local agencies that use services provided by DOJ's crime labs which the budget estimates will generate General Fund savings of $15.5 million in the budget year. (We discuss this proposal in our analysis of DOJ.)

CROSSCUTTING ISSUES

Judiciary and Criminal Justice

A "CONTAINMENT" STRATEGY FOR ADULT SEX OFFENDERS ON PAROLE

About half of the 7,300 adult sex offenders now under state parole supervision are considered to pose a high risk of committing new sex crimes and other violent acts. Very few of these offenders have received any treatment while in prison to curb their pattern of criminal activities, and only a fraction receive intensive supervision, treatment, and control after they are released into the community. Two out of three fail on parole by committing new crimes or parole violations. A program to address this public concern by sending such offenders to state mental hospitals is proving costly and is holding relatively few offenders.

In light of these concerns, we recommend the implementation of a more cost-effective strategy of "containment" of high-risk adult sex offenders. The containment strategy includes longer and more intensive supervision of high-risk adult sex offenders released on parole, regular polygraph examinations of sex offenders, and pre- and post-release treatment programs to help control the behavior of habitual sexual offenders.

SEX OFFENDERS IN COMMUNITIES A MAJOR PUBLIC CONCERN

Although felony sex crime rates have declined in California in recent years, the growing presence of adult sex offenders in the community remains a major concern of the Legislature and the public. This concern

has prompted the state to take a number of steps to further the arrest and punishment of such offenders, tighten sex offender registration requirements, and notify the public when such offenders are paroled to their neighborhoods.

The Community Impact of Sex Offenders

Registration Requirement. About 80,000 persons are required by state law to register for life as sex offenders with their local police chief or county sheriff because they were convicted of felony or misdemeanor sex-related crimes such as rape, child molestation, sexual assault, indecent exposure, or possession of pornography.

About 7,300 of the adults subject to registration requirements are under state parole supervision, with about 6,800 of the nearly 15,000 sex offenders now held in state prison released to parole each year.

Reported Sex Crimes on the Decline. The presence of these adult sex offenders in the community, and the risk some pose to public safety, has been a concern to the public and to the Legislature. This remains the case even though the numbers of reported sex crimes and arrests in California for sex crimes have declined in recent years. The number of reported rapes, for example, dropped from 12,700 in 1990 to about 10,200 in 1997—a decrease of almost 20 percent. The number of adults arrested for felony child molestation was about 3,900 in 1990, but in 1997 was 3,200—a decrease of about 17 percent. Significant declines in adult arrests have also been documented during the 1990s for such misdemeanor sex crimes as indecent exposure, annoying children, possession of obscene matter, and lewd conduct.

Many Crimes Unreported. One cause of the continued public concern is that many serious sex crimes are never reported to authorities and thus result in no arrest or punishment of the offender. National data and California criminal justice experts indicate that sex offenders are apprehended for a fraction of the crimes they actually commit. By some estimates, only one in every three to five serious sex offenses are reported to authorities and only 3 percent of such crimes ever result in the apprehension of an offender.

Another cause of concern is the effects of sex crime upon its victims, whom statistics show are overwhelmingly women and children. Academic studies and California Department of Corrections (CDC) data confirm that a single child molester can abuse hundreds of children and that his crimes often go unreported and unpunished over many years.

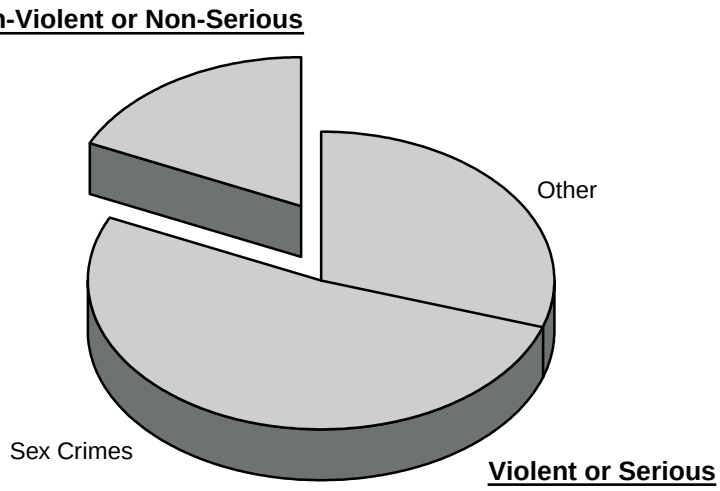
A Different Criminal Profile. Sex offenders can be distinguished from the overall population of adult felons now supervised on parole in a number of significant ways. The CDC statistics indicate:

- As shown in Figure 1, about 80 percent were last sent to prison primarily for committing a violent or serious crime, most commonly a sex-related offense. Only about 30 percent of the parole population as a whole was last sent to prison for a violent or serious felony.

Figure 1

Sex Offender Parole Population by Type of Offense

June 30, 1998



- Adult sex offenders released to parole are, on the whole, an older group. As shown in Figure 2 (see next page), about 66 percent are age 35 or older, while 45 percent of the parole population as a whole is in this age group.
- A higher proportion of the sex offenders released to parole are white. About 38 percent of the supervised parole population of sex offenders is white, 35 percent is Hispanic, and 22 percent is black, as shown in Figure 3 (see next page). The overall parole population is 29 percent white; 40 percent Hispanic; and 26 percent black.
- Very few sex offenders supervised on parole are female. Men constitute 99 percent of the sex offender population on parole, compared with 96 percent of the parole population overall.

Figure 2

Sex Offender Parole Population by Age Group

June 30, 1998

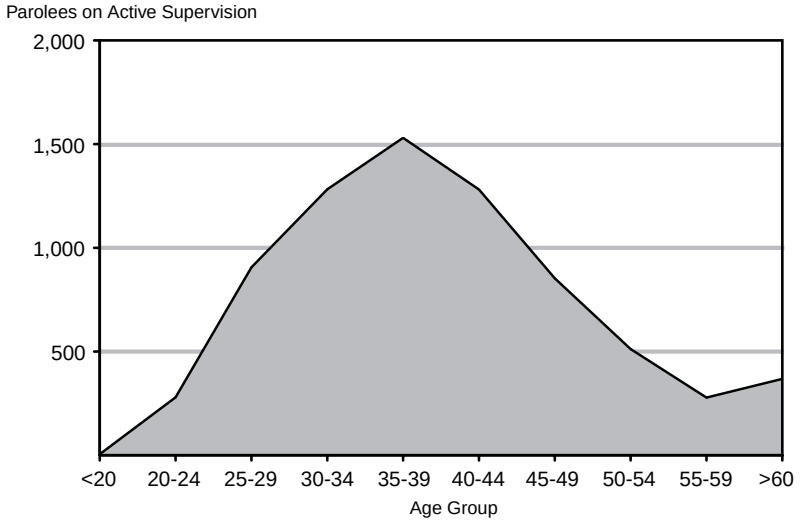
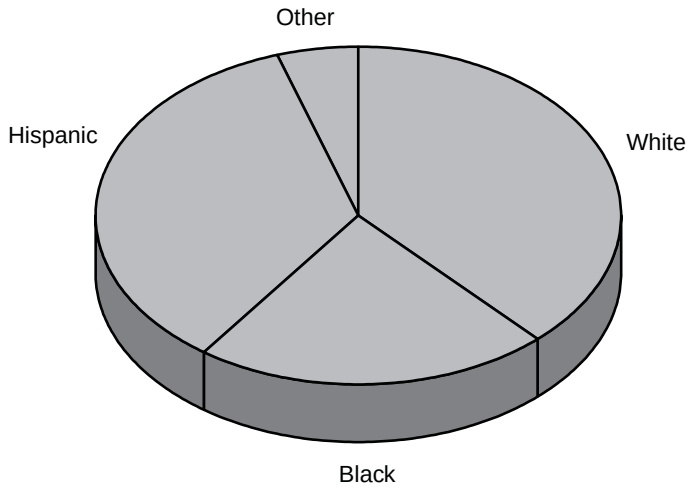


Figure 3

Sex Offender Parole Population by Ethnicity

June 30, 1998



The State's Approach to Dealing With Sex Offenders

The public's concerns about sex offenders has prompted the state to take a number of steps in recent years, sometimes in concert with federal and local law enforcement efforts. The significant actions taken in California are outlined below.

More and Longer Prison Sentences. State laws now provide longer prison terms for certain adult offenders who commit sex crimes or have a criminal history that includes such crimes.

One such measure was the so-called "One-Strike" law (Chapter 14, Statutes of 1994 [SB 26x, Bergeson]), which requires sentences of at least 25 years to life for specified felony sex offenders with a prior sex offense. As of September 30, 1998, 172 one-strike offenders had been imprisoned under its provisions. The annual number of one-strike commitments has been growing and now exceeds 69 per year.

The "Three Strikes and You're Out" law, also enacted in 1994, has significantly affected adult sex offenders. That is because prior felony sex convictions on an offender's record often count as "strikes" that bring a longer sentence for any subsequent felony conviction. As of September 30, 1998, about 1,400 sex offenders had received second- or third-strike sentences.

Due in part to these sentencing laws, the number of offenders sentenced annually to prison for felony sex crimes increased by 27 percent during the 1990s. About 2,600 court-ordered prison admissions per year are now for felony sex offenses. Because the average prison sentences handed down by the courts for felony sex offenses are getting longer, the number of adults held in prison for felony sex crimes has grown even faster and now exceeds 10,000 inmates. In addition, another 5,000 offenders are now being held in prison whose principal commitment offense was not a sex crime, but who nonetheless meet the definition of sex offenders because they committed such an offense in the past.

Parolees who violate the conditions of their parole by committing new sex offenses are being returned to prison more frequently by the Board of Prison Terms (BPT). The annual number of parolees returned to state custody in this way has more than quadrupled during the 1990s, with about 2,600 parolees returned to custody for sex-related parole violations during 1997-98. While BPT revocations of parolees have grown significantly overall, revocations for sex crime-related parole violations have grown even faster. Some categories of offenders, such as those committing incest, are being returned for substantially longer periods of time.

Tighter Registration Requirements. Beginning in 1947, state law has required certain felony and misdemeanor sex offenders (and certain other offenders such as arsonists) to register at least once per year—more often if they change their place of residence—with the local police chief or county sheriff. A series of recent state laws has strengthened the registration requirements and those requirements are being more rigorously enforced.

For example, Chapter 864, Statutes of 1994 (AB 1211, Rainey) now makes it a felony for certain sex offenders to fail to register and mandates incarceration of repeat violators. Other measures have narrowed the time period when sex offenders are required to reregister after moving, required transients to register every 90 days, established preregistration procedures for offenders released from jail or prison, required offenders who change their names to reregister, and required them to provide blood and saliva samples that can be used for DNA matching to solve crimes. The proposed 1999-00 budget requests $3.9 million to collect DNA samples from offenders now held in state prison.

Community Notification Efforts. In conformance with a federal statute known as "Megan's Law," named after a New Jersey child murdered by a sex offender, state and local law enforcement authorities in California have implemented programs to notify residents when a high-risk sex offender is present in their neighborhood.

The state distributes CD-ROM computer discs to local law enforcement agencies and operates a "900" telephone hotline to provide the public with information on the community of residence and zip code of felony sex offenders. The Governor's budget requests $183,000 to update the information on a monthly instead of the present quarterly basis. The state provides detailed information to local law enforcement agencies prior to the release of high-risk sex offenders, and authorizes those agencies to provide specific warnings and information about such offenders to schools and individuals determined to be at risk from their presence in the community.

Sexual Predator Apprehension Teams. The state has established teams of Department of Justice special agents in Sacramento, San Francisco, Fresno, and Los Angeles to investigate and track predatory and habitual sexual offenders. The state also participates with local law enforcement agencies in task forces created in Santa Clara and Los Angeles Counties to focus on the arrest and conviction of persons committing violent sexual assaults. According to the department, its teams of agents have arrested 800 individuals for sex and nonsex felony crimes during its first three years of operation.

"Sexually Violent Predator" (SVP) Law. Following the lead of several other states, California has enacted legislation (Chapters 762 and 763, Statutes of 1995 [AB 888, Rogan and SB 1143, Mountjoy]) providing for the court-ordered civil commitment to state mental hospitals of any offender determined to be a SVP. The commitments are sought for state prison inmates as they approach their scheduled parole dates. We discuss the SVP program in more detail later in this analysis.

In addition, several hundred sex offenders who are prison inmates or parolees are receiving mental health treatment services at state mental hospitals or community-release programs operated by the Department of Mental Health (DMH). We discuss these treatment programs later in this analysis.

Other Actions Targeting Sex Offenders. State law has created self-disclosure requirements and other barriers to the employment of sex offenders at such places as schools, youth programs, and community care facilities. Parolees with a history of sex offenses are now required to disclose their criminal past. One recent measure (Chapter 96, Statutes of 1998 [AB 1646, Battin]) prohibits authorities from placing a child molester who is released on parole within one-quarter mile of an elementary school.

Courts were also authorized under state law (Chapter 596, Statutes of 1996 [AB 3339, Hoge]) to order sex offenders who have assaulted children to undergo medication treatments (so-called "chemical castration") intended to curb their sexual impulses. As of November 1998, only one sex offender had been ordered to submit to this procedure.

The BPT and the CDC are subjecting some sex offenders to electronic monitoring in a pilot project authorized by Chapter 867, Statutes of 1995 (AB 1804, Goldsmith), that requires a report to the Legislature by January 2000.

WEAKNESSES IN THE STATE'S APPROACH

While the state is aggressively apprehending and institutionalizing adult sex offenders, it is doing relatively little to prevent high-risk sex offenders released on parole from committing new crimes. Almost two out of three sex offenders are failing on parole by committing parole violations or new crimes. Efforts to address this concern by sending such offenders to state mental hospitals or back to prison are proving costly and are holding relatively few offenders. Very few sex offenders released on parole received any treatment while in prison to curb their pattern of criminal activity, and only a fraction receive intensive supervision, treatment, and control after they are released on parole into the community.

A Flawed Parole System

In our *Analysis of the 1998-99 Budget Bill* (see page D-11), we concluded that there were major flaws in the state's adult parole system. We raised concerns about the way parolees were supervised and controlled in the community, and the inadequate resources provided for prison and parole programs that could assist offenders in reintegrating safely into the community. In our view, the cycle of parole failure and reincarceration resulting from the state's approach was driving up state costs while compromising public safety.

Our further analysis has identified similar problems in the way the state manages its population of sex offenders. A program intended to divert high-risk sex offenders released from prison into state mental hospitals is proving costly and currently holding relatively few offenders. Supervision and control of the vast majority of such offenders who are released on parole is inadequate. Few adult offenders are participating in pre- or post-release treatment—an approach proven effective in reducing criminal sexual activity—and tools such as polygraph examinations are not available to assist in their treatment and control.

Inadequate Supervision of Parolees

High-Risk Offenders Identified. The CDC has established criteria to help determine whether a sex offender who is being released on parole poses a high risk of committing a new offense. Those criteria include evidence that the offender has an established pattern of deviant sexual behavior. On the basis of these criteria, CDC has estimated that 48 percent of the adult parolees who are required to register as sex offenders—about 3,500 as of June 30, 1998—should be classified as high risk.

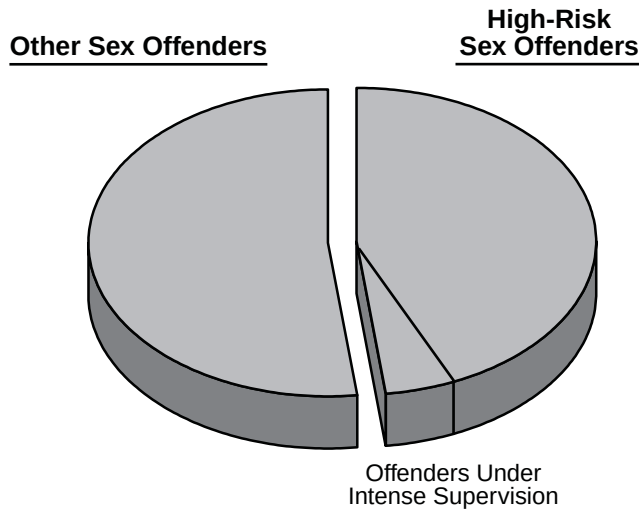
The CDC has established a specialized supervision program for the sex offenders it considers to be high risk. Under this program, each parole agent is assigned 40 high-risk sex offenders to supervise (less than half the average of 82 cases handled by parole agents). High-risk offenders remain on this special, more intense, caseload for two years and may stay on it longer if necessary.

However, CDC has established only 15 such specialized caseloads at seven locations around the state. As shown in Figure 4, only 600 of the 3,500 high-risk sex offenders on parole are receiving this more intensive level of scrutiny by parole agents. Most of the others are assigned to so-called "high-control" caseloads, in which one agent handles an average of 55 cases.

Figure 4

Sex Offender Parole Population Caseloads

June 30, 1998



The differences in caseload greatly affect the number of contacts that regularly occur between a parole agent and a sex offender—the primary means of ensuring that a parolee is in compliance with conditions of his parole. The CDC indicates that an offender on a 55-to-1 high-control caseload must be contacted by a parole agent at least once per month, while a parolee on a specialized sex offender caseload of 40 to 1 must be contacted at least three times per month.

Supervision Period. The customary period of parole supervision for most high-risk sex offenders is established in state law as two years, but can be extended by BPT to three years "for good cause." Offenders now receiving life sentences under the One-Strike or Three-Strikes laws will be subject to parole supervision for five years, but none are likely to be released from prison for many years.

Many correctional professionals and experts on deviant sexual criminal behavior agree that a standard two- to three-year period of parole, as has been established in California, is insufficient for high-risk sex offenders. The likelihood that they will commit new crimes, particularly sex offenses, is believed likely to persist for much longer for some individuals, possibly for the rest of their lives. Some child molesters, we are ad-

vised, appear to have a pattern of reoffending within months of their discharge from parole, even though they may have stayed out of trouble during their entire parole period. Notably, other states, such as Colorado and Arizona, are subjecting selected groups of adult sex offenders to at least a minimal level of community supervision for the rest of their lives in an effort to deter future criminal behavior.

Few Offenders Receive Treatment

Control, Not a Cure. Correctional professionals and experts on deviant sexual criminal behavior are in general agreement that no treatment program can "cure" a person with criminal sexual tendencies. However, there is a growing body of academic evidence suggesting that some therapies, often referred to as "cognitive-behavioral treatment" or "relapse prevention," can enable some high-risk sex offenders in prison or on parole to learn how to curb their impulses to commit further criminal acts.

Experts on this subject indicate that, to be effective, such programs must (1) be tailored especially for sex offenders, (2) be structured to progress through multiple phases, (3) address individual problems such as addiction to drugs or alcohol that may be related to their pattern of criminal behavior, (4) be of sufficient duration and intensity to be effective, and (5) have a strong "aftercare" component to ensure there is not a return to criminality after their release to the community. Medication treatments that can reduce the intensity of an offender's sexual impulses are used in conjunction with relapse-prevention therapy for particular cases. (Informed consent and medical protocols have been used in these instances.)

Sex offender treatment programs containing some of these elements have been implemented for California's sex offenders in the past, but are rarely available now for either prison inmates or parolees. This is the case even if an offender's criminal record was deemed so serious that it resulted in his referral to DMH for evaluation as an SVP. In cases when a sex offender does not receive an SVP commitment, he ordinarily would be subject to intensive supervision in the community but probably will not participate in a specialized sex offender treatment program.

The Sex Offender Treatment and Evaluation Project (SOTEP) Program. The DMH operated a relapse prevention program known as SOTEP from 1985 through 1995. The CDC inmate volunteers were transferred to the state mental hospital at Atascadero for 18 months to two years for sex offender treatment, with one year of aftercare following their release on parole.

Some groups of adult offenders participating in SOTEP evidenced lower rates of committing new sex crimes after their release to the community, although in most cases the degree of improvement was not statistically significant. The DMH evaluators of the program believe SOTEP might have proven more effective if the treatment program were of a longer duration, if more emphasis had been placed on practicing offender self-control techniques and less on individualized therapy, and if the aftercare component had stronger parole supervision and treatment.

The Legislature approved a 1995 measure to extend the SOTEP program for three more years, but it was vetoed by the Governor. The administration said it rejected the continuation of SOTEP because it was "no substitute" for a program for civil commitment of SVPs. Although the Governor's proposal to establish a SVP program was later approved, authority to continue SOTEP was never restored.

Parole Outpatient Clinics. A minimal level of mental health services continues to be provided by CDC for sex offenders through its four Parole Outpatient Clinics (POCs), which are focused on evaluation, counseling, and treatment of parolees with serious mental disorders. The CDC's practice is to refer all parolees subject to sex offender registration requirements to a POC, regardless of their mental condition. This is the case even though only a fraction of such offenders—as few as 10 percent, according to experts on sex offenders—have a diagnosed serious mental disorder such as schizophrenia. At any given time, more than 5,100 sex offenders are on a POC caseload.

We are advised by CDC that few of the sex offenders sent to the POCs are receiving the type or intensity of specialized treatment provided in successful relapse prevention programs. Following an initial psychiatric evaluation at a POC, most are in contact with its clinical staff only about once every 90 days. That compares with relapse prevention programs providing a minimum of at least several hours of programmed counseling and therapy *every week.* We discuss a better approach to this use of POC resources later in this analysis.

The DMH Programs. The only comprehensive programming remaining for California adult sex offenders occurs within the state mental hospital system and within the Conditional Release Program (CONREP), its post-release aftercare program. As of June 30, 1998, 352 forensic patients were being held in state mental hospitals as a result of rape or child molestation charges. (Some were inmates or parolees previously incarcerated by CDC, while others were sent to the hospitals directly by the courts and were never held in prison.) Another 123 forensic patients

originally held as a result of rape or child molestation charges have been released to the community and are now participating in CONREP.

The more intensive services provided through CONREP have been proven effective in reducing recidivism of sex offenders. A DMH evaluation indicated that sex offenders who received treatment in the state mental hospitals and subsequently in CONREP have a very low reoffense rate—less than 4 percent annually. However, except for SVP commitments, access to such programs is limited to sex offenders with serious mental disorders.

Even as California has been scaling back its sex offender treatment programs, such as SOTEP, a number of other states have been expanding such programs for their prison inmates and parolees. Relapse prevention programs have proven successful in reducing the rate of sexual reoffending of sex offenders in the States of Alaska, Washington, Arizona, and Oregon, as well as in Canada.

Polygraph Controls Absent

Technology Has Multiple Uses. In a number of other states, but not in California except on an experimental basis, polygraph examinations are increasingly being used to improve the treatment and control of adult sex offenders. A 1992 nationwide survey indicated that 25 percent of treatment programs for adult male sex offenders involved use of the polygraph. The examinations have proven useful chiefly because sex offenders, as a group, often have strong motivations to lie about their past and current behavior.

Clinicians in prison or parole sex offender treatment programs use the examinations as a tool to confront offenders who deny their history of assaultive sexual behavior. The threat of a polygraph prompts many offenders to disclose past criminal activity. One Colorado study documented how a group of 97 sex offenders initially admitted to a combined total of 227 victims. Faced with a polygraph examination of their criminal history, the same group of offenders subsequently admitted to more than 10,000 victims. Once a pattern of criminal history has been divulged, treatment providers can use that information to break down an offender's denial of culpability and convince the offender that he or she will be held accountable for future criminal activity.

Parole authorities can use such disclosures about past sexual misconduct to determine whether a parolee should be classified as a high-risk sex offender who should be subjected to closer scrutiny. The polygraph examinations also may help authorities determine whether special conditions of parole should be imposed on a particular offender. For example, if an examination prompted admissions that children from a certain age

group was a favorite target of the offender for sexual assault, the parole conditions could specify that an offender avoid particular locations where such a victim group was often present.

Checking on Parole Compliance. After an offender has been released on parole, continued regular polygraph examinations—usually twice per year—can be used to help evaluate whether a sex offender is continuing to comply with conditions of parole and avoiding criminal activity. While an offender's failure of a lie-detector test is not used as grounds for criminal prosecution or revocation, such a result may alert authorities to investigate, confirm, and punish ongoing criminal behavior.

Some states, including Texas, Arizona, and Colorado, have developed or are now developing written protocols that govern the way polygraph examinations are used for "forensic" (that is, for criminal justice-related) purposes. Some states have established regulatory standards or credentialing requirements for the individuals or firms conducting forensic polygraph examinations.

Last year, the state Department of Justice received funding to hire forensic polygraph examiners to assist local law enforcement authorities in the apprehension and prosecution of sex offenders. Except on an experimental basis, however, California authorities have not relied upon the polygraph for either the treatment or control of sex offenders.

Few Held by Costly SVP Program

Three-Year-Old Effort. The state began its program to seek the court-ordered civil commitment of SVPs to state mental hospitals in January 1996. The SVP commitment effort is similar in some respects to a civil commitment program for mentally disordered sex offenders (MDSOs) struck down by the courts and then repealed from state law in 1981. (Some MDSOs remain under the jurisdiction of the DMH.)

The SVP program was ruled constitutional last month by the California Supreme Court. The program targets prison inmates nearing release to parole who have been convicted of a violent sexual offense against two or more victims and who have a diagnosed mental disorder increasing the likelihood that they will engage in sexually violent criminal behavior.

The CDC and BPT work together to screen inmates to determine if they meet the criteria set forth in the SVP law. Those cases are referred to DMH for an evaluation to see if the inmate's mental condition fits additional criteria set out in the law for commitment. If a county district attorney or county counsel then decides to seek an SVP civil commitment, and

a judge issues such an order after a civil trial, male offenders are sent to Atascadero State Hospital and female offenders to Patton State Hospital for treatment for at least two years. Further two-year commitments may be sought indefinitely until the offender is deemed to no longer pose a danger and is released to community supervision.

Few Commitments to Date. So far, the program is resulting in significant state costs but relatively few state hospital commitments of SVPs. As shown in Figure 5, DMH, district attorneys, and the courts have determined that many sex offenders referred for commitments fail to meet the criteria set forth in the SVP law at every stage in the process.

As of the beginning of October 1998, CDC and BPT had screened the records of more than 24,000 sex offenders and referred about 2,300 cases to DMH for evaluation. As of that same date, only 129 of these sex offenders had been committed to state mental hospitals as SVPs with another 494 cases in process by DMH, prosecutors, and the courts. If present trends hold, only 335 of those 24,000 sex offenders screened by CDC and BPT—or less than 2 percent of the original total—would eventually end up being sent to Atascadero or Patton with a SVP commitment.

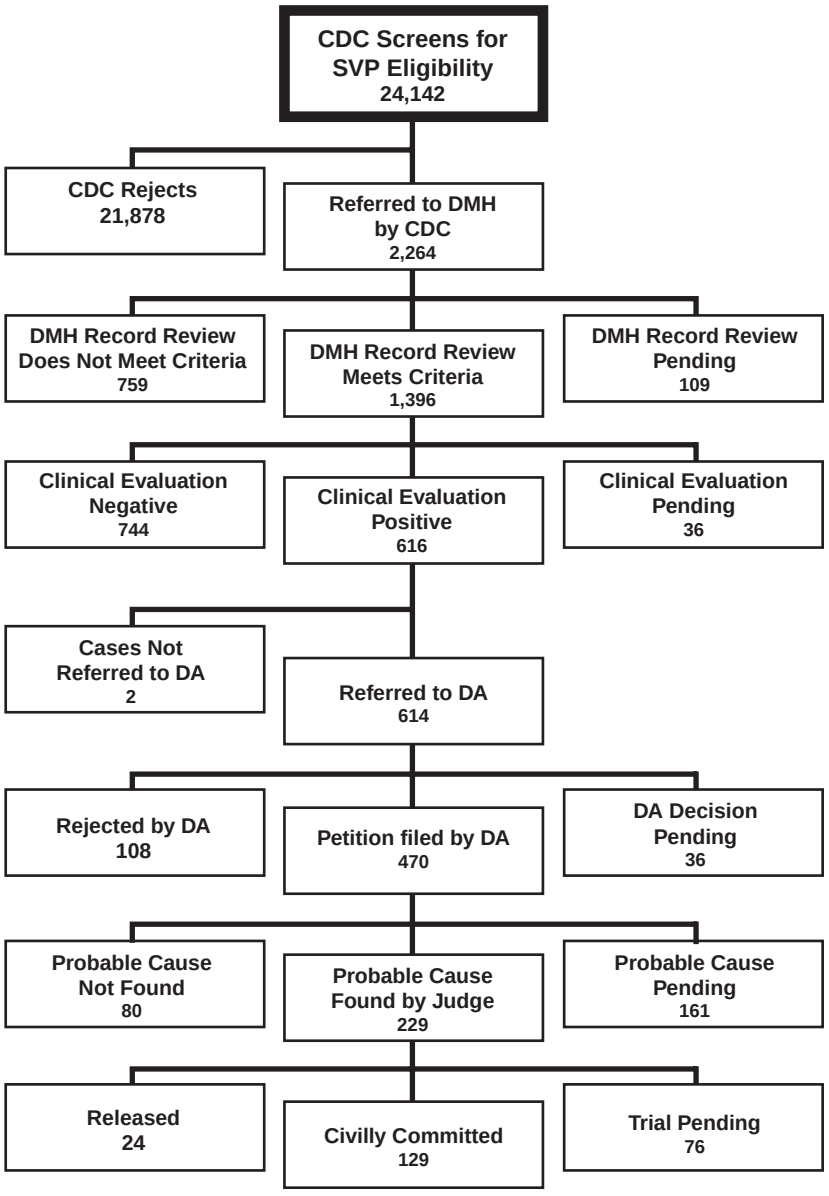
Program Costs Growing. Meanwhile, the support and capital outlay costs of the SVP program are growing significantly. That is partly because the cost to the state of holding and treating one SVP at Atascadero or Patton is estimated to be about $107,000 annually, much more than the $21,000 per year cost of incarceration in a state prison. Because the SVP law mandates local government participation in the SVP commitment process, it is anticipated that the state will owe tens of millions of dollars to counties for the cost of adjudication of hundreds of SVP cases. We estimate that by June 2000, the state will have spent a cumulative total of $214 million for state and local government activities related to SVPs. These costs—averaging more than $450,000 per person—include facilities to hold persons committed by the courts as SVPs, as well as those held in mental hospitals and county jails while their cases are evaluated and adjudicated.

We anticipate that the annual cost to the state for the SVP program is likely to grow further as local government agencies file claims against the state for reimbursement of their costs and as the state adds needed space to the mental hospital system. The DMH has already received about $5.5 million in initial funding and is requesting $16 million more in 1999-00 to plan and design a $300 million high-security facility dedicated to the treatment of 1,500 SVPs. That is equal to the cost of building a new state prison that could house 5,000 offenders. (Our analysis and recommendations regarding this project are discussed in our DMH analysis in the Capital Outlay chapter of our *Analysis*.)

Figure 5

The Sexually Violent Predator Program

As of October 1998



Our analysis indicates that DMH has been significantly overbudgeted for the costs of evaluating inmates referred for potential commitments as SVPs. This issue and our recommendations are discussed in our DMH analysis in the Health and Social Services chapter.

SVP Candidates Paroled to Community. Adult sex offenders who are not committed under the SVP program are released on parole, sometimes without providing complete documentation to parole agents of the factors which led to their consideration for commitment to a state mental hospital. We are advised by BPT that CDC does not always prepare an investigative report documenting these factors. Moreover, DMH does not ordinarily provide reports on the outcomes of its evaluation of candidates for SVP commitment to CDC's parole division. Both the BPT and the CDC parole division believe this information could help identify additional high-risk sex offenders, ensure that those who are identified are subjected to appropriate conditions of parole, and assist in their successful treatment in the community.

The BPT had sought to continue to hold some of these offenders in prison by declaring them seriously mentally disordered and revoking their parole. But in July 1998, a state appellate court determined that the practice of revoking someone's parole before they had ever been released on parole was illegal. The court decision resulted in the release of 118 sex offenders to parole, with 34 since arrested and returned to custody for parole violations.

A Failing Approach

Recidivism Rate High. Lacking effective programs to curb their criminal behavior, as well as inadequate supervision and control in the community, many sex offenders are committing new crimes and violating parole and subsequently being returned to state prison. Because of these and other concerns, the BPT has advised us that it intends to develop new guidelines for the management of sex offenders.

According to CDC data, 850 sex offenders on parole were returned to prison during 1997-98 with a conviction by a court for a new crime, while another 4,335 were returned to state custody by BPT for parole violations. This means that almost two out of three sex offenders annually are failing on parole, resulting in additional crime and contributing to the steady growth in state costs to build and operate additional prison space.

The adult parole population as a whole has a somewhat higher parole failure rate than sex offenders. However, sex offenders are almost nine times more likely to return to prison for a parole violation involving a sex

crime-related offense. Many had failed to comply with sex offender registration requirements. However, others were returned for rape, child molestation, and other crimes.

Links to Substance-Abuse Addiction. Correctional experts, academic studies, and CDC data on sex offenders have all documented a strong relationship between the offender's criminal activity and substance-abuse addiction. As of June 30, 1998, 709 of the California adult sex offenders under parole supervision last went to prison for a drug- or alcohol-related crime—almost as many as the 781 who had last served time in prison for rape. For sex offenders on parole, substance abuse remains a leading factor in their return to prison for parole violations. About 28 percent have been revoked for parole violations such as illegal drug possession, use, sales, or driving under the influence.

LAO RECOMMENDATION: "CONTAINMENT" OF HIGH-RISK SEX OFFENDERS

We recommend the implementation of a strategy of "containment" of California's population of high-risk adult sex offenders. The containment strategy includes longer and more intensive supervision of high-risk sex offenders released on parole, regular polygraph examinations of sex offenders, and pre- and post-release treatment programs to help control the behavior of habitual sexual offenders. We believe this promising approach would result in an increase in state expenditures in the short run amounting to about $9 million annually. We believe that a state investment in such a strategy would yield significant benefits, including net savings to the state in the long term, potentially ranging into the tens of millions of dollars, as well as an improvement in public safety.

The Containment Model

A Promising Approach. The National Institute of Justice, a research arm of the U.S. Department of Justice, sponsored a nationwide survey in 1994 of the way different states managed their populations of adult sex offenders. Based upon this research, Colorado public safety officials have proposed and are now implementing what they have termed a "containment" approach that incorporates the most effective methods now being practiced across the country.

This approach is intended to "contain" or prevent a sex offender who has been released on parole from committing new sex crimes. Conceptually, the sex offender is placed in the middle of a triangle of supervision

surrounded by (1) the parole agent, (2) a treatment provider, and (3) a forensic polygraph examiner. The approach emphasizes collaboration among these three parties, making the safety of the community and past sex crime victims a high priority, and calls for individualized case management of sex offenders that addresses the specific supervision, treatment, and controls needed to reintegrate them safely in the community.

Based upon our discussions with prison and parole experts here and in other states, as well as our review of academic research into effective sex offender programs, we believe the containment approach is promising. For example, Maricopa County, Arizona, has had a containment approach similar to Colorado's since 1986. This approach has proven to be highly effective in preventing sex offenders who have been released to the community on probation from committing new sexual assaults. A study determined that only 1.6 percent of 1,700 offenders participating in the program from April 1993 through April 1998 were committed for new sex crimes. Maricopa County found that such offenders ordinarily are recommitted for sex crimes at a rate of about 14 percent.

The Next Logical Step. Last year, the Legislature approved, but the Governor vetoed, legislation (SB 2116, Schiff) authorizing a three-year pilot program in one California county to implement a similar program for sex offenders released on state parole. However, California authorities have already experimented extensively with several key elements of containment, including relapse prevention treatment programs, forensic polygraph examinations, and intense supervision of high-risk sex offenders. A parole unit in Redding in Shasta County has tested several elements of a containment approach with positive results, including below-normal recidivism of its high-risk sex offenders.

Thus, we believe the logical and appropriate next step is for the state to expand these pilot efforts into a comprehensive and more cost-effective system of containment for California's population of high-risk adult sex offenders. We offer specific recommendations below, which are summarized in Figure 6, to ensure that such an approach is properly tailored to fit California's criminal justice and correctional systems.

Figure 6

Proposed Program for Containment of Sex Offenders

- ***Intense supervision*** for offenders released to parole.
- More ***background information*** for parole agents.
- ***Longer period of supervision*** for offenders posing the greatest risk.
- ***Specialized treatment*** programs.
- Voluntary ***medication treatments*** for selected offenders.
- Pilot program of ***in-prison treatment*** for high-risk offenders.
- Regular ***polygraph*** examinations.

Intensify Supervision

Focus on High-Risk Sex Offenders. We recommend the adoption of legislation directing the CDC to establish more intensive and specialized supervision caseloads for adult sex offenders it determines to pose a high risk of committing new crimes. In effect, the 40 to 1 caseloads now established for 600 such offenders would be extended to as many as possible of the other 2,900 offenders that CDC has concluded pose a significant risk to the community but now receive less intensive supervision.

Consistent with a recommendation our office offered to the Legislature last year, we recommend that the cost of intensifying high-risk sex offender caseloads be offset by eliminating or shortening the period of active supervision of other adult parolees who are not violent offenders or sex offenders, and who have been determined through a classification process to pose little risk to public safety. We are advised that, if this new classification system were implemented, an estimated 6,700 parolees—roughly 6 percent of the parole population—would be considered suitable for alternatives such as direct discharge or minimum parole terms.

At the direction of the Legislature, CDC is nearing completion of a statistically validated parole classification system that will systematically identify such low-risk parolees. We recommend that these adult parolees be moved—either immediately upon their release to parole or after an abbreviated period of trouble-free supervision—to "banked" caseloads. The offenders on banked caseloads would not be required to be in regular contact with parole agents. However, these offenders would retain their status as parolees, making them subject to immediate search for contraband without court warrants and subject to revocation for any violation of their conditions of parole.

In order to minimize disruption to the parole workforce that could result from removing some offenders from parole agent caseloads, we recommend that these changes be phased in over a two-year period.

We further recommend that DMH and CDC report to the Legislature by April 1, 1999, regarding the funding, personnel, and statutory authorization needed, if any, to ensure that background reports on offenders referred for commitment as SVPs, but who are able to avoid such a commitment to a state mental hospital, are prepared on a timely basis and made available to the parole agents who must supervise them in the community.

Provide Longer Supervision for Certain Offenders

Modify Statutory Limits Selectively. We recommend that state law be changed to establish a longer period of parole for the most dangerous adult sex offenders. Studies of sexually deviant criminal offenders provide strong evidence that a longer period of parole is needed to protect the public. Longer parole periods may result in some additional offenders being returned to custody for parole violations, but the pressure of extended supervision would likely prevent some of them from committing new crimes and being returned for long prison terms.

Accordingly, we specifically recommend that repeat sex offenders sentenced under the One-Strike law to 25 years to life (who in many cases caused great bodily injury, used a firearm, or harmed multiple victims during their crime) be subject to lifetime parole instead of the five years provided under current law. The CDC data show that the persons receiving one-strike sentences are younger and far more likely to commit violent crimes, including sex crimes, than other sex offenders.

The CDC would retain authority to determine the appropriate level of supervision needed for any adult sex offender. For example, if such an

offender had performed well on parole for ten years, CDC would be authorized to move the offender to a banked caseload.

Based on our review of research and discussions with correctional professionals, we further recommend that offenders sentenced to state prison for the most serious felony sex crimes, particularly child molestation and rape, be subject to a five-year parole period rather than the three years now provided by law. All of these changes would take effect for offenders committing crimes after this change in the law and would not be applied to offenders now incarcerated in state prison.

Create Specialized Parole Treatment Programs

Establish Relapse Prevention in the Field. We recommend that the Legislature provide statutory authority and funding to CDC beginning in 1999-00 to establish specialized sex offender treatment programs. These programs would be based on the relapse prevention model for high-risk offenders who have been released on parole. The treatment programs would be targeted at the same group of offenders receiving more intense supervision by parole agents and would include referral to specialized services, such as substance-abuse treatment, for offenders needing such assistance.

In addition, medication treatments would be provided for selected offenders as determined by medical protocols to control their behavior. Unless ordered by a court, the medication treatment would be voluntary and provided with the consent of the sex offender.

A framework for the operation of such a program would be outlined in accompanying legislation. In order to make it easier for CDC to provide treatment services throughout the entire state parole system, we recommend that they be provided primarily through contracts with private vendors with the established expertise and credentials for conducting specialized sex offender treatment in a group setting. We recommend against providing these services by hiring additional state staff at the existing POCs because they lack the structure to successfully implement such a specialized new program, and because we believe POCs should instead focus on improving treatment of seriously mentally disordered offenders.

Under this approach, some high-risk sex offenders would participate in group-counseling sessions run by contract providers and some in sessions conducted by parole agents. Parole agents would receive training on how to run the sessions and to ensure they can work effectively with contract providers.

In order to strengthen the personal commitment of sex offenders to these treatment programs, we recommend the authorizing statute permit CDC to collect at least nominal fees from offenders to partly offset the cost of the treatment services. This practice has been implemented successfully in other states offering such programs to parolees. As discussed above, CDC would also be provided budgetary authority to spend these reimbursements.

End Unwarranted POC Referrals. Additionally, we recommend that CDC be directed through budget bill or statutory language to end the practice of referring certain sex offenders to the POCs. These sex offenders are those who do not have a diagnosed serious mental disorder or who do not exhibit signs of serious mental illness after being released to parole. This will avoid duplication with the sex offender treatment services provided to high-risk sex offenders, while doing away altogether with the provision of mental health services to low-risk sex offenders who neither need nor currently receive much assistance from the POCs.

We further recommend that the cessation of these referrals not lead to a reduction of POC staffing and resources, but instead to expanded and more intensive POC services for the seriously mentally disordered parolees remaining on its caseload. The POC system, which has received no significant funding increases during the 1990s, is currently so understaffed that there is only one clinician for every 143 parolees.

Start an In-Prison Treatment Program

Begin Pilot Project for Adult Offenders. We recommend that the Legislature provide General Fund resources beginning in 1999-00 to convert existing prison space to a 500-bed pilot program to provide sex offender treatment under the relapse prevention model in a state prison. This could be accomplished by transferring sex offenders incarcerated at various prisons to one location. We further recommend the enactment of a statute specifying a framework for the operation and evaluation of the pilot program. This should include specifications that the program be established in a separate prison yard segregated to the maximum extent that is practical from nonsex offenders. The measure would specify that admissions to treatment be targeted at adult sex offenders who (1) are within two years of being released on parole, (2) have been subject to a clinical assessment and a review of their criminal history indicating a high risk of committing new sex offenses, and (3) may be amenable to treatment based on clinical assessment.

The program would be implemented primarily through contracts with private vendors with appropriate professional credentials and experience in forensic sex offender treatment, using an appropriate mix of medical and nonmedical staff. Individualized treatment for substance-abuse addiction, anger management, and other risk factors would be provided as warranted. Medication treatments would be provided with the informed consent of an inmate according to medical protocols. Consistent with existing law, inmates who participate could earn credits to reduce their time served in prison (in most cases, by no more than 15 percent of their total sentence).

Sex offenders who demonstrated significant progress during treatment in a clinical reassessment would not be subject to referral by the CDC director for civil commitment as an SVP. However, upon parole, all such participants in the pilot program would initially be placed on a specialized, intensive parole caseload for high-risk sex offenders.

Require an Evaluation. Because the state has yet to demonstrate it can run a cost-effective in-prison sex offender treatment program, we recommend only a pilot program be established at this time. If the CDC program proved successful, it could be expanded later to include additional high-risk sex offenders. We recommend that DMH be directed to conduct an independent evaluation of the CDC program to determine if it is operating effectively, is having a positive clinical effect on sex offenders, and is cost-effective for the state.

Facilitate Use of Polygraph Examinations

Outline Specific Purposes in Statute. We recommend that the Legislature provide statutory authority and funding to CDC to incorporate the use of polygraph examinations as part of the treatment programs we have proposed. While we are advised that use of the polygraph for these purposes is already permissible under state law, we recommend that state law be amended to specify that CDC polygraph examinations would be used for specified purposes. These purposes are to facilitate sex offender treatment, ensure the appropriate classification of parolees, fashion the establishment of appropriate parole conditions, and determine ongoing compliance with those parole conditions and state law.

Limit CDC's Use of Polygraphy. Our recommended statute on polygraph usage would not authorize CDC to use polygraph examinations for the purpose of forcing adult sex offenders in prison or on parole to confess specific details of their past sex crimes. We believe such an approach would prove counterproductive because it would stifle the disclosure of

harmful sexual activity by offenders—often the therapeutic key to making them confront and alter their patterns of illegal behavior. These polygraph-induced disclosures could provide critical information to parole authorities to prevent future victimization of women and children by rapists and child molesters.

The polygraph examinations would not be conducted in a fashion intended to elicit detailed confessions of past criminal activity constituting sufficient evidence for prosecution of additional sex crimes. It is possible that a particular inmate or parolee could volunteer such specific information during a polygraph examination. In that event, existing state law (which we do not propose to change) requires clinical professionals, including those providing sex offender treatment, to report to law enforcement authorities their knowledge of any specific admissions by offenders of illegal sexual activity. But inmates and parolees who avoided making specific incriminating statements would not be subject to prosecution for additional crimes based on the outcome of their polygraph examination.

Ensure Participation in Examinations. We further recommend that state law be changed to clarify the consequences that would be faced by sex offenders who refused to submit to polygraph examinations for the specific purposes such as treatment outlined above. Specifically, we recommend that state law be amended to specify that the CDC Director could punish an incarcerated offender participating in a sex offender treatment program with the loss of previously earned work and education credits upon that offender's refusal to submit to a polygraph examination. We further propose to amend state law to clarify that the refusal of a sex offender on parole to submit to such an examination could constitute grounds for the parole revocation and reincarceration of that offender by the BPT.

Establish Professional Standards. Finally, we recommend that CDC be directed to establish clear professional standards of work experience or accreditation for any persons or firms hired by the state for forensic polygraph work. The CDC should also be directed to establish written protocols that parole agents, treatment providers, and polygraph examiners must follow whenever polygraph examinations are used.

Short-Term Fiscal Effect

Treatment and Supervision Costs. Our proposal would shift the deployment of parole agents from low-risk offenders to high-risk sex offenders at no additional state cost. Thus, the short-term costs primarily

result from the establishment of prison and parole treatment programs as well as the use of forensic polygraph examinations and medication treatments.

Based upon programs established in other state prison systems and the California Department of the Youth Authority, we estimate that the operation of a 500-bed pilot program at an existing prison could cost about $3.8 million annually at full implementation, not counting unknown costs for DMH evaluation, medication treatments, polygraph, and any capital outlay needed for supplemental program space at the facility selected for the program.

We anticipate that the cost per offender of providing specialized sex offender treatment services would be significantly lower for parolees, based in part upon the Redding parole unit that experimented with a containment approach. We estimate the full statewide cost to operate such a program at about $4 million annually. If the department charged sex offenders going to contract-provider counseling sessions a nominal fee, these costs could be partly offset by about $400,000 in fee revenues. Thus, the net cost to the state would be about $3.6 million annually at full implementation. The cost of medication treatments for selected sex offenders who consented to the procedure is unknown, but could amount to hundreds of thousands of dollars annually. We estimate that the use of polygraph examinations as we have proposed would eventually cost $900,000 annually.

We estimate that the overall cost of implementing a containment approach with both in-prison and parole programs would be less than $4.5 million in 1999-00, increasing to about $9 million in 2000-01. Our plan also generates short-term savings by removing sex offenders who are not seriously mentally ill from POC caseloads, but our plan redirects those staff resources toward improved services for mentally ill parolees.

Long-Term Fiscal Effect

Longer Parole Period. Lengthening the statutory period of parole for adult sex offenders would eventually increase the costs of supervision. We estimate that the fiscal impact would not be significant until at least six years after such a change were enacted. If longer parole terms were the rule for all sex offender parolees under supervision today, the state would be spending about $10 million more annually.

Lengthening the period of parole supervision could also result in additional sex offenders being returned to state custody for parole violations. These offenders are not subject to parole revocation following their

discharge from parole. Under the LAO proposal, many of them would now be subject to such sanctions for an additional two years of parole supervision and, in the case of one-strike felons, for a lifetime period of supervision. This would increase CDC's operating costs.

Our projected costs for the supervision and treatment of sex offenders released on parole could also increase in the future to the extent that the use of polygraph examinations results in the identification by CDC of a larger number of high-risk sex offenders. This could be the case, for example, for a sex offender who admitted during an in-prison polygraph examination to numerous sex crimes victims for which he had never been prosecuted. Such an individual might have been placed on a regular parole caseload in the past, but under our approach would now go into a containment program involving more intense and more costly parole supervision and treatment. In-prison treatment costs for adult sex offenders could also grow if the pilot program we recommend proved to be clinically effective as well as cost-effective.

Net Savings Likely. Our analysis also indicates, however, that the short-term and long-term costs to the state outlined above would be more than offset by other factors.

First, we anticipate that retaining these high-risk sex offenders on parole for longer periods of time under a containment approach would likely result in fewer recommitments to prison for new crimes or for parole violations. Other states and CDC's own Redding parole unit experiment have demonstrated significant reductions in recidivism as a result of tighter supervision and effective treatment of high-risk adult sex offenders.

Given the longer prison terms now facing repeat sex offenders, there could be significant dividends from keeping more sex offenders safely in the community on parole. Every adult sex offender the state prevented from committing a new crime, and then being returned to prison with a one-strike or three-strikes sentence, would save the state as much as $500,000 on prison operations and construction costs over the long term. If a containment strategy were able to prevent just 100 sex offenders from receiving a new, lengthy prison commitments of the type mandated by these sentencing laws, the state would save more than $50 million in the long term.

The state would also achieve significant savings to the unknown extent that sex offenders who demonstrated progress during in-prison treatment programs were diverted from SVP evaluations, adjudication, and civil commitment and aftercare in the CONREP program.

These savings could also be considerable. As we noted above, SVP program costs are likely to rise further as more cases are processed and more commitments are completed to the state mental hospital system. The annual treatment cost of one SVP has been estimated at about $107,000. Cases must be retried if a commitment is to be continued beyond the original two-year period, creating additional state and local costs. Then, once an SVP is released from treatment, state law mandates that they be placed in the CONREP community aftercare program. The CONREP has average annual cost per patient of $21,000, with the average costs for supervising SVPs likely to be much higher. The SVPs released to CONREP will likely remain under this intense supervision for at least three to five years.

Finally, to the unknown extent that a containment program is successful in preventing additional violent sex offenses, the state and local governments would have lower criminal justice system costs and lower costs for providing medical, counseling, and other assistance to crime victims.

These factors are the basis of our conclusion that effective implementation of a containment approach for high-risk adult sex offenders would result in net state savings in the long run, potentially in the range of tens of millions of dollars annually.

Conclusion

An Investment in Crime Prevention. Based upon our analysis, we are concerned that the way the state currently manages its adult parole population of high-risk sex offenders does not represent a cost-effective "purchase" of public safety using the taxpayer dollars that are available.

After three years of effort, the increasingly costly SVP program has resulted in the civil commitment of about 129 offenders. Meanwhile, thousands of high-risk sex offenders are being paroled to the community each year without intensive supervision and treatment, with a resulting high incidence of recidivism for parole violations and new crimes, even though this situation could be improved at a comparatively modest cost.

Benefits of a Containment Strategy. Figure 7 (see next page) summarizes the benefits of our recommended approach. We believe the investment of additional state funds in a containment strategy for sex offenders would result in significant net state savings. Additionally, we are convinced that the change in approach we propose is also warranted based on the beneficial impact its effective implementation would have on public safety.

Figure 7

Benefits of the LAO Containment Approach

- ***Improved public safety*** including a reduction in new crimes and parole violations by sex offenders on parole.
- ***Better use of state parole resources*** with more intense efforts for a longer period of time to supervise high-risk offenders and less focus on low-risk offenders.
- ***More and better information*** for parole agents to identify the sex offenders who pose the greatest risk to the public and impose appropriate conditions of parole to reduce such risks.
- ***Better use of Parole Outpatient Clinic resources*** with more focus on the assessment and management of seriously mentally ill offenders.
- ***Significant long-term net savings to the state and local government*** potentially in the tens of millions of dollars annually, due primarily to lower costs for the prison and mental hospital systems, the criminal justice system, and for assistance to crime victims.

Our plan does not contemplate the elimination of the SVP program. Rather it calls for a shift in strategy toward the cost-effective treatment of high-risk sex offenders *before* they complete their prison terms instead of their treatment in state mental hospitals *after* completion of their prison sentences at five times the cost. Our approach incorporates longer and more intensive parole supervision, continued treatment, and forensic polygraph examinations to control the thousands of high-risk offenders who will continue to be released into the community despite the SVP program.

THE TOBACCO SETTLEMENT

The attorneys general of most states and the major U.S. tobacco companies have agreed to settle more than 40 pending lawsuits brought by states against the tobacco industry. In exchange for dropping their lawsuits and agreeing not to sue in the future, the states will receive billions of dollars in payments from the tobacco companies and the companies will restrict their marketing activities and establish new efforts to curb tobacco consumption.

The settlement is projected to result in payments to California of $25 billion through 2025, which will be split equally between the state and local governments. The* 1999-00 Governor's Budget *assumes the receipt of $562 million in the budget year, which is equivalent to the first two payments to the state.

Although the settlement does not require action by the Legislature, we recommend that the Legislature (1) recognize the uncertainties surrounding the amount of funds the state will receive, especially in the long run, and not dedicate the settlement monies to support specific new ongoing programs, (2) consider the settlement revenues that will accrue to local governments when considering future local government fiscal relief, and (3) monitor new national antitobacco programs in order to complement existing state efforts.

Summary of the Settlement

On November 16, 1998, the attorneys general of eight states (including California) and the nation's four major tobacco companies agreed to settle more than 40 pending lawsuits brought by states against the tobacco industry. The settlement agreement calls for financial payments to the states, the creation of a national foundation to develop an antismoking advertising and education program, and the establishment of certain advertising restrictions to benefit public health. Figure 1 (see next page) summarizes the key features of the agreement, many of which are discussed in more detail below.

Figure 1

Key Features of the Tobacco Settlement

- ***Payments to States.*** Requires the tobacco manufacturers to make payments to the states in perpetuity, with the payments totaling an estimated $206 billion through 2025.
- ***National Foundation.*** Creates an industry-funded foundation whose primary purpose will be to develop an advertising and education program to counter tobacco use.
- ***Advertising Restrictions.*** Places advertising restrictions on tobacco manufacturers, including bans on cartoons, targeting of youth, outdoor advertising, and apparel and merchandise with brand name logos.
- ***Corporate Sponsorships of Events.*** Restricts tobacco companies to one brand name sponsorship per year.
- ***Tobacco Company Affiliated Organizations.*** Disbands the Tobacco Institute and regulates new trade organizations.
- ***Limit on Lobbying.*** Prohibits the tobacco manufacturers and their lobbyists from opposing proposed laws intended to limit youth access and use of tobacco products.
- ***Access to Documents.*** Requires the tobacco companies to open a website which includes all documents produced in smoking and health-related lawsuits.

How Many States Are Part of the Agreement? Nationally, the attorneys general of 46 states and various territories have now signed on to the settlement proposal. The remaining four states—Florida, Minnesota, Mississippi, and Texas—had previously settled their cases with the tobacco industry.

What Companies Are Part of the Agreement? The four major tobacco companies that negotiated the agreement are Brown & Williamson To-

bacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, and R.J. Reynolds Tobacco Company. These four manufacturers account for more than 95 percent of the total sales of cigarettes nationally. Since the release of the settlement, most of the remaining smaller tobacco manufacturers have joined the agreement, so that the market share of the participating tobacco companies accounts for about 99.7 percent of total national sales.

Does the Settlement Require Validation? Under the terms of the settlement proposal, the courts in each participating state must approve the agreement. The settlement does not require that any explicit action be taken by the state legislatures. As we discuss later, however, the Legislature may wish to consider several actions related to the settlement.

In California, on December 9, 1998, the settlement agreement was approved by the San Diego Superior Court, where the state's case was being litigated. The settlement will become final in California if there are no appeals within 60 days of the court's decision. California was the nineteenth state whose court has approved the agreement. So far no court in any other state has rejected the settlement.

Monetary Provisions of the Settlement

The settlement agreement requires the tobacco companies to make payments to the states *in perpetuity*, with the payments totaling an estimated $206 billion through 2025 nationally. These funds will be divided among the states based on allocation percentages negotiated by the attorneys general. These allocation percentages are based on a variety of factors such as population and cigarette sales within the state. These state allocation percentages will not change over time. In order to pay for the settlement, the tobacco companies have raised the price per pack of cigarettes by 45 cents.

How Much Money Will California Get? California is projected to receive an estimated $25 billion through 2025, or about 12.8 percent of the total monies allocated for the states—the highest percentage of any of the states participating in the agreement. While the average annual payment to California is estimated to be approximately $925 million, as can be seen in Figure 2 (see next page), the estimated amount of funding per year changes considerably over time. California's share of the 1998 payment is estimated to be $306 million and there is no scheduled payment in 1999 under the terms of the settlement. New York has the next highest allocation percentage, an amount that is very close to California's allocation percentage.

Figure 2

Estimated Annual Tobacco Settlement Payments to California

1998 Through 2025
(In Millions)

Year	State	Local[a]	Total
1998	$153	$153	$306
1999	—	—	—
2000	409	409	818
2001	442	442	884
2002	531	531	1,061
2003	536	536	1,071
2004 through 2007[b]	447	447	894
2008 through 2017[b]	456	456	912
2018 through 2025[b]	511	511	1,022
Totals	**$12,503**	**$12,503**	**$25,007**

[a] Includes all counties and the Cities of Los Angeles, San Diego, San Francisco, and San Jose.
[b] Each year.

Who Gets the Money? Several California jurisdictions, including Los Angeles County and the City and County of San Francisco, had filed their own lawsuits against the tobacco companies. On August 5, 1998, the Attorney General entered into a Memorandum of Understanding (MOU) with the local governments to coordinate their lawsuits with the state's suit and provide for the allocation of any monies recovered. The terms of the MOU include an even, 50-50, split of the financial recovery between the state and the local governments that sign onto the deal. Thus, the estimated $25 billion to be allocated pursuant to the tobacco settlement would be split between the state and local governments with each receiving $12.5 billion.

The local share will be further split between the counties and specified cities. Under the terms of the MOU, the state's 58 counties will receive 90 percent of the local share, or $11.25 billion. These monies will be distributed to the counties based on population. The remaining 10 percent, or $1.25 billion, will be split equally among four specified cities—Los Angeles, San Diego, San Francisco, and San Jose. The MOU limits the recovery to these cities who could have filed an independent lawsuit pursuant to a specific provision of the Business and Professions Code.

Assuming that all of the local governments join in the settlement, we estimate that Los Angeles County will receive the largest amount of money—about $151 million by June 30, 2000 and $3.4 billion through 2025. (For our estimates for the individual counties and cities, please see Appendix 1 in our recent report, *The Tobacco Settlement: What Will It Mean for California?*)

Local governments do not automatically receive the funds unless they join the settlement and agree to its terms. To the extent that a county or city chooses not to participate, the monies that they could have otherwise received would be redistributed to the state and local governments.

What Does the Governor's Budget Assume? The *1999-00 Governor's Budget* assumes the receipt of $562 million to the state's General Fund in 1999-00—the state's share of the 1998 payment ($153 million) and 2000 payment ($409 million).

How Can the Money Be Spent? The tobacco settlement agreement places *no restrictions* on the use of the monies by the states. Similarly, California's MOU with local governments contains no restrictions.

Many of the state and local lawsuits (including California's) had sought recovery from the tobacco companies of the tobacco-related health care costs (such as Medi-Cal) incurred by states and local governments. The settlement agreement and California's MOU with the local governments do not specify that any of the financial payments by the companies are to reimburse state and local governments for such costs.

Absent specific action by the Legislature, the funds received by the state from the settlement would be deposited into the General Fund. Because the money is not a proceed of taxes, it would not be counted as revenues for purposes of calculating the minimum guarantee under Proposition 98.

Does the Settlement Money Count Towards the VLF Trigger? As part of the 1998-99 budget package, the Legislature and Governor agreed to certain cuts in the state's vehicle license fee (VLF) in future years if specified revenue forecasts (or "triggers") are reached. We believe that the additional General Fund revenues from the tobacco settlement would be counted toward the triggers. Based on our most recent revenue projections, however, revenues from the settlement would *not* be enough by themselves to pull a trigger and generate an additional cut in the VLF. However, the settlement monies would bring General Fund revenues *closer* to the levels that would activate the trigger and, if revenues increase beyond current projected levels, could result in an additional VLF cut in the future.

When Will the Money Be Available? The settlement agreement sets forth a payment and distribution schedule for the monies to the states. The tobacco companies will make payments into an escrow account. However, none of the money would be distributed to the states from the escrow account until there is a "final approval" of the agreement.

"Final approval" is defined in the agreement as the earlier of (1) June 30, 2000 or (2) when 80 percent of the states, representing 80 percent of the allocated distribution, obtain approval of their consent decrees and all challenges and appeals are heard by their state courts. Currently, it is unknown when final approval will be achieved, but it is likely that it will occur before June 30, 2000 (within the state's 1999-00 fiscal year). As part of the settlement, the tobacco companies will make a total of $12 billion in "up-front" payments. The first payment of $2.4 billion was paid to the escrow account by the end of 1998. Additional up-front payments of $2.4 billion will be made each January in 2000, 2001, 2002, and 2003. Annual payments will begin on April 15, 2000.

Uncertainties Regarding the Amount of Money California Will Receive

Our review finds that there are a number of factors that could have an impact on the amount of dollars available to California, especially in the long run. Most of these uncertainties would result in the state receiving less money than projected or receiving money with restricted uses, although two of the uncertainties could actually result in the state receiving more money.

Actions of the Federal Government That Could Offset Payments. The agreement has provisions to reduce the payments to the states in the event that the federal government takes certain specified actions against the tobacco companies by November 30, 2002. Specifically, if the Congress enacts legislation that provides for payments by the tobacco manufacturers (whether by settlement payment, tax, or other means), which the federal government then makes available to the states for health-related, tobacco-related, or for unrestricted purposes, the tobacco companies could offset their payments to the states by that amount. Under this scenario, the state might receive the same overall amount of money it would have otherwise received, but with the federal government setting the priorities or with significant strings attached. Neither the Congress nor the President have announced any intention to take such actions at this time; nevertheless, such actions remain a possibility in the future.

Actions of the Federal Government to Seek Reimbursement for Health Care Costs. The federal government shares with the states the costs of the Medicaid Program (Medi-Cal in California). Although the settlement with the states is not based on reimbursing states for costs of treating tobacco-related illnesses under Medicaid, federal law generally *requires* federal agencies to seek reimbursements for the federal share of any Medicaid costs. As a consequence, it is possible that the federal government could seek reimbursement for its tobacco-related Medicaid costs, either by seeking a share of the states' settlement funds or by taking legal action against tobacco companies in federal court. To the extent that federal authorities are successful in obtaining part of the settlement funds, this would reduce the amount of funds retained by the states. In addition, to the extent that a federal court action results in a large payout by the tobacco companies to the federal government, the companies may become less solvent and less able to make the payments to the states as specified in the states' settlement.

Federal authorities have recently indicated their intention to sue the tobacco companies, but have not indicated whether they plan to seek a share of the states' settlement monies. However, in response to a previously proposed settlement, they had indicated that they would seek a share of the funds.

Drop in Cigarette Sales. The settlement agreement contains provisions that allow the tobacco companies to decrease the amount they pay to the states if the nationwide sales of cigarettes decrease. Specifically, each year the amount of the payment to the states will be adjusted based on the volume of cigarettes shipped within the U.S. for sale. To the extent that this volume drops, the payments to states will decrease over time. The tobacco companies have raised their price per pack by 45 cents in order to pay for the settlement. To the extent that the increase in the price per pack reduces the amount of cigarettes consumed, the payments to the states would decrease over time.

This volume adjustment is based on *nationwide* sales, not just sales within California. This could minimize any negative financial impact on California since tobacco sales are more likely to decline faster in California than in the rest of the country due to (1) the additional 50 cents per pack tax placed on cigarettes beginning on January 1, 1999 as a result of Proposition 10 (discussed in greater detail below), and (2) the existing antismoking campaign that already exists in California that is funded from Proposition 99 monies.

Lawsuits by Nonparticipating Local Governments. If a local government does not join in the settlement but rather continues with a lawsuit

against the tobacco companies, the local government would not receive any funds from the settlement. The share that they would be eligible for under the terms of the MOU would be divided by the state and the other participating local governments. However, any award, judgment, or settlement won by a nonparticipating local government would be offset against tobacco companies' payments to the entire state. At this time, based on informal discussions with local governments, it seems likely that most, if not all, local governments in California will participate in the state settlement.

Tobacco Company Bankruptcy. The tobacco settlement was entered into with the U.S. manufacturing subsidiaries of the tobacco companies. As a consequence, the *parent companies* are not responsible for payments to the states should one of the subsidiaries go bankrupt. Bankruptcy by one or more of the tobacco manufacturers is a possibility given that the manufacturers still face potential lawsuits from individuals and class actions. For example, there is currently a class action case in Florida against the tobacco manufacturers seeking $200 billion.

Should one or more of the tobacco companies declare bankruptcy, the amount of money going to the states could decrease significantly. The remaining companies would not be responsible for paying the obligation of the bankrupt companies.

Reduction in Market Share of Settling Companies. Over time, the payments of the participating manufacturers can decrease if they lose market share to nonparticipating manufacturers. Under the terms of the agreement, the states can protect themselves against a reduction in payments by passing a "model statute" included in the agreement that would require nonparticipating manufacturers to put funds into escrow accounts for 25 years equivalent to the amounts paid by the participating manufacturers.

This possibility of reduced payments due to a decline in market share is probably not a major concern. This is because, as indicated earlier, most of the smaller tobacco manufacturers have now agreed to the deal. Under the terms of the deal, the public health provisions of the agreement will apply to these companies. Should their market share increase to a specified level, they will become responsible for making payments corresponding to those due by the original participating companies. States would not receive any additional monies, but the shares paid by individual companies would change.

Increased Payments From the "Strategic Contribution." From 2008 through 2017, the tobacco companies will provide a "strategic contribu-

tion" of $861 million per year to the states in excess of the other payments. How these funds are allocated among the states will be determined by a panel committee of three former attorneys general. The criteria for the allocation of the strategic contribution will take into account each state's contribution to the litigation. California was a relatively late entrant among states to the litigation, which may hurt the state's chances of receiving a significant portion of the strategic contribution. However, the fact that the California Attorney General was one of the eight attorneys general that negotiated the agreement and the sheer size of the state's case against the companies may offset any disadvantage.

Increases Due to Inflation Adjustments. The payments made by the tobacco companies will increase above the currently estimated amounts due to an inflation adjustment. The future tobacco payments will be adjusted annually by 3 percent or the national Consumer Price Index (CPI), whichever is greater. Thus, to the extent that the volume of cigarettes shipped within the U.S. does not decrease, the total payments to the states will increase.

Legal Implications of the Settlement

The tobacco settlement agreement likely brings to a close various state and local government litigation against the tobacco companies and has a number of legal implications.

What Happens to the State's Case as a Result of the Settlement? On June 12, 1997, the California Attorney General filed a lawsuit against the major tobacco companies in the Sacramento Superior Court containing four causes of action, as shown in Figure 3 (see next page). By the time of the settlement agreement, two of the causes of action had already been dismissed by the court and two others were yet to be addressed by the court.

Upon approval of the consent decree in the state court, the state's case against the tobacco companies will be considered settled. As previously indicated, the San Diego Superior Court approved the consent decree on December 9, 1998 and the settlement becomes final 60 days later unless the court order is challenged during that period. The settlement agreement generally releases the signing tobacco companies from any future lawsuits by the state and local governments that participate in the settlement.

How Is the Settlement Different From a Resolution Resulting From a Trial? It is difficult to say with a high level of certainty how a trial on California's lawsuit against the tobacco companies would have ended. It seems unlikely, however, that a court would have ordered provisions related to public health that the tobacco companies subsequently agreed

to in the settlement (for example, restrictions on advertising and corporate sponsorship). It is not clear whether the monetary provisions provided in the settlement agreement are greater than the state would have obtained if it had won its case in court. However, because the companies have *agreed* to the settlement, it is likely that money will flow to the state more quickly and easily since the companies would likely have appealed a court decision.

Figure 3

What California Alleged in Its Lawsuit Against the Tobacco Companies

☑ ***Recovery of Tobacco-Related Medi-Cal Expenditures.*** The state sought reimbursement for health care services provided over the past three years to Medi-Cal beneficiaries who suffer from illnesses caused by tobacco products. This allegation was previously dismissed by the court.

☑ ***Violations of State Antitrust Laws.*** Tobacco firms (1) conspired to not develop or market safer cigarettes and tobacco products and (2) conspired to not compete on the basis of relative product safety. This allegation was awaiting action by the court.

☑ ***Violations of State Consumer Protection Laws.*** Tobacco firms conducted deceptive, unlawful, and unfair business practices by (1) making misrepresentations and deceptive statements to sell their products, (2) targeting minors to buy cigarettes, (3) manipulating levels of nicotine without adequate disclosure, and (4) improperly suppressing evidence about the health impacts of the product. This allegation was awaiting action by the court.

☑ ***Violations of State False Claims Act.*** Tobacco firms improperly sealed certain documents and records which would otherwise have been available to inform California authorities of the companies' wrongdoings. This allegation was previously dismissed by the court.

Can Californians File Lawsuits as Individuals or in Class Action Lawsuits Against the Tobacco Companies? While the settlement places restrictions on future lawsuits by governmental entities, lawsuits by individuals and classes of individuals against the tobacco companies could still go forward.

How Will the Settlement Be Enforced? The agreement provides the state courts with jurisdiction over implementing and enforcing the settlement. The state or the tobacco companies may apply to the court to enforce the terms of the agreement. If the court issues an order enforcing the agreement and a party violates that order, the court may order monetary, civil contempt, or criminal sanctions to enforce compliance.

On March 31, 1999, the tobacco manufacturers will pay $50 million which will be used to assist the states in enforcing and implementing the agreement and to investigate and litigate potential violations of state tobacco laws. Additionally, the National Association of Attorneys General will receive $150,000 per year until 2007 for oversight costs associated with monitoring potential conflicting court interpretations involving the settlement, and assisting states with inspection and discovery activities conducted to enforce the settlement.

Public Health Provisions of the Settlement

The settlement includes a number of provisions agreed to by the tobacco companies that are designed to reduce smoking and thus improve public health. Figure 4 (see next page) summarizes the major public health-related provisions of the agreement.

It is unknown how effective these provisions will be. It should be noted, however, that some of the efforts that will be established as a result of the settlement, such as advertising and education programs to combat smoking, already exist in California and are supported with Proposition 99 funds.

Differences Between the Settlement and Previous Agreements

The current agreement is the culmination of efforts to settle state lawsuits against the tobacco companies that have been ongoing for several years.

The 1997 "Global Settlement." In mid-1997, the attorneys general of 40 states and the companies worked out the so-called "global settlement" agreement. Under this agreement, the companies would have made

Figure 4

Major Provisions Related to Public Health

☑ **Restrictions on Advertising**

- Bans use of ***cartoon characters*** in advertising.
- Prohibits ***targeting youth*** in advertising, promotions, or marketing.
- Bans outdoor advertising including billboards, and placards in arenas, stadiums, shopping malls, and video game arcades.
- Limits size of ***advertising outside retail establishments*** to 14 square feet.
- Bans ***transit*** advertising.

☑ **Restrictions on Product Placement and Sponsorship**

- Bans distribution and ***sale of apparel and merchandise*** with brand name logos, beginning July 1, 1999.
- Bans payments to promote ***tobacco products in movies, television shows, theater*** productions, live or recorded music performances, and videos and video games.
- Prohibits brand name ***sponsorship of team sports*** events or events with a significant youth audience.
- Limits tobacco companies to ***one brand name sponsorship per year*** (after current contracts expire).
- Bans tobacco ***brand names for stadiums and arenas.***

☑ **New National Foundation to Combat Smoking**

- Establishes foundation to develop ***programs*** to combat teen smoking and educate consumers about tobacco-related diseases.
- Industry will pay total of ***$1.45 billion*** for national public education campaign for tobacco control and ***$25 million per year*** to study programs to reduce teen smoking.

☑ **Other Restrictions**

- Disbands certain ***organizations affiliated with tobacco industry.***
- Prohibits tobacco firms from ***opposing proposed laws which are intended to limit youth access*** to tobacco products.
- Prohibits the industry from making any ***material misrepresentations regarding the health consequences*** of smoking.

major monetary payments to the states. These payments would be in exchange for certain enactment of laws by Congress which would have essentially halted much of the litigation against the tobacco industry and

placed certain restrictions on future litigation against the industry, including no punitive damages, no class actions, and an annual cap on damage payments. Although federal legislation was introduced to enact the global settlement, as well as legislation that went far beyond that settlement, Congress did not pass any legislation. The current multistate settlement requires no legislative action by Congress.

The current settlement does not provide for payments as large as the global settlement. The global settlement proposed $368 billion over 25 years in payments to the states as opposed to the current agreement which is $206 billion over 25 years.

From a public health standpoint, probably the most significant policy difference between the two settlements is that the global settlement would have changed current federal law to allow the U.S. Food and Drug Administration (FDA) to regulate tobacco. In addition, the global settlement contained somewhat broader restrictions on the content of tobacco company advertising than the current settlement, although the current agreement contains broader restrictions on the placement of advertising. The global settlement contained so-called "look-back" provisions that would have penalized tobacco companies if youth smoking did not decline over time. However, only the current settlement includes establishment of a national foundation to study youth smoking and fund antismoking advertising.

Settlements With the Four Other States. As indicated earlier, four states (Florida, Minnesota, Mississippi, and Texas) all have previously settled their cases against the tobacco companies with conditions and provisions similar to those of the current settlement. The amount of money projected for California under the current settlement, on a per capita basis, is similar to the amounts projected for Florida and Texas. However in Mississippi, which was the first state to file a lawsuit, and in Minnesota, which settled just prior to the end of the trial, the per capita amounts were much greater than for California in the current multistate agreement.

Relationship of the Settlement to Proposition 10

Proposition 10, enacted by the voters in the November 1998 election, created the California Children and Families First Program. This program will fund early childhood development programs from revenues generated by increases in the state excise tax on cigarettes and other tobacco products. The measure increases the excise tax on cigarettes by 50 cents

per pack beginning January 1, 1999, bringing the total state excise tax to 87 cents per pack. The measure also will increase the excise tax on other types of tobacco products (such as cigars, chewing tobacco, pipe tobacco, and snuff) beginning July 1, 1999.

Although both the tobacco agreement and Proposition 10 will generate substantial additional revenues to the state and local governments in California, their similarities end there, as shown in Figure 5. The major difference between the two is that Proposition 10 revenues can only be used for specified purposes allocated by local commissions, whereas there are no restrictions on the use of the tobacco settlement monies by the state or local governments. (For additional information on Proposition 10, please see our recent report *Proposition 10: How Does It Work and What Role Should the Legislature Play in Its Implementation?*)

Figure 5

Comparison of Tobacco Settlement and Proposition 10

	Tobacco Settlement	Proposition 10
Revenue	$800 million to $1 billion annually, split 50-50 between state and local governments	$690 million in 1999-00 declining slightly in subsequent years[a]
Use of funds	No restrictions	Restricted to child development programs
Projected revenue	Significant uncertainty, especially in the long run	Likely to decline slowly
Control of funds	State and locally elected officials	County-appointed commission and state commission
How funds generated	Payments from tobacco companies (passed on to consumer)	New state tax on tobacco products
Effective date	1999-00	January 1, 1999

[a] Legislative Analyst's Office estimate.

What Should the Legislature Do?

As indicated previously, the agreement does not require any action by the Legislature in order to take effect. However, the agreement raises a number of issues that the Legislature will need to consider.

Recognize Funding Uncertainties in the Long Run. Despite the uncertainties outlined above, we believe that it is relatively certain that the state will receive the projected amounts of revenues from the settlement at least in the short run (the next three years or so). However, several of the uncertainties, such as potential declines in smoking and future actions of the federal government, make the long-term funding levels much more questionable.

Given the long-term uncertainties about the revenues, we recommend that the Legislature refrain from dedicating the tobacco settlement monies to support specific new ongoing programs. Rather, we believe that it would be more fiscally prudent to reexamine the settlement projections regularly and continue to deposit the money in the General Fund without specific earmarking for a particular program. Should the Legislature wish to establish new programs, such programs should *compete* for revenues from the General Fund with all other legislative priorities. Our recommended approach is consistent with the Governor's 1999-00 budget proposal.

Recognize Benefit to Local Governments. Since the property tax shifts of the early 1990s, the Legislature has taken many actions to bolster the fiscal condition of California's local governments. For example, the Legislature has acted to provide cities and counties: Proposition 172 sales tax revenues, relief from trial court funding reform, and programs to support local law enforcement. Combined, these revenues offset more than 60 percent of the ongoing revenue loss due to the property tax shift. For 1998-99, we estimate that the "net harm" to local governments associated with the property tax shift is about $1.4 billion.

As shown in Figure 2, the tobacco settlement is expected to provide to local governments $153 million in the first year, rising to about $500 million annually within a few years. In the case of some California cities and counties, these settlement revenues will restore (or improve) the locality's fiscal condition relative to the locality's fiscal condition prior to the property tax shifts. Other cities and counties, while still benefiting significantly from the cigarette settlement, will not find that these settlement revenues fully "make up" the fiscal hole caused by the property tax shift. As the Legislature contemplates proposals for local fiscal relief in the future, we recommend that the Legislature keep in mind these additional financial resources provided through the settlement.

Monitor New National Antitobacco Programs in Order to Complement Existing State Programs. The settlement establishes a national foundation to combat smoking and includes a total of $1.45 billion in payments from the tobacco companies for establishment of a national

tobacco control public education campaign and $25 million per year to study programs to reduce teen smoking. It is not clear how these monies will be used at this time. However, it seems likely that such efforts could complement or supplement the state's existing efforts to curb tobacco consumption. For this reason, it will be important for the administration and the Legislature to closely monitor implementation of these provisions of the settlement and make adjustments to the state's programs as necessary.

Consider Adopting the Model Legislation Included in the Settlement. The settlement agreement includes model legislation that would protect the payments made to the state from decreasing as a result of loss of market share or entry into the market by new tobacco companies. In view of this fiscal issue, we believe that the Legislature may want to consider enacting the model legislation.

Conclusion. The tobacco settlement will result in significant additional resources to California's state and local governments. As the Legislature debates its approach toward utilizing these funds, it is critical that the uncertainties surrounding the level of funds the state will receive in the future be taken into account.

DEPARTMENTAL ISSUES

Judiciary and Criminal Justice

DEPARTMENT OF CORRECTIONS (5240)

The California Department of Corrections (CDC) is responsible for the incarceration, training, education, and care of adult felons and nonfelon narcotic addicts. It also supervises and treats parolees released to the community.

The department now operates 33 institutions, including a central medical facility, a treatment center for narcotic addicts under civil commitment, and a substance abuse treatment facility for incarcerated felons. The CDC system also includes 12 reception centers to process newly committed prisoners, 16 community correctional facilities, 38 fire and conservation camps, the Richard A. McGee Correctional Training Center, 33 community reentry and restitution programs, 130 parole offices, and 4 outpatient psychiatric services clinics.

BUDGET PROPOSAL

Expenditure Growth to Slow. The budget proposes total expenditures of $4.2 billion for the CDC in 1999-00. This is $127 million, or 3.1 percent, above the revised estimate for current-year expenditures. The primary cause of this increase is the growth in the inmate population and the related expansion of state prison staff. Under the budget plan, the CDC workforce would grow by about 1,500 personnel-years, or 3.5 percent, above the projected 1998-99 staffing level. This projected 1999-00 growth in the CDC workforce compares with anticipated growth of about 3,700 personnel-years, or 9 percent, during 1998-99.

The budget includes $37 million to reflect the additional full-year cost of staff and new programs added during the current year, with most of that sum for custody staff needed to activate additional prison beds.

The 1999-00 budget proposal for CDC represents a significant slowdown in the growth of its expenditures. The CDC expenditures have not grown by a smaller dollar amount since 1983-84, except for 1992-93—a year when the state faced an unusually large revenue shortfall and CDC spending actually decreased slightly. The CDC expenditures have not otherwise grown this slowly on a percentage basis since 1967-68, when they went up 3 percent. As discussed below, the proposed slowdown in correctional spending is associated with a slowing in the growth in the inmate population and related growth in CDC staffing.

General Fund Expenditures. Proposed General Fund expenditures for the budget year total $4 billion, an increase of about $135 million, or 3.5 percent, above the revised estimate for current-year General Fund expenditures.

The General Fund contribution to the proposed budget would grow slightly more than the CDC budget overall. One major reason is a decline in the availability of bond funds to partly offset CDC costs. In prior years, bond funds that were no longer needed for completed prison construction projects were used to offset the ongoing payments provided in the budget to pay off lease-payment bonds. For 1999-00, bond reimbursements are budgeted at about $68 million, a decline of about $11 million, or 14 percent, below current-year expenditures. Because the state has nearly exhausted these surplus bond funds, larger General Fund appropriations to CDC are now required to pay off these bonds.

Federal Fund Expenditures. The Governor's budget assumes that the state will receive $273 million from the federal government during 1999-00 as partial reimbursement of CDC's cost (estimated to be $557 million in the budget year) of incarcerating and supervising felons on parole who are illegally in the United States and have committed crimes in California. That is $100 million more than would likely be received under current appropriations, and assumes that the federal government will significantly increase its spending for these purposes. The federal funds are not included in CDC's budget display, but instead are scheduled as "offsets" to total state General Fund expenditures. We discuss this assumption in more detail later in this analysis.

OVERVIEW OF THE INMATE POPULATION

Who Is in Prison?

Figures 1 through 5 illustrate the characteristics of the state's prison population, which was 158,207 as of June 30, 1998. The charts show:

- About 58 percent of inmates are incarcerated for nonviolent offenses (Figure 1).
- About 67 percent of all inmates were committed to prison from Southern California, with about 36 percent from Los Angeles County alone and 8 percent from San Diego County. The San Francisco Bay Area is the source of about 13 percent of prison commitments (Figure 2 on page 58).
- More than 53 percent of all inmates are between 20 and 34 years of age, with the number of inmates falling dramatically starting by the early 40s (Figure 3 on page 58).
- The prison population is divided relatively evenly among whites, blacks, and Hispanics (Figure 4 on page 59).
- About 58 percent of the inmates are new admissions from the courts, 24 percent are offenders returned by the courts for a new offense while on parole status, and 18 percent are parolees returned to prison by administrative actions for violation of their conditions of parole (Figure 5 on page 59).

Figure 1

Prison Population by Type of Offense

June 30, 1998

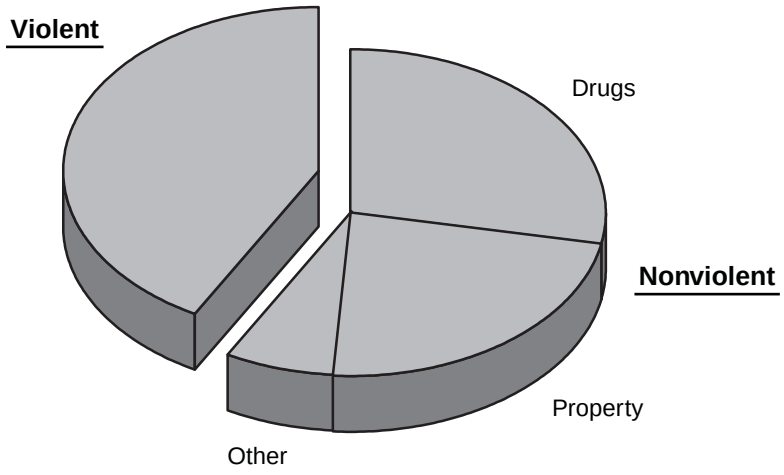


Figure 2

Prison Population by Area of Commitment

June 30, 1998

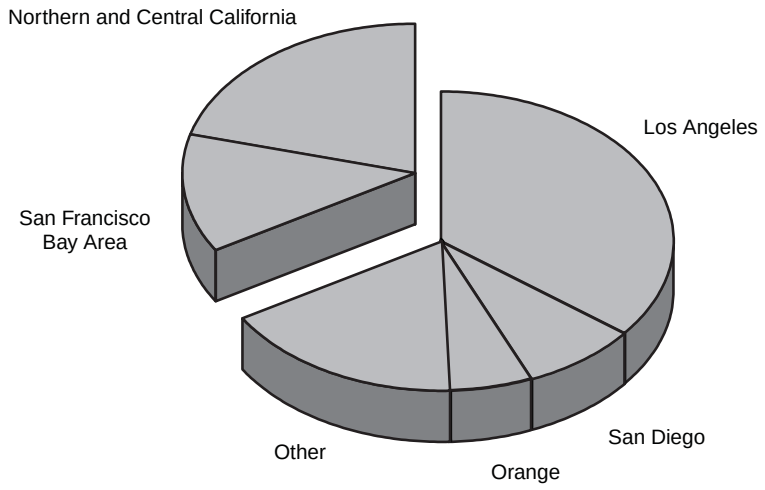


Figure 3

Prison Population by Age Group

June 30, 1998

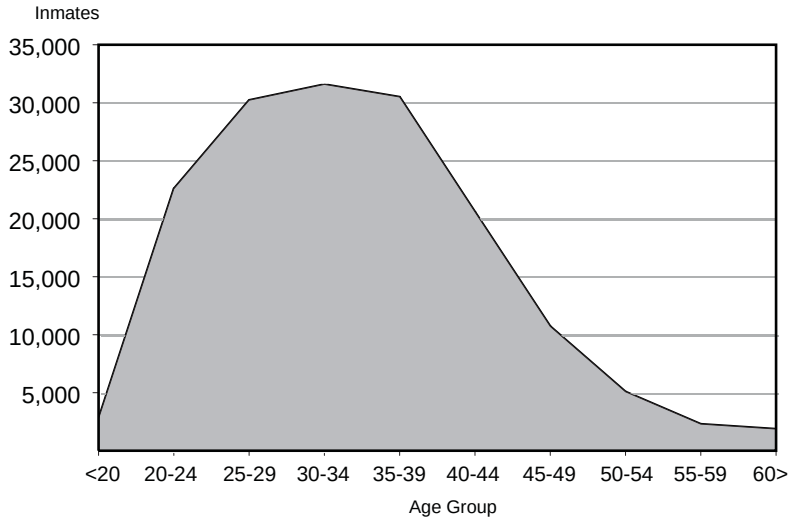


Figure 4

Prison Population by Ethnicity

June 30, 1998

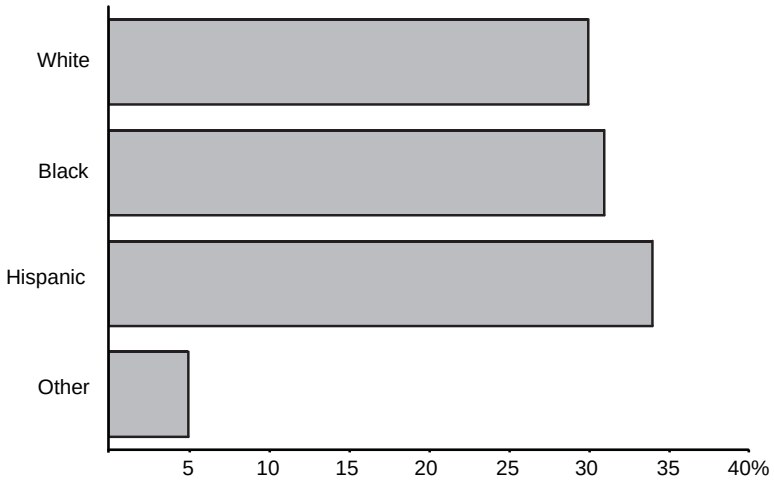
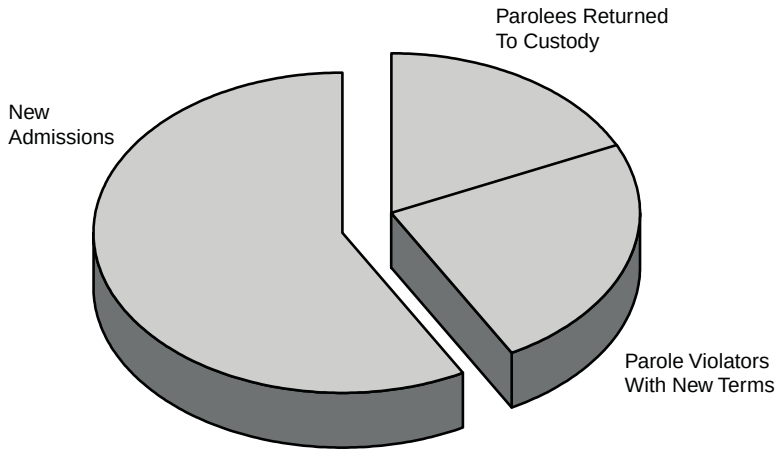


Figure 5

Prison Population by Commitment Type

June 30, 1998



INMATE AND PAROLE POPULATION MANAGEMENT ISSUES

Projected Inmate Population Growth Slowing

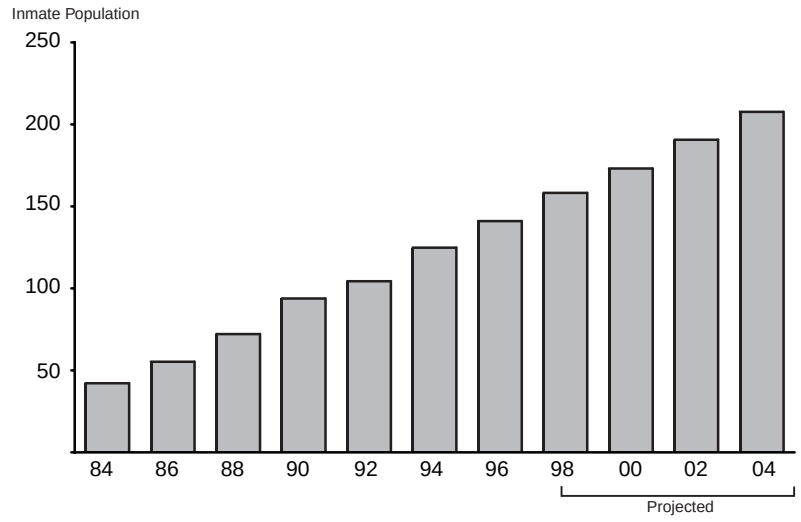
The Department of Corrections projects that the prison population will increase over the next five years, reaching a total of almost 208,000 inmates by June 2004. This represents a slower rate of growth than the department has experienced in the 1990s. Recent trends indicate, however, that the growth rate will be even slower than the new projections would suggest.

Inmate Population Growth. As of June 30, 1998, the CDC housed 158,207 inmates in prisons, fire and conservation camps, and community correctional facilities. Based on the fall 1998 population forecast prepared by the CDC, the inmate count would reach about 165,400 by June 30, 1999, and increase further to 173,100 by June 30, 2000. These figures represent an annual population increase of 4.5 percent in the current year and 4.7 percent in the budget year. As can be seen in Figure 6, this continues an upward trend in the prison population that has been evident since the early 1980s.

Figure 6

Inmate Population Growth Projected to Continue

1984 Through 2004
(In Thousands)



The CDC projections assume that the population will increase further over the following four years, reaching 208,000 inmates by June 30, 2004. This represents an average annual population increase of about 3.9 percent over the six-year period from 1997-98 through 2003-04.

Parole Population Growth. As of June 30, 1998, the CDC supervised 108,750 persons on parole. The fall 1998 projections assume that the parole population will be 114,700 as of June 30, 1999, and will increase to 120,300 by June 30, 2000. These figures assume a parole population increase of 5.5 percent in the current year and 4.8 percent in the budget year.

The fall 1998 projections also assume that the population will increase further over the following four years, reaching a total of 135,200 parolees by June 30, 2004. This represents an average annual population increase of about 3.7 percent.

Change From Prior Projections. The fall 1998 projection of the inmate population has decreased significantly from the prior CDC forecast (spring 1998). The new fall 1998 forecast for June 30, 1999 is about 4,700 inmates lower than the spring forecast—roughly equal to the number of inmates housed in one prison. As can been seen in Figure 7, the differences between the spring 1998 and fall 1998 inmate projections at first widen over the next several years, but narrow again in the long run.

Figure 7

Total Inmate Population
Recent CDC Projections

June 30 Population[a]	Projection as of: Spring 1998	Fall 1998	Difference
1999	170,101	165,395	-4,706
2004	214,223	207,620	-6,603
2007	244,583	240,779	-3,804

[a] For selected years.

As regards the parole population, the fall 1998 projection reflects a significant increase relative to the prior, spring 1998 CDC forecast. The new fall 1998 forecast for June 30, 1999 is about 3,500 parolees higher than the spring forecast. As can been seen in Figure 8 (see next page), the

differences between the spring 1998 and fall 1998 parole projections at first widen over the next several years, but narrow again in the long run.

Figure 8

Total Parole Population
Recent CDC Projections

June 30 Population[a]	Projection as of: Spring 1998	Fall 1998	Difference
1999	111,227	114,720	+3,493
2004	127,025	135,203	+8,178
2007	137,270	142,971	+5,701

[a] For selected years.

Why the Forecasts Have Changed. According to CDC, the lower projections in the prison population, along with the higher projections in the parole population, are primarily due to evidence that fewer parolees are failing while on parole in the community. Fewer are being returned to state prison through an administrative process of the Board of Prison Terms for violation of their conditions of parole. In addition, fewer are being sent back to prison by the courts for new violations of law than had been assumed for the spring 1998 forecast.

That has the effect both of holding down growth in the prison population and bolstering the size of the parole population. In modifying its population projections, CDC did not offer any explanation why fewer parolees are being returned to state custody.

Potential Risks to Accuracy of Projections. As we have indicated in past years, the accuracy of the department's latest projections remain dependent upon a number of other significant factors. Among the factors that could cause population figures to vary from the projections are:

- ***Changes in sentencing laws*** and the criminal justice system adopted by the Legislature and the Governor or through the initiative process.
- ***Changes in the operation of inmate education and work programs*** and prison rules affecting the credits inmates can earn to reduce their time in prison.

- ***Changes in the local criminal justice system*** can affect the number of persons arrested, charged, tried, convicted, and ultimately admitted to prison.
- ***A continued trend of lower crime rates,*** especially for violent crimes, could cause growth in the inmate population to fall below the latest CDC projections.

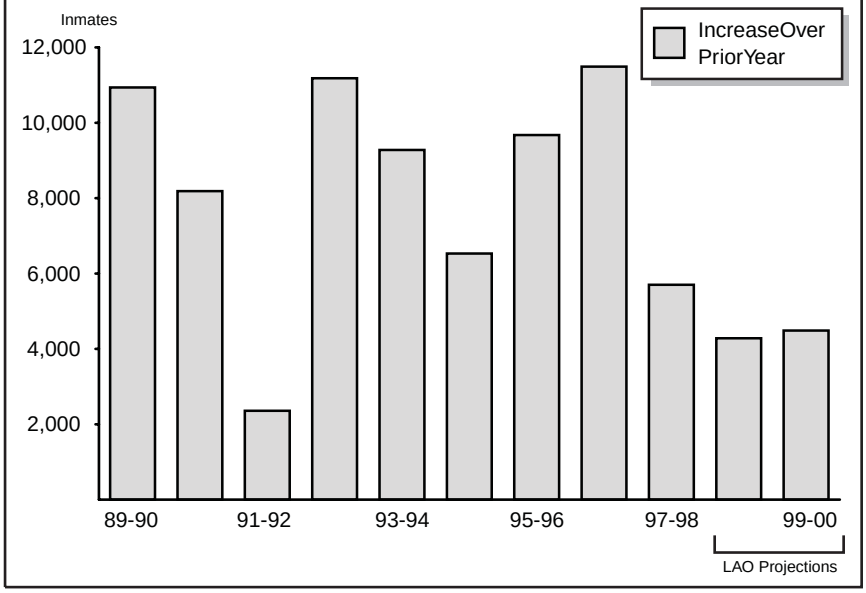
Significant further changes in any of these areas could easily result in a prison growth rate higher or lower than contained in CDC's projections.

Current Inmate Count Running Below Projections. At the time this analysis was prepared, the actual CDC inmate count had already varied significantly from CDC's fall 1998 projections. The CDC had *overestimated* the number of inmates who would be incarcerated as of mid-January 1999, by almost 2,900. As of that same date, the fall 1998 projections *underestimated* the number of parolees being supervised on parole by almost 1,000.

During the first half of 1998-99, the prison population grew at the lowest rate in many years—about 1,700 inmates, or 1 percent, on an annual basis. As can be seen in Figure 9, it has not been unusual in recent

Figure 9

CDC Growth Has Slowed Recently



years for the CDC system to absorb growth of 11,000 inmates annually. The growth rate has not been this low since 1991-92, a period when CDC aggressively expanded parole services and standardized its handling of parole violations with the result that parole revocation rates dropped.

Part of the reason that prison growth has slowed may be due to changes in the pattern of decision-making by parole authorities regarding when misconduct by a parolee constitutes grounds for revocation and reincarceration of an offender for a parole violation and when alternative types of sanctions are deemed appropriate. Administrative changes in such decision-making have had a significant impact on prison population levels in the past. In the early 1990s, for example, CDC administrators established more consistent decision-making in such matters and the parole revocation rate declined significantly.

Part of the reason may also be a $5.5 million expansion of parolee services, such as substance-abuse counseling and short-term residential shelters, approved last year by the Legislature and the Governor. We recommended such an increase in services in the belief that it would result in more offenders paroling safely into the community and fewer returned to state custody for new crimes or parole violations. Notably, when CDC eliminated about $5 million in these parole services in 1997, the rate of parole failure increased significantly and the state experienced an unexpected surge in its prison population. The restoration of these funds may also be contributing to the decline in the parole failure rate.

Budget Modified to Reflect Trend. The Governor's January budget proposal for CDC is ordinarily based upon CDC projections released the previous fall. However, that is not the case for the proposed 1999-00 CDC budget. In preparing the budget, the Department of Finance made fiscal adjustments to reflect the growing discrepancy between the fall 1998 projections and actual inmate and parole population counts.

Specifically, the budget plan assumes that the population held in state prisons will average 489 fewer inmates than projected during 1998-99 and 1,453 fewer inmates than projected during 1999-00. Relatively minor adjustments were also made to the parole population. Because of these inmate and parole population adjustments, the budget assumes that about $5.3 million less in funding will be spent for prison operations during 1998-99 than if the budget plan were based strictly on CDC's fall 1998 projections. Similarly, the adjustments mean that about $16.5 million less in funding was budgeted for prison operations during 1999-00 than if the budget plan were based strictly on CDC's population figures.

Caseload Funding Requires Further Adjustment

We recommend that the 1999-00 budget request for inmate and parole population growth be reduced by $29.7 million because prison population growth continues to lag below California Department of Corrections (CDC) projections. We further recommend that the budget request for correctional officer cadet training and inmate mental health services be reduced by $3.6 million to account for the slower pace of population growth.

As regards the current year, we believe that CDC population expenditures will be $33.9 million less than budgeted. Further changes to the CDC budget for the current and budget years should be considered following review of the May Revision. (Reduce Item 5240-001-0001 by $33.4 million.)

As we indicated earlier, CDC's fall 1998 population projections appear to have overestimated the number of inmates who are being incarcerated and understated the number of parolees under supervision. The Governor's budget, as submitted, adjusts CDC's fall 1998 projections to reflect the slower growth rate. However, we believe that if current trends hold, the adjustments made by the Governor's budget will be insufficient. Our estimates of the CDC inmate population, which take into account more recent trends, are shown in Figure 10.

Figure 10

Inmate Population Projections[a]

	1998-99	1999-00
California Department of Corrections	161,879	168,934
Department of Finance[b]	161,390	167,481
Legislative Analyst's Office	158,592	164,572

[a] Average daily population.
[b] Reflected in *1999-00 Governor's Budget.*

Current-Year Effect. Based on the population data available at the time we prepared this analysis, we estimate that the average daily population of the prison system in 1998-99 will be about 2,400 inmates below the number assumed in the Governor's budget plan. We further estimate that the average daily parole population will be about 1,000 higher than had been assumed. We estimate that the net effect of these two changes would be a savings in the current year of $29.7 million.

Budget-Year Effect. We anticipate that this fiscal trend will carry over into 1999-00. Based on available population counts, we estimate that the average daily prison population in the budget year will be almost 2,500 fewer inmates below the number assumed in the proposed budget. We further estimate that the average daily parole population will be about 2,000 higher than had been assumed in the budget plan. Based on these calculations, we believe that CDC is overbudgeted for growth in its inmate and parole caseloads by $29.7 million.

The CDC will issue updated population projections in spring 1999 that form the basis of the May Revision. At that time, we will review whether further adjustments to CDC's funding for inmate and parole caseloads are warranted.

Effect on Other CDC Expenditures. If current inmate population trends hold, the CDC would need to train fewer new correctional officers to staff its prisons. It also would not need to increase its budget for services to mentally ill inmates by as much as the Governor's budget plan provides. Funding for both items is tied to inmate population levels.

We estimate that budget request for correctional officer cadet training should be reduced by $3.3 million, and the budget request for mental health services for inmates by $341,000, to be consistent with recent population trends. The Legislature should also assume that the CDC will spend $4 million less on cadet training and $167,000 less on mental health services for inmates in 1998-99.

Analyst's Recommendation. In summary, we recommend that the 1999-00 CDC budget be reduced by $29.7 million from the General Fund to reflect slower CDC inmate population growth. Additionally, the CDC budget for cadet training and inmate mental health services should be reduced by $3.6 million because of slower growth in the inmate population. The current-year budget is also likely to reflect savings of about $33.9 million due to slower CDC caseload growth. We recommend that the Legislature consider making further CDC caseload adjustments at the time of the May Revision.

Inmate Housing Plan Relies on Overcrowding

We withhold recommendation on the Department of Corrections' (CDC's) plan for housing the projected increase in the prison population because the slowdown in the rate of inmate population growth has made elements of the plan obsolete. We anticipate that the CDC will revise the plan at the time of the May Revision.

Prison Overcrowding to Continue. The Governor's housing plan provides for the continued overcrowding of day rooms, gyms, and housing units at various existing prisons. However, many specific prison bed activation proposals included in the plan are unlikely to occur because of the slowing in the rate of prison population growth, rendering many of its elements obsolete.

The housing plan assumes the state will move ahead with projects authorized by the Legislature last year to build 1,000 administrative segregation beds for high-risk inmates on the grounds of the existing state prisons. It also seeks staffing and funding to contract for an additional 2,000 beds with private vendors. The Governor's budget does not propose to construct any new state-operated prisons.

Analyst's Recommendation. Because the inmate population is running below the fall 1998 projections upon which the CDC housing plan was based, it is likely that it will change significantly by the May Revision. Thus, we withhold recommendation on the plan at this time pending receipt of CDC's revised prison inmate population projections and the updated housing plan provided in the May Revision.

Implications of the Population Projections

The state continues to face a major challenge to accommodate the steadily growing population of prison inmates, but recent projections indicate that it will have some additional time to prepare to meet that challenge. We recommend the state undertake further efforts this year to accommodate future growth in the inmate population using a balanced approach weighted almost evenly between adding new prison capacity and enacting policy changes that would reduce the expected population.

System Nearing Long-Term Capacity. Despite the recent slow-down in inmate population growth, the prison system is approaching its long-term housing capacity of 175,000 inmates (including additional capacity for 4,000 inmates approved in September 1998). By long-term housing capacity, we mean that most of the general inmate population is housed two per cell with double-bunking in dormitories and gymnasiums. This capacity does not include about 7,200 beds—triple bunks in prison dormitories and gymnasiums and double bunks on dayroom floors in celled housing units—that the department does use now but considers to be a "high-security risk" and thus not a viable long-term housing alternative.

When the spring 1998 projections were released, CDC expected the inmate population to reach the long-term capacity level in mid-2000. The

new fall projections, together with the most recent population trends, indicate that this will not occur until at least a year later.

Progress in Addressing the Problem. Recent actions taken by the Legislature and the Governor (and not yet reflected in CDC's population projections) will likely cause the date the system reaches long-term capacity to slip even further. A $177 million legislative package signed into law by the Governor on September 14, 1998, will add almost 4,000 beds to the prison system (half in state-operated prison facilities and half through contracts for inmate bed space with private-sector vendors).

Moreover, the legislative package, together with an additional $13 million provided through the *1998-99 Budget Act*, expands state and local programs designed to slow the rate of growth in the inmate population. (Issues pertaining to the way in which the Governor's budget plan implements the legislative package are discussed later in this analysis.) We estimate that, if fully implemented over the next six years, these new or expanded programs would reduce the need for additional prison space by at least 5,000 beds. There are some indications that they may already have played a role in slowing inmate population growth. The restoration of casework services money has enabled parole agents to provide parolees with programs and services that will keep some offenders safely in the community instead of returning them to prison.

We believe the recent actions taken by the Legislature and Governor will benefit the state by holding down future state incarceration costs while improving public safety. However, we do not believe that this package by itself will be sufficient to address the entire *long-term* prison capacity problem facing the state. After taking the effect of this package into account, we estimate that the state would run out of bed space by as soon as 2001 and would need additional space for as many as 27,000 inmates by June 30, 2004. That is the equivalent of five to six state-operated prisons carrying a one-time construction cost of $1.6 billion and annual ongoing operational costs of more than $500 million.

Take a Balanced Approach. Given the significant amount of overcrowding in the prison system now and the CDC projections of many more inmates to come, we recommend that the Legislature and administration undertake further efforts in 1999 to accommodate future growth in the inmate population. In our view, such efforts should emphasize a balanced approach, weighted almost evenly between adding new prison capacity and enacting policy changes that would reduce the expected inmate population growth. We offered such an approach in our May 1997 report, *Addressing the State's Long-Term Inmate Population Growth.* The

package enacted in 1998 was consistent with the principles outlined in that report, but additional steps will be needed.

Such a balanced approach should include measures that will reduce the need for additional prison beds—such as restructuring the state parole system, reform of state sentencing laws, and the expansion and improvement of existing academic, vocational, and Prison Industry Authority programs. This approach should also include measures that expand prison capacity—by constructing additional new state-run prisons, adding more beds to the grounds of some existing prisons, and/or contracting for more community correctional facility beds with vendors. We believe this balanced approach toward addressing the prison capacity problem will prove cost-effective and will minimize the risks to public safety.

A more detailed discussion of some of these options can be found in our May 1997 report on prison capacity issues; our April 1996 report, *Reforming the Prison Industry Authority;* and in the Judiciary and Criminal Justice Section of the *1998-99 Analysis of the Budget Bill.* An additional option for addressing the prison capacity issue by reducing the recidivism of high-risk sex offenders is discussed in the Crosscutting Issues section of this chapter.

CORRECTIONAL PROGRAM ISSUES

Full Implementation of Agreement Would Require Additional Funding

Largely because of the state's fiscal constraints, the Governor's budget plan does not completely implement a 1998 legislative agreement to balance expansion of prison capacity with new programs intended to reduce high recidivism rates of offenders released on parole. We recommend that the Legislature consider a $9.5 million augmentation for certain programs to more completely fulfill the 1998 agreement, and offer recommendations on related issues.

Budget Only Partially Consistent With Legislative Direction. During its 1998 session, the Legislature reached agreement on a balanced package of measures intended to increase the long-term housing capacity of the state prison system as well as cost-effective expansions of state and local programs designed to slow the rate of growth of the prison population. The key measures relating to adult corrections were Chapter 500 (SB 491, Brulte), Chapter 502 (SB 2108, Vasconcellos), and Chapter 526 (AB 2321, Knox). Other provisions were contained in the *1998-99 Budget Act*.

As described in Figure 11, the Governor's budget does not fully implement all elements of that package on the original timetable and at the ultimate program service levels that were contemplated in the agreement.

Figure 11

Budget Plan Modifies the 1998 Corrections Agreement

Program	Legislation 1998-99	Governor's Budget Plan 1998-99	Governor's Budget Plan 1999-00	LAO Analysis of Modifications
In-prison drug treatment and community aftercare expansion	$10 million	$6.1 million	$26.4 million	More gradual phase-in of new beds appears justified
Preventing Parolee Crime Program expansion	$3 million	$1.6 million	$1.8 million	Fails to expand literacy labs, multiservice centers, or substance abuse networks
Prerelease program expansion	$1 million	$500,000	$1 million	Phase-in of new program appears justified
Offender job placement services expansion	$1 million	$769,000	$1 million	Phase-in of new program appears justified
Pilot programs for women offenders	$6 million	$3 million	$5.9 million	Assists fewer offenders and provides less job training than was proposed
Parole casework services funding restoration	$5.5 million	$5.5 million	$5.5 million	Full implementation on original proposed schedule
Work and education program expansion	$2.5 million	$2.5 million	$5 million	Full implementation on original proposed schedule

Our review found that some of the reductions in spending levels and the slower phase-in of the new programs are for valid, technical reasons. For example, the budget plan does not include funding for computerized literacy laboratories for parolees because a Feasibility Study Report (FSR) ordinarily required for such information technology projects was not ready at the time the budget plan was prepared.

Other reductions in the Governor's budget reflect decisions to slow down or reduce the program to a level at odds with the 1998 legislative agreement. For example, although CDC was prepared to carry out a $3 million expansion of the Preventing Parolee Crime program in 1998-99, about half of the $3 million legislative appropriation is left unspent until 1999-00 and the expenditures would top out at $1.8 million in 1999-00. Moreover, the CDC budget does not comply with last year's supplemental report language requiring automatic adjustments to the Preventing Parolee Crime program that keep pace with growth in the parole caseload.

We would note that the Governor's budget provides for the full expansion of prison capacity approved in the 1998 legislative agreement, although with some changes in timing and funding sources.

Reinvestment of Some Savings Should Be Considered. We believe it is important that the legislative agreement be fulfilled to the maximum extent feasible, taking into account appropriate technical limitations on the timing and use of the funds and the state's fiscal constraints. Accordingly, we recommend that the Legislature consider reinvesting a portion of the population-related spending reduction we identified in the CDC budget to more completely fulfill the 1998 legislative agreement. Such an approach is in keeping with the Legislature's policy decision to address the challenge posed by existing prison overcrowding and limitations on the state's long-term housing capacity.

We also suggest some specific improvements in the way the appropriated funds are used and address other related issues. Our analysis indicates that these programs are likely to result in savings on prison operations and construction, greater than their costs. Our specific proposals are discussed below.

- ***Preventing Parolee Crime.*** We recommend the Legislature consider a $6.8 million augmentation, including $3.2 million for residential multiservice centers, $3 million for substance abuse treatment networks, and $250,000 for ongoing evaluation of the programs. We recommend that the Legislature consider a $650,000 augmentation for computerized literacy labs only if the FSR for this program has been approved by the time of budget hearings. In the event these augmentations are approved, about $300,000 of the $6.8 million augmentation should be reflected in the budget plan as coming from automatic parole caseload adjustments, consistent with previously adopted supplemental report language.

- ***Prerelease Programs.*** We propose no augmentation, but instead recommend that the Legislature direct that $750,000 of the $1 million augmentation for prerelease programs be spent in conjunction with a new Offender Employment Continuum program scheduled to commence operation in October 1999. The CDC proposes to use the $750,000 for a modest expansion of the existing three-week inmate prerelease classes. We believe a better approach would be to target these resources to establish longer and more intensive prerelease programs relying more heavily on a cognitive-skills model, an approach researchers believe to be successful in changing the behavior of offenders. The inmates receiving the services would be the same ones selected for the five Offender Employment Continuum pilot programs, which are designed to provide job placement and job development services after their release on parole. We believe pairing stronger prerelease programs with strong post-release job assistance is worth a test.

- ***Women Offender Pilot Projects.*** We recommend that the Legislature consider a $2.7 million augmentation for the three pilot projects. Together with funding already allocated to establish additional community residential aftercare for women offenders, this sum would be sufficient to expand the number of participants from the 426 in the budget plan to 750 annually. The augmentation would also provide the resources needed to implement work experience programs to strengthen the job placement programs already contemplated.

We further recommend that state law be changed so that offenders with a recent drug-related felony conviction, including many of the women who will be participating in the pilot programs described above, are eligible for welfare services such as drug treatment, child care, and education (but not cash grants).

We do not propose at this time to fund this program under the state's welfare program, known as CalWORKS (California Work Opportunity and Responsibility to Kids). However, this change would permit almost all of the state's expenditures for the female offenders program to be counted toward the CalWORKs maintenance-of-effort (MOE) requirement, giving the state additional flexibility on its use of General Fund resources. (The implications of counting these expenditures toward the state's CalWORKS MOE are discussed in the Health and Welfare chapter of this *Analysis.*) We also believe the statutory change is an appropriate public policy that would help reduce the welfare dependency of the families of women offenders.

Determine Caseload for Disabled Inmates Before Funding Special Programs

We recommend approval of $1.8 million requested to screen the prison inmate population to identify offenders who are developmentally disabled. However, we recommend denial at this time of $3.5 million requested to provide specialized programs for developmentally disabled inmates because their number and location in the prison system is unknown and because a plan to provide these services is still being negotiated as part of a lawsuit. (Reduce Item 5240-001-0001 by $3.5 million.)

Request Tied to Pending Court Case. The budget includes $5.3 million to establish a new program to screen, identify, track, and provide specialized services for prison inmates with various developmental disabilities—such as mental retardation, cerebral palsy, epilepsy, and autism. The new program would operate in as many as 12 different state prisons and require a workforce of 116 personnel-years.

The request is prompted by efforts to resolve a pending federal class-action lawsuit filed by developmentally disabled inmates who contended that they were discriminated against on the basis of their mental impairment. The legal parties have agreed to a process by which CDC and legal representatives of the inmates are negotiating a remedial plan to identify and address the needs of developmentally disabled inmates. The CDC indicates that funding for the proposed program is needed if the state is to settle the case and avoid prolonged litigation and the imposition by the court of a more costly solution than would result from a negotiated settlement.

No Agreement on Plans. We are advised that, despite ongoing negotiations between the parties, strong disagreements remain over many elements of the state's proposed remedial plan. Among the most significant disputes is the state's proposal to establish specialized services for more severely developmentally disabled inmates at a number of different prisons. The CDC indicates that this approach is necessary to "mainstream" these offenders into prison programs and to ensure security. The plaintiffs in the case contend it would be more efficient and more effective to cluster such inmates together at fewer locations and, in the process, protect them from being victimized by nondisabled inmates.

As is customary in such legal negotiations, CDC's remedial plan has been undergoing changes. The CDC budget request is based on the assumption that 12 prisons would provide services. A subsequent plan submitted to plaintiffs indicates that such services would actually be available at 14 prisons, and we are advised that yet another plan still

under development could propose a ten-prison plan. Further changes appear likely as negotiations proceed.

Complicating the negotiating process is the fact that the state does not know how many developmentally disabled offenders it has in prison, how many have a severe disability requiring more extensive services, the makeup of this group according to their security classification, or their program needs. That information almost certainly cannot be determined with accuracy until the state undertakes efforts to screen and identify developmentally disabled offenders.

That makes it impossible to know what the ultimate cost would be of the program being proposed by CDC. The CDC says the number of developmentally disabled inmates is probably between 2 percent and 10 percent of the general prison population—in other words, somewhere between 3,000 and 16,000 inmates. Knowing the actual prevalence, in our view, is critical to the design of an efficient and effective program to meet the needs of this specialized population.

Analyst's Recommendation. For these reasons, we recommend that the Legislature approve the $1.8 million requested in the budget year to screen and identify inmates in its prison population but recommend denial at this time of the $3.8 million sought for implementation of specialized services.

In our view, this approach would demonstrate the state's good-faith intention to reach a negotiated agreement on a remedial plan and permit CDC to move forward immediately with the screening and identification efforts that are needed first to design an appropriate program. The CDC could reinstate its request for additional funding to implement services for this group of inmates once a remedial plan has been negotiated and the prevalence of this group in the prison population can be estimated with greater accuracy.

No Legal Authority Cited for Holding Mentally Ill Parolees

We recommend approval of $1.4 million and 2.8 personnel-years requested to provide community housing, more intensive counseling and treatment, and electronic monitoring of mentally ill offenders released on parole. However, we recommend denial of $3.6 million requested to hold parolees in secure private psychiatric facilities costing from $230 to $460 per day because it is unclear who the department would hold in these facilities and what legal authority it has to do so. (Reduce Item 5240-001-0001 by $3.6 million.)

Background. About 16,600 inmates are now receiving mental health services within the prison system, and another 8,000 parolees under active state supervision are receiving such services from Parole Outpatient Clinics. State law authorizes the courts in various civil and criminal proceedings to order mentally ill and dangerous offenders, including inmates nearing their parole release dates deemed to be Sexually Violent Predators (SVPs) or Mentally Disordered Offenders (MDOs), to be involuntarily committed to state mental hospitals for treatment. State law also authorizes the use of electronic monitoring devices to track the location of offenders released on parole.

In the past, the Board of Prison Terms (BPT) sometimes ordered prison inmates who were nearing their parole release dates to continue to be held in state prison for up to another year on the grounds that they needed psychiatric treatment. However, in July 1998, a state appellate court ruled that this practice was illegal absent any conduct by the inmate indicating that his mental health has deteriorated to the point he is likely to commit further criminal acts. The court found that BPT lacked any statutory authority for such actions, and that other legal remedies were available, such as the SVP or MDO law, to protect the public from mentally ill and dangerous offenders.

As a result of this so-called Whitley ruling (formally known as *Terhune v. Superior Court of Contra Costa County*), the state was forced to release a number of offenders, while others are again being held because they committed parole violations resulting in their return to prison or because they received a court-ordered commitment to a state mental hospital.

New Proposal for Mentally Ill Offenders. The budget requests $5 million and 2.8 personnel-years for a new program involving parolees with psychiatric problems.

The CDC request includes about $3.6 million to contract with private secure psychiatric facilities at rates between $230 and $460 per day for mental health treatment for 80 parolees, who it has indicated would be placed there involuntarily as a condition of their parole. The CDC has advised us that parolees selected for placement in these beds would be those who, while mentally ill, are nonetheless ineligible for court-ordered commitments to state mental hospitals and also ineligible for revocation of their parole on psychiatric grounds.

The request also includes about $1 million to place 57 parolees in nonsecure community residential facilities, about $200,000 to contract for the electronic monitoring of parolees in the community, and about $180,000 for additional staffing for Parole Outpatient Clinics to provide

more intensive counseling and treatment of an unspecified number of parolees.

Concerns About the Proposal. We are concerned about the portion of the CDC request relating to holding parolees involuntarily in secure private psychiatric facilities, for two primary reasons.

- The CDC has no clear, established criteria at this time for determining which parolees out of the thousands released from prison each year with mental disorders would be subject to such involuntary commitments. Because the parole population subject to such commitments has not been clearly defined, the CDC has not sufficiently justified its estimate of the caseload of parolees who would be eligible for such commitments each year. Thus, the Legislature has no way to know if the $3.6 million requested for this purpose is an excessive or insufficient amount of funds.

- The CDC cites no statutory authority for such involuntary commitments in the documentation supporting its budget request. The CDC did assert in its documentation that the funding was being requested "to comply with the . . . Whitley decision" and that CDC "must comply with the court order." In fact, the Whitley court decision does not require the CDC to establish any new commitment process and could be interpreted as prohibiting just such an effort. At the time this analysis was prepared, we were unaware of any pending legislation to authorize such actions by the CDC.

We do not object to other provisions of the budget request providing housing, electronic monitoring, and more intensive treatment at community clinics for mentally ill offenders.

Analyst's Recommendation. For these reasons, we recommend approval of $1.4 million and 2.8 personnel-years for housing, electronic monitoring, and treatment services for mentally ill offenders, but recommend denial of the $3.6 million funding request for holding parolees involuntarily in secured housing due to the lack of clear criteria for determining who is subject to such commitments and CDC's failure to cite statutory authority for making such a commitment without the approval of a court.

CORRECTIONAL ADMINISTRATION ISSUES

Various Proposals Need Modification

We recommend a reduction of $16.3 million requested in the Department of Corrections (CDC) budget for leased jail beds, institutional staffing, and training proposals for correctional officers. We withhold recommendation on $6.5 million for the Correctional Management Information System information technology project because key project activities have fallen behind schedule. We also withhold recommendation on $1 million sought for contracting for community correctional facility beds because no information supporting this specific expenditure request had been provided to the Legislature. We recommend that the Legislature initiate an audit of prison personnel management policies and practices. Also, we recommend that CDC update the Legislature at budget hearings regarding the status of several overdue reports on various correctional issues. (Reduce Item 5240-001-0001 by $16.3 million.)

The proposed 1999-00 CDC budget includes funding relating to jail beds leased from Los Angeles County, correctional officer training, the Correctional Management Information System (CMIS) information technology project, community correctional facility beds, and prison staff overtime. Also, prior budget acts have included budget bill and supplemental report language mandating reports to the Legislature on various correctional issues.

Analyst's Recommendation. We withhold recommendation on various budget requests for which CDC has not provided sufficient justification. We further recommend deletion or a reduction of funding for other proposed expenditures that we have found are not justified, and offer other recommendations as outlined below:

- ***Pitchess Jail Lease.*** We recommend a reduction of $7.4 million in the CDC budget for the leasing of jail beds from Los Angeles County for holding CDC parole violators. The CDC budget includes sufficient funding for 1,400 beds at the Peter Pitchess Detention Center and other Los Angeles County jails, but the department is actually using only 1,000 to 1,100 beds at any given time. We anticipate that as much as $7.4 million in surplus funding for unused Pitchess contract beds will also revert to the General Fund at the end of the current year, making these resources available for expenditure by the state in 1999-00.

- ***Training for Correctional Officers.*** We recommend the deletion of $5 million included in the budget for unspecified training propos-

als for correctional officers. We make this recommendation because at the time this analysis was prepared, the Legislature had received no information regarding the purpose of this budget augmentation or its justification.

- ***The CMIS Project Review.*** We withhold recommendation on $6.5 million ($5.3 million General Fund and $1.3 million in special funds) for CMIS and related information technology projects. Although the Legislature last year approved a request for $311,000 and five staff positions to expedite CMIS, approval of a new FSR for the project is now nine months behind schedule. We recommend that the Departments of Corrections and Information Technology report at budget hearings on the present status of CMIS, as well as changes in the scope of the project and the intended procurement process. We further recommend that CDC account for its use of the augmentation that was supposed to expedite the project during the current fiscal year.

- ***Community Correctional Facilities.*** We withhold recommendation on $1 million requested for contracting for 2,000 community correctional facility beds during the budget year. We recognize that the Legislature has authorized these beds as part of a 1998 legislative agreement on new correctional programs and capacity. However, at the time of our analysis, we had received no information supporting this specific expenditure request. We also recommend a General Fund reduction of $3.9 million requested for institution staffing related to the deferral of activation of these beds until 2000-01. We are advised by CDC that these funds were requested in error.

- ***Management of Institution Personnel.*** The CDC has been experiencing significant problems in properly managing its prison personnel. Overtime costs increased to $149 million in 1997-98, a $25 million jump in one year. The department faces new and rigorous labor-contract constraints on its use of permanent intermittent employees. As of January 1998, 15 percent of correctional officer positions were vacant, three times the customary vacancy rate for civil service personnel. In light of these problems, we recommend that the Legislature direct the Bureau of State Audits, in consultation with the Department of Personnel Administration, to review the personnel management policies and practices at a sample of state prisons and recommend what changes, if any, are warranted to (1) hold down state overtime and other personnel costs, (2) comply with state civil service laws and professional personnel

management practices, and (3) ensure good management-employee relations.

- ***Overdue CDC Reports.*** We recommend that the CDC report at budget hearings regarding the status of several reports mandated by budget bill and supplemental report language, but not yet released to the Legislature at the time this analysis was prepared. In particular, CDC should update the Legislature at the time of budget hearings regarding these reports: (1) the expansion of inmate work and education programs (due December 1, 1998); (2) participation of offenders released on parole in federal programs (due December 1, 1998); (3) classification of parolees (due December 1, 1998); and (4) the feasibility of using Ballington Plaza in Los Angeles for a women's correctional program (due December 1, 1998). The CDC has notified the Legislature that several of the overdue reports will be completed by a specific later date, in no case later than April 1, 1999.

Federal Funds Assumption Is Risky

The Governor's budget assumes that the state will receive $273 million in federal funds to cover the state's costs of incarcerating and supervising undocumented immigrants. This is about $100 million, or 58 percent, more than the budget assumes the state will receive in the current year. The funds are not counted in the budget bill, but are counted as offsets to state General Fund spending. Our review indicates that the assumption for a large increase in reimbursements is highly risky.

As indicated in the Overview at the beginning of this chapter, the budget assumes that the state will receive $273 in federal funds in 1999-00 to offset the state's costs to incarcerate and supervise undocumented immigrants in CDC and the Department of the Youth Authority. This is about $100 million, or 58 percent, more than the administration estimates that the state will receive in the current year.

These federal funds are counted as offsets to state expenditures and are not shown in the budgets of CDC and the Youth Authority, or in the budget bill. Thus, the Governor's budget would hold CDC and the Youth Authority budgets harmless should the federal funds not materialize.

State's Share Has Been Declining. California has received the largest share of federal funds since the federal government began reimbursing the states five years ago for incarcerating undocumented immigrants. However, the state's share has gradually declined since federal fiscal year (FFY) 1996 when the state received more than 50 percent of the funds, to

less than 30 percent in the last federal allocation. This drop in the state's share is due, in part, to federal decisions to make local governments eligible for reimbursement. Also, California's share has probably declined as other states have improved their capabilities to identify the pool of offenders for whom they can request reimbursement. (California was well-prepared to identify the pool when the federal government began the reimbursement program.)

Budget Assumption Is Risky. Although we believe that the state has an excellent case to claim more money from the federal government to cover the costs of incarcerating and supervising undocumented offenders (the state estimates that its costs exceed $500 million a year), we believe that the Governor's budget assumption that the state will receive $273 million in reimbursements in the budget year is highly risky for two reasons.

First, even if Congress appropriates more money, it is likely that the state's share will continue to decline as more jurisdictions throughout the nation improve their claiming abilities and apply for reimbursement.

Second, and more importantly, in order to achieve the additional $100 million, Congress would have to appropriate significantly more for the program than it has in the past. By our calculations, even if California continued to receive the same share of funds it received in the most recent allocation, Congress would have to roughly double its FFY 2000 appropriation for the program to more than $1 billion in order for there to be enough money to meet the Governor's budget assumption. We note that the President's budget proposal for FFY 2000, which was released in early February, requests less than the amount appropriated by Congress for the past two FFYs.

BOARD OF CORRECTIONS (5430)

The state's Board of Corrections oversees the operations of the state's 460 local jails. It does this by inspecting facilities biennially, establishing various standards, including staff training, and administering state and federal funds for jail and juvenile detention facility construction. In addition, the board maintains data on the state's jails and juvenile halls. The board also sets standards for, and inspects, local juvenile detention facilities, and is responsible for the administration of two juvenile justice grant programs.

The budget proposes expenditures of $144 million in 1999-00 ($71 million from the General Fund). This is about $74.8 million, or 108 percent, more than estimated current-year expenditures. The increase is due to (1) the implementing of several law enforcement and juvenile justice local assistance grant programs authorized by the Legislature last year and (2) providing state and federal prison construction funds to jails and local juvenile detention facilities

Board Responsibilities Have Increased Dramatically

The Board of Corrections has been assigned responsibility for distributing almost $200 million in local assistance funds in the current and budget years. These funds are for grants for juvenile crime programs, grants to counties to reduce the population of mentally ill offenders in the jails, and grants to counties for jail construction and juvenile facility construction and renovation. The board is requesting 10.1 positions in the current year and 13.1 positions in the budget year to administer these grants. The Governor's budget does not propose funds to expand the programs in the budget year, contrary to statements of legislative intent included in the measure that established and funded several of the programs.

The proposed 1999-00 budget for the board is more than double its expected expenditures for the current year, and the current year expendi-

tures are estimated to be 72 percent higher than in 1997-98. This dramatic rate of increase reflects the significant increases in responsibilities which the board has absorbed in recent years. The majority of these new funds have been appropriated to the board to distribute to counties for a variety of new grant programs related to juvenile justice and local correctional facility construction, renovation, and management.

Juvenile Justice Grant Programs. The board is currently administering two juvenile justice grant programs—the Repeat Offender Prevention Program (ROPP) and the Juvenile Crime Enforcement and Accountability Challenge Grant—which distribute state funds to county probation departments for juvenile justice-related demonstration programs. The ROPP program was initiated in the *1996-97 Budget Act* with an appropriation of $3.3 million dollars for seven counties (Fresno, Humboldt, Los Angeles, Orange, San Diego, San Mateo, and Solano). The program is based on research conducted by the Orange County probation department indicating that a significant proportion of juvenile crime is committed by a chronic 8 percent of the offender population. Each of the projects funded by this program is aimed at identifying and intervening with this population at an early stage (at the beginning or before the onset of their offending). The 1997-98 and 1998-99 budgets provided additional funds to continue the program until 2001 ($3.4 million and $3.8 million, respectively), and the 1998-99 budget added the City and County of San Francisco as a grantee. The board is requesting a partial position in the current and budget years to handle the workload associated with the addition of San Francisco and the extension of the program

The Juvenile Challenge Grant program was established by Chapter 133, Statutes of 1996 (SB 1760, Lockyer) with an initial *1996-97 Budget Act* appropriation of $50 million to fund a five-year program cycle. This first round of funds was distributed to 14 counties to fund 29 different community-based demonstration programs targeting juvenile offenders. The programs were selected through a competitive process in which 52 counties applied. In 1998-99, the Challenge Grant program received an additional $60 million which will be distributed again on a competitive basis very similar to that employed for the first round. The board has requested position authority for three positions in the current year, and 3.9 positions in the budget year to administer this program. The positions would be supported by the funds already appropriated to the board for administration of the grants.

The *1999-00 Governor's Budget* includes no additional funds for the Challenge Grants. However, Chapter 325, Statutes of 1998 (AB 2261, Aguiar) expressed the Legislature's intent to appropriate at least an addi-

tional $25 million annually to the program through 2001-02. During the first round of Challenge Grant funding, the board received proposals requesting over $137 million for the available pool of $50 million. The board anticipates that the demand for Challenge Grant funds will again far outstrip the $60 million currently available. Awards for the second round of the Challenge Grants will be made in May 1999.

Both of these programs require that the recipient counties undertake a rigorous quantitative evaluation designed to measure the outcomes of the various programs. The final report for the first round of the Challenge Grant program is due to the Legislature by March 1, 2001, and the final report on the ROPP is due on December 31, 2001. The findings of these reports will be important as the Legislature considers the proper role for the state in funding juvenile justice programs.

Mentally Ill Offender Crime Reduction Grant Program . The Mentally Ill Offender Crime Reduction Grant program is designed as a demonstration grant project to aid counties in finding new collaborative strategies for more effectively responding to the mentally ill offenders who cycle through already overcrowded county jails. Chapter 501, Statutes of 1998 (SB 1485, Rosenthal) created the program, and requires the board to develop an evaluation design that will assess the effect of the program on crime reduction, overcrowding in jails, and local criminal justice costs.

Chapter 502, Statutes of 1998 (SB 2108, Vasconcellos) appropriated $27 million for the program, and Chapter 501 expressed the Legislature's intent to appropriate an additional $25 million for the program in the budget year. However, the Governor's budget does not include any additional funds for this program.

The distribution of the grant funds will be on a competitive basis, and includes a planning grant process that allows counties to receive funds in order to assess their needs and develop programming proposals. Because 45 counties applied for and received initial small planning grants and at least two others appear likely to apply for demonstration grants, it is likely that the demand for the demonstration grant funds will outstrip the $23.7 million currently available. Grant awards for this program will be made in May 1999. The board is requesting one position in the current and budget years to administer this program.

Violent Offender Incarceration/Truth-in-Sentencing Grant. The Violent Offender Incarceration/Truth-in-Sentencing (VOI/TIS) Grant Program is a federally funded program that distributes money to states to construct or upgrade state and local correctional facilities. Under this program, states can spend up to 15 percent of their grant for local adult

or juvenile facility construction. However, if the state declares that there are exigent circumstances, a state can use up to the entire amount for local juvenile facility construction.

In 1998, the Legislature enacted Chapter 339 (AB 2793, Migden) which declared exigent circumstances, awarded all of the 1998-99 VOI/TIS funds to counties for adult jail and juvenile detention facility construction, and announced the Legislature's intent to distribute the 1999-00 VOI/TIS funds in the same manner—15 percent for jail construction, and 85 percent for juvenile facility construction. However, the Governor's budget does not include any proposal to expend the 1999-00 federal funds. The board estimates that by 2002, the counties will need to spend an additional $735 million for local adult and juvenile facilities. The board will award the 1998-99 funds in May 1999. The budget includes three positions in the current year and 3.9 positions in the budget year to administer these funds.

Juvenile Hall/Camp Restoration Program. Because the need to restore and maintain existing juvenile facilities is at least as great as the need to expand existing bed capacity, the Legislature enacted Chapter 499, Statutes of 1998 (AB 2796, Wright). This measure appropriated $100 million in General Fund monies to support renovation, reconstruction, and deferred maintenance for juvenile halls and camps. The board will distribute these funds on a competitive basis in conjunction with the federal VOI/TIS funds available for juvenile facilities. Funds for this program are also expected to be awarded in May 1999. The board is requesting three positions in the current year and 3.9 positions in the budget year to administer these funds.

BOARD OF PRISON TERMS (5440)

The Board of Prison Terms (BPT) is composed of nine members appointed by the Governor and confirmed by the Senate for terms of four years. The BPT considers parole release for all persons sentenced to state prison under the indeterminate sentencing laws. The BPT may also suspend or revoke the parole of any prisoner under its jurisdiction who has violated parole. In addition, the BPT advises the Governor on applications for clemency and helps screen prison inmates who are scheduled for parole to determine if they are sexually violent predators subject to potential civil commitment.

The proposed *1999-00 Governor's Budget* for the support of the BPT is $15.5 million from the General Fund. This is an increase of $778,000, or 5.3 percent, above estimated expenditures for the current year. The proposed current- and budget-year increases are primarily the result of the steadily increasing workload for hearing cases of parole violators and indeterminately sentenced prison inmates. In addition, the budget requests additional staff and contract funding related to expansion of the state Mentally Disordered Offender (MDO) program. This program commits prison inmates who are seriously mentally ill to state mental hospitals (we discuss this proposal below).

Rate Increases for Evaluators Should Be Rejected

We recommend approval of the Board of Prison Terms (BPT) request for $520,000 for two new staff positions and additional contract funding related to expansion of a state program to commit mentally disordered offenders nearing the end of their prison terms to state mental hospitals. However, we recommend reducing by $100,000 the funding proposed for rate increases to private psychiatrists and psychologists paid to evaluate these offenders because BPT's concern that it is being outbid for these services by the Department of Mental Health (DMH) is better addressed

by granting part of the BPT rate increase, but also lowering DMH's rates to equal the new BPT rates.

We further recommend that DMH report at budget hearings on where and how DMH will hold the additional mentally disordered offenders resulting from this expansion of the commitment process. (Reduce Item 5440-001-0001 by $100,000 and reduce Item 4440-001-0001 by $137,000.)

The BPT Role in Commitment Process. The MDO program was established by Chapters 1418 and 1419, Statutes of 1985 (SB 1054, Lockyer and SB 1296, McCorquodale) to commit mentally ill prison inmates to state mental hospitals. To be deemed an MDO, an inmate must have committed one of a number of specified violent crimes, be nearing release on parole, have a severe mental disorder, and pose a substantial danger of causing physical harm to others if released to the community. Also, in order to be committed as an MDO, the offender must have been receiving mental health treatment in state prison for at least 90 days in the year prior to his or her anticipated release date.

State law provides that BPT must certify that an inmate being considered for an MDO commitment meets the necessary criteria. The BPT schedules and coordinates the evaluation of such offenders by psychiatrists or psychologists representing DMH and the California Department of Corrections (CDC). If the DMH and CDC evaluators disagree about whether an inmate is eligible for an MDO commitment, state law requires BPT to solicit the opinion of two other, independent evaluators to resolve the matter. Both must concur in an MDO commitment if it is to proceed; otherwise, the offender would likely be released on parole.

MDO Workload Increasing. The BPT has requested a General Fund augmentation of $620,000 to hire a staff psychiatrist and office technician and for additional contract funding to help address an increase in its projected MDO workload. In response to recent court decisions, many more inmates are now receiving ongoing mental health treatment at CDC institutions, with the result that the number of offenders approaching their release dates and potentially eligible for MDO commitments is growing significantly. Accordingly, CDC and DMH also propose to increase their efforts to commit more such offenders to state mental hospitals as MDOs instead of permitting their release to the community on parole.

The BPT has requested the two new positions to coordinate this expansion of MDO-related activities. It has also requested the contract funding necessary for it to address the resulting increase in its evaluation and hearing caseload.

Proposed Rates Should Be Reduced. Our analysis of DMH data documenting recent MDO caseload trends demonstrates that the $177,000 sought for the additional staffing and $125,000 sought for increases in its hearing and evaluation workload are justified. However, we have concluded that an additional $318,000 sought by BPT to increase the rate it pays psychiatrists and psychologists to conduct MDO evaluations is not justified and should be reduced by $100,000.

The BPT based its request on the increasing difficulty it has experienced in finding clinical professionals to conduct its evaluations. According to BPT, this difficulty stems from the fact that the psychiatrists and psychologists who have been performing this type of work have been offered higher rates for similar work by DMH. The BPT noted that, while it has been paying a flat rate of $320 per MDO evaluation, DMH has been paying $614 for MDO evaluations and paying an average of $1,500 for evaluation of offenders being considered for commitments under the Sexually Violent Predator program. The BPT has requested funding sufficient to raise its rates to $568 per evaluation to reduce the rate disparity.

The BPT's concerns about the disparity in rates appears to be valid. However, we believe a better approach to reducing the gap would be to increase the rate BPT pays for MDO evaluations to $490 (an increase of more than 50 percent), and to reduce DMH rates to $490. This change would restore BPT's basic rates to the $400 level they were at until a 1993 budget cut, and additionally provide the same $90 allowance for travel and court-appearance time received by DMH contractors. This approach would reduce the BPT budget request by $100,000 and permit a further $137,000 reduction in the DMH budget. Our recommendation to reduce the DMH rates paid for MDO evaluations is discussed in our analysis of the DMH budget in the Health and Social Services chapter of this *Analysis*.

No Plan for Holding Additional MDOs. We are also concerned that, while both the BPT and DMH are requesting additional funding to expand the MDO commitment process, the DMH budget does not provide additional funding to hold and provide treatment for the additional MDOs that would result from this proposed expansion of commitment efforts. We believe it would be unwise for the Legislature to provide additional funding for the processing of MDO cases unless there is funding and an acceptable plan for holding and treating these offenders.

Accordingly, in our analysis of DMH (please see the Health and Social Services chapter), we recommend that DMH report at budget hearings on its caseload estimates for mentally disordered offenders, along with projected support and capital outlay costs associated with the growing number of MDO referrals.

Analyst's Recommendation. For these reasons, we recommend approval of a $520,000 augmentation for BPT for MDO-related positions and contract evaluations, with a reduction of $100,000 from its original budget request. We also recommend that DMH report at budget hearings regarding the operating and any capital outlay costs relating to the proposed expansion of the MDOs in the state mental hospital system and its plan for holding and providing treatment for these additional offenders.

DEPARTMENT OF THE YOUTH AUTHORITY (5460)

The Department of the Youth Authority is responsible for the protection of society from the criminal and delinquent behavior of young people (generally ages 12 to 24, average age 19). The department operates training and treatment programs that seek to educate, correct, and rehabilitate youthful offenders rather than punish them. The department operates 11 institutions, including two reception centers/clinics, and four conservation camps. In addition, the department supervises parolees through 16 offices located throughout the state.

The budget proposes total expenditures of $392 million for the Youth Authority in 1999-00. This is $3.1 million, or about 1 percent, more than current-year expenditures. General Fund expenditures are proposed to total $320 million in the budget year, an increase of $4.5 million, or 1.4 percent, above expenditures in 1998-99. The department's proposed General Fund expenditures include $36.6 million in Proposition 98 educational funds. The Youth Authority also estimates that it will receive about $68 million in reimbursements in 1999-00. These reimbursements primarily come from the fees that counties pay for the wards they send to the Youth Authority.

The primary reason for the slight increase in General Fund spending for the budget year is that $15 million of a $25 million appropriation provided to the department in Chapter 499, Statutes of 1998 (AB 2796, Wright) for allocation to nonprofit organizations for youth shelters is proposed to be expended in the budget year.

Approximately 72 percent of the total funds requested for the department is for operation of the department's institutions and camps and 16 percent is for parole and community services. The remaining 12 percent of total funds is for the Youth Authority's education program.

WARD POPULATION

Who Is in the Youth Authority?

There are several ways that an individual can be committed to the Youth Authority's institution and camp population, including:

- ***Juvenile Court Admissions.*** The largest number of first-time admissions to the Youth Authority are made by juvenile courts. As of December 1998, 94 percent of the institutional population was committed by the juvenile courts. Juvenile court commitments include offenders who have committed both misdemeanors and felonies.

- ***Criminal Court Commitments.*** These courts send juveniles who were tried and convicted as adults to the Youth Authority. On December 31, 1998, 5 percent of the institutional population were juveniles committed by criminal courts.

- ***Corrections Inmates.*** This segment of the Youth Authority population—2 percent of the population in December 1998—is comprised of inmates from the Department of Corrections (CDC). These inmates are referred to as "M cases" because the letter M is used as part of their Youth Authority identification number. These individuals were under the age of 18 when they were committed to the CDC after a felony conviction in criminal court. Prior to July 22, 1996, these inmates could have remained in the Youth Authority until they reached the age of 25. Chapter 195, Statutes of 1996 (AB 3369, Bordonaro) restricts future "M cases" to only those CDC inmates who are under the age of 18 at the time of sentencing. The new law requires that "M cases" be transferred to the CDC at age 18, unless their earliest possible release date comes before their 21st birthday.

- ***Parole Violators.*** These are parolees who violate a condition of parole and are returned to the Youth Authority. In addition, some parolees are recommitted to the Youth Authority if they commit a new offense while on parole.

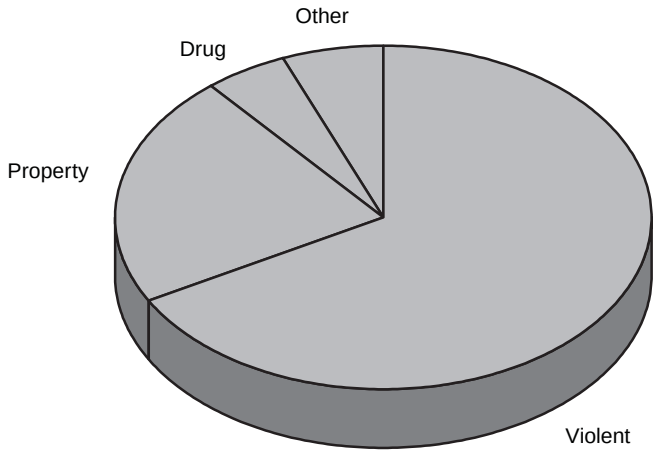
Characteristics of the Youth Authority Wards. Wards in Youth Authority institutions are predominately male, 19 years old on average, and come primarily from southern California, with 34 percent coming from Los Angeles County. Hispanics make up the largest racial and ethnic group in Youth Authority institutions, accounting for 49 percent of the total population. African Americans make up 29 percent of the population, whites are 14 percent, and Asians and others are approximately 8 percent.

Most Wards Committed for Violent Offenses. Figure 1 shows the Youth Authority population by type of offense.

Figure 1

Youth Authority Population By Commitment Offense

1998



As of December 1998, 67 percent of the wards housed in departmental institutions were committed for a violent offense, such as homicide, robbery, assault, and various sex offenses.

In contrast, only 42 percent of the CDC's population has been incarcerated for violent offenses. The number of wards incarcerated for property offenses, such as burglary and auto theft, was 22 percent of the total population. The number of wards incarcerated for drug offenses was 5 percent in 1998, and the remaining 6 percent was incarcerated for various other offenses. We believe that the percentage of wards that are incarcerated for violent offenses will probably increase in future years. This is because the state has implemented a sliding fee schedule that provides the counties with an incentive to commit more serious offenders to the Youth Authority while retaining the less serious offenders at the local level. Specifically, counties are charged higher fees for less serious offenders committed to the Youth Authority and lower fees for more serious offenders (we describe this later in this analysis).

Average Period of Incarceration Is Increasing. Wards committed to the Youth Authority for violent offenses serve longer periods of incarceration than offenders committed for property or drug offenses. Because of an increase in violent offender commitments, the average length of stay for a ward in an institution is increasing. For example, the Youth Authority estimates that on average, wards who are first paroled in 1998-99 will have spent 31.3 months in a Youth Authority institution compared to 23.6 months for a ward paroled in 1993-94. This trend is expected to continue; the Youth Authority projects that the length of stay for first parolees in 2002-03 will be 32.3 months, a 3 percent increase.

The longer lengths of stay are explained in part by the fact that wards committed by the juvenile court serve "indeterminate" periods of incarceration, rather than a specified period of incarceration. Wards receive a parole consideration date when they are first admitted to the Youth Authority, based on their commitment offense. Time can be added or reduced by the Youthful Offender Parole Board (YOPB), based on the ward's behavior and whether the ward has completed rehabilitation programs. In contrast, juveniles and most adults sentenced in criminal court serve "determinate" sentences—generally a fixed number of years—that can be reduced by "work" credits and time served prior to sentencing.

As the Youth Authority population changes, so that the number of wards committed for violent offenses makes up a larger share of the total population, the length of stay will become a significant factor in calculating population growth. However, as we point out in our analysis of the YOPB, not all of the increase can be attributed to a change in the population mix, as less serious offenders are experiencing even sharper increases in their lengths of stay than more serious offenders.

Ward Population Continues to Decline

The Youth Authority's institutional population continued to decrease in the current year and it is projected to decline further over the next several years until June 2001, at which point it will start to increase. The Youth Authority's forecast is to have 7,510 wards at the end of the budget year and 7,880 wards in 2002-03.

Youth Authority parole populations are expected to decline in the budget year to about 5,060 parolees, and will continue to decrease to about 4,865 parolees by the end of 2002-03. The decline is due to fewer Youth Authority admissions and longer lengths of stay for those wards who are currently incarcerated.

The Youth Authority's September 1998 ward population projections (which form the basis for the *1999-00 Governor's Budget*) estimate that the number of wards and inmates housed in the Youth Authority will decrease by 397, or 5 percent, by the end of 1998-99, compared to 1997-98. A primary reason for this decline in population is the implementation of Chapter 195 which transferred CDC inmates housed at the Youth Authority back to the CDC. In addition, implementation of Chapter 6, Statutes of 1996 (SB 681, Hurtt) increased the fees that counties pay the state for placement of juvenile offenders in the Youth Authority. The new fees went into effect January 1, 1997, and have had an impact on Youth Authority commitments (we discuss the effect of this legislation in more detail below).

For the budget year through 2002-03, the Youth Authority projects that its population will decline and then grow slightly, reaching just under 8,000 incarcerated wards on June 30, 2003. These estimates are significantly lower than the projections made by the Youth Authority in the spring of 1998 (which was the basis for the enacted 1998-99 budget) and appear to fully reflect the effects of the fee increase discussed below.

While the Youth Authority is experiencing a significant decline in the number of parolees it supervises in the current year, it does not expect a further significant decline in the budget year. Parole populations will decline by only 40 cases, or less than 1 percent, in the budget year. The number of parolees will continue to decline slowly through 2003. Figure 2 (see next page) shows the Youth Authority's institutional and parolee populations from 1997-98 through 2002-03.

Ward and Parolee Population Projections Will Be Updated in May

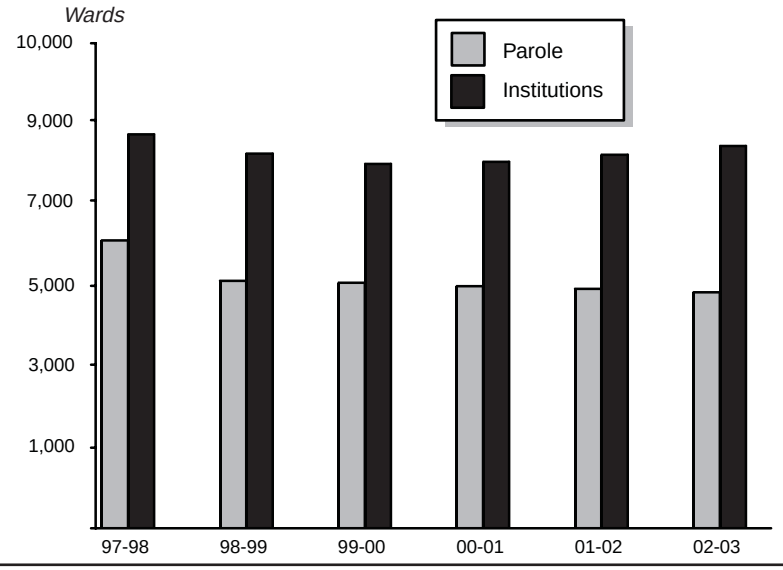
We withhold recommendation on a net $1.4 million decrease from the General Fund based on projected ward and parolee population changes, pending receipt of the revised budget proposal and population projections to be contained in the May Revision.

Ward and Parolee Population in the Budget Year. The Youth Authority population is projected to decrease by 215 wards, or 5 percent, from the end of the current year to the end of the budget year. The budget proposes a net decrease of $1.4 million from the General Fund reflecting this decrease in the Youth Authority population. The dollar decrease is relatively modest because the Youth Authority has decided not to close any housing units in response to the projected drop in population. In fact, the budget requests a small net increase in the number of security personnel staffing the institutions.

Figure 2

Youth Authority Institutions and Parole Populations

1997-98 Through 2002-03



The department will submit a revised budget proposal as part of the May Revision that will reflect more current population projections. These revised projections could affect the department's request for funding. To the extent that population decline is greater than currently assumed, it could necessitate closing a housing unit or one of the department's 16 parole offices, which would result in substantially greater savings.

In recent years, Youth Authority projections have tended to be somewhat higher than the actual population, leading to downward revisions for the future projected population. For example, the projection of the June 30, 1999 institutional population projection dropped from 8,315 in the fall 1997 projections to 7,830 in the spring 1998 projections, and currently stands at 7,510.

These decreases appear to be partly caused by the changes in Youth Authority fees. While these changes appear to have stabilized, there is sufficient uncertainty to warrant withholding recommendation on the budget changes associated with the population size pending receipt and analysis of the revised budget proposal.

YOUTH AUTHORITY FEES CHARGED TO COUNTIES

Legislation that took effect in 1997 to substantially increase the fees paid by counties for committing less serious offenders to the Youth Authority appears to be having its desired effects. Admissions in less serious offense categories are down significantly, and counties are moving to increase their menu of local programming options for these offenders. County efforts in this direction have been aided by the availability of over $700 million in state and federal funds for juvenile probation programs. As a result of these successes, we recommend that the state maintain the sliding scale structure.

In this section, we review the 1997 legislation that increased fees paid by counties for commitments to the Youth Authority. We begin by describing the fee changes and outline steps taken to provide additional funding to counties for juvenile justice programs. We then discuss the effects of the fee changes on both the Youth Authority and the counties. This information is based on our review of data and discussions with Youth Authority staff and county probation departments. We follow this with our conclusion about the effects of the fee reforms and several recommendations to the Legislature based on our findings.

Legislation Increased Fees Counties Pay for the Youth Authority

Effective January 1, 1997, counties are charged new and higher fees for their commitments of juvenile offenders to the Youth Authority. These fees were enacted by Chapter 6.

Prior to the enactment of Chapter 6, counties paid a monthly fee of $25 for each offender sent to the Youth Authority. That fee was set in 1961, and was increased to $150 by Chapter 6 in order to take account of inflationary cost increases to the Youth Authority. In addition, Chapter 6 established a new "sliding scale" fee structure which requires counties to pay a percentage of the per capita monthly cost of wards with less serious offenses who are committed to the Youth Authority.

Sliding Scale Fees Based on Type of Offender. The sliding scale fees are determined by the YOPB based on the category that a ward is assigned to at his initial parole board hearing. The board assigns each juvenile committed to the jurisdiction of the Youth Authority a category number—from I to VII—based on the seriousness of his commitment offense. Because most juveniles are committed on the basis of their entire records, this number would correspond to the most serious offense in their re-

cords, not necessarily their most recent offense. Generally, offenses in categories I through IV are considered the most serious, while categories V through VII are less serious. Figure 3 provides typical examples of the offenses in each category.

Figure 3

Youth Authority Wards— Categories and Typical Offenses

Ward Category	Typical Offenses	Baseline PCD[a]	Monthly Charge to County
I	Murder, torture, kidnapping resulting in death	7 years	$150
II	Voluntary manslaughter, child molestation, kidnapping[b]	4 years	150
III	Rape/sexual assault[b], carjacking	3 years	150
IV	Armed robbery[b], arson[b], drug selling offenses	2 years	150
V	Assault with a deadly weapon[b], robbery[b], residential burglary[b], sexual battery	18 months	1,300
VI	Carrying a concealed firearm, commercial burglary, battery[b], all felonies not contained in categories I-V	1 year	1,950
VII	Technical parole violations, all offenses not contained in categories I-VI (for example, misdemeanors)	1 year or less	2,600

[a] Parole consideration date.

[b] If offense results in substantial injury then it would fall into the more serious adjacent category (for example, rape is generally a category III offense, but a rape with substantial injury is a category II offense).

Commitments of wards in categories I through IV are billed the $150 monthly fee. Category V commitments are billed to the counties at 50 percent of per capita cost ($1,300 per month), category VI at 75 percent ($1,950 per month), and category VII commitments are billed the full cost of the commitment ($2,600 per month).

Legislation Enacted in 1998 Caps the Fees. This fee structure was modified somewhat by Chapter 632, Statutes of 1998 (SB 2055, Costa) which froze the per capita costs on which the sliding scale fees are based at the levels in effect on January 1, 1997 ($31,200 per year). This legislation was enacted in response to county concerns about rapidly increasing per

capita costs as a consequence of recent declines in the Youth Authority population (the smaller the ward population, the greater the per capita costs of the Youth Authority). This legislation ensures that counties will not pay higher fees simply because the population decline resulting from the implementation of the sliding scale generates higher per capita costs. However, as a result of this legislation, the Youth Authority's reimbursements from the counties will be continually smaller than the state's actual costs, as both inflation and a declining population lead to increases in per capita costs.

Intent of Sliding Scale Legislation. The sliding scale legislation was intended to provide counties with a fiscal incentive to utilize and develop more locally-based programs for less serious juvenile offenders, and to reduce their dependence on costly Youth Authority commitments. Prior to the passage of the legislation, counties had a strong fiscal incentive to send offenders to the Youth Authority because they only paid a nominal $25 monthly fee per ward. As a result, Youth Authority commitments, while often more expensive than other sanction and treatment options, were far less expensive from the counties' perspective.

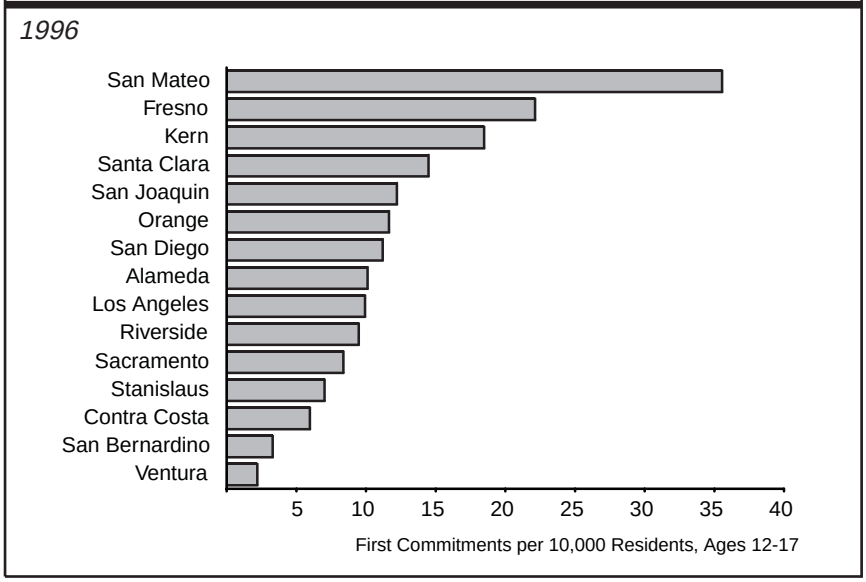
While some counties developed their own locally based programs despite these incentives, other counties appeared to be over-relying on Youth Authority commitments. This disparate usage of the Youth Authority was reflected in the widely ranging first admission rates across counties. Figure 4 (see next page) shows the 1996 first admission rates to the Youth Authority for the 15 counties with the largest populations aged 12 through 17 years (the population from which first admissions generally are drawn). The figure shows the large disparities among counties in the use of the Youth Authority that existed prior to the legislation.

The problems with the prior fee structure were threefold. First, a large body of research on juvenile justice programs suggests that most juvenile offenders can and should be handled in locally based programs. In part, this is because locally based programs can work more closely with the offender, his family, and the community. Second, these locally based programs tend to be less expensive than a Youth Authority commitment, which meant that state funding was encouraging counties to use a more expensive as well as less effective sanctioning option for many offenders. Finally, taxpayers in those counties with lower admissions rates for less serious offenders were paying not only for their own locally based options, but also for a share of the costs created by those other counties with higher Youth Authority admissions rates. In response to these shortcomings, the Legislature acted to align the fiscal incentives faced by counties

with more cost-effective policies, thereby encouraging counties to invest in preventive and early intervention strategies.

Figure 4

County Commitment Rates to Youth Authority Vary Widely Prior to Fee Change



New State and Federal Funds Ease the Transition Costs of the Fee Changes. Since the sliding-scale legislation took effect, the Legislature has appropriated over $700 million for various county-based juvenile justice initiatives. These new funds do not directly address the increased fees, but they do help mitigate the financial burden by supplementing existing resources for developing local alternative programs to the Youth Authority. These include:

- ***Temporary Assistance for Needy Families (TANF).*** The Legislature has provided over $370 million in federal TANF funds for county probation departments, $65 million of which is earmarked for probation camps and ranches. The rest of the funds are available on a block grant basis to county probation departments to support a wide range of activities from basic prevention to various kinds of residential placement options. These funds represent an expansion of monies previously available to counties under the prior Aid to Families with Dependent Children (AFDC) program. (The AFDC program was subsequently replaced by the CalWORKS

[California Work Opportunity and Responsibility to Kids] program.) Under the prior AFDC program, these funds were claimed by county probation departments under federal Title IV-A (emergency assistance program) from 1993 to September 1995. Subsequently, the federal government notified the counties that juvenile offenders would no longer be eligible for these funds. When the CalWORKS program was implemented, the state decided to reallocate funds from its federal block grant to the counties. This reallocation was at a higher level than under the Title IV-A program. The Governor's budget proposes $200 million for this purpose in 1999-00, the same level as in the current year.

- ***Juvenile Detention Facility Funds.*** The Legislature has provided $221 million in state and federal funds to the Board of Corrections for construction and renovation of county juvenile detention facilities. This amount is comprised of $121 million in federal Violent Offender/Truth-in Sentencing Grant money for county juvenile detention facilities and another $100 million from the General Fund for juvenile facility renovation, construction, and deferred maintenance. In addition, Chapter 339, Statutes of 1998 (AB 2793, Migden), expresses the Legislature's intent to provide 85 percent of federal fiscal year 1999 Violent Offender funds to the counties for juvenile facilities. While this allocation has not yet been made, it is expected to be about the same as the $80 million 1998-99 award. However, the proposed Governor's budget includes no appropriation of the 1999 federal funds.

- ***Challenge Grants.*** The Legislature has provided $110 million to the Board of Corrections for the Juvenile Crime Enforcement and Accountability Challenge Grant Program. The first $50 million of this money was appropriated in 1996 and awarded to 14 counties on a competitive basis to support innovative juvenile justice strategies. In 1998, another $60 million was appropriated to further expand this program. These grant funds will be awarded later this spring. Counties can apply for Challenge Grant funds for a wide array of programs, but first they must convene a juvenile justice coordinating council and undertake a local planning process in order to accurately identify the service gaps in their existing juvenile justice system. As a result, counties are able to receive funds for the programs that address their own identified greatest needs. Chapter 325, Statutes of 1998 (AB 2261, Aguiar) stated the Legislature's intent to appropriate at least $25 million annually through 2001-02 for the program. The Governor's budget, however, does

not include any additional funds for this program in the budget year.

- ***Repeat Offender Prevention Program (ROPP).*** The Legislature provided $11 million dollars to the Board of Corrections for the ROPP. The purpose of this program is to support county efforts to identify and treat youth at risk of becoming chronic juvenile offenders before they become serious offenders. The ROPP is a pilot program that is being implemented in eight counties, and is scheduled to be completed in 2001.

Thus, while counties have been faced with new costs as a result of the sliding scale reform, these costs—estimated to have cost the counties less than $100 million dollars since the reform took effect—are far outweighed by the new state and federal funds that have been available to them.

Fees Have Changed Profile Of Youth Authority Wards

Admissions in the Least Serious Offender Categories Have Declined Significantly. In the two years since the sliding scale fee took effect, it has significantly reduced the numbers of first admissions to the Youth Authority. Overall, first admissions in 1997 were 30 percent lower than in 1996. Admissions data for 1998 continue the 1997 trends. These trends seem likely to continue into the future.

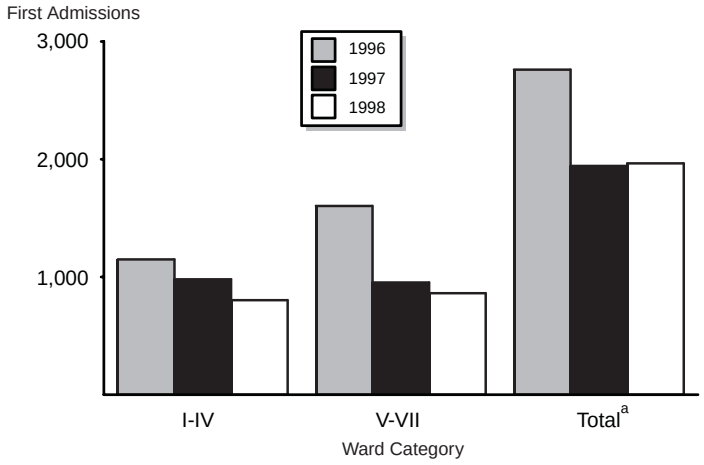
Not only have overall admissions declined, but admissions for the least serious offenders have dropped significantly. As Figure 5 shows, first admissions for the more serious offenses declined by 15 percent, while admissions in the less serious offense categories declined by 41 percent. This change suggests that counties have responded to the sliding scale fees, but have not been deterred by the increase in the monthly fee from committing more serious offenders when appropriate.

Prior Disparities in Youth Authority Usage Have Diminished Significantly. The new fees have also resulted in a more even distribution among counties of first admission rates for less serious offenders (categories V through VII). An examination of the first admissions rate in Figure 6 illustrates these changes in the 15 counties with the largest juvenile populations. This change ensures that those counties that continue to rely heavily on the Youth Authority are paying a greater share of the costs incurred as a result of those commitments.

Figure 5

First Admissions Significantly Decline In Less Serious Offense Categories

1996 Through 1998

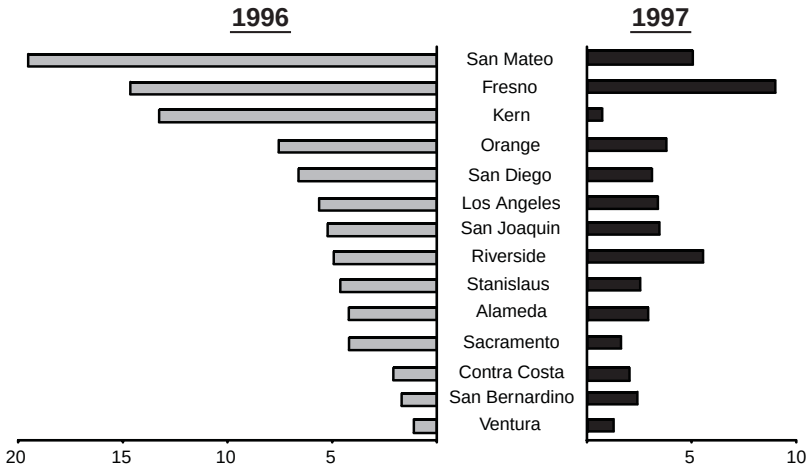


[a] The 1998 total includes some first admissions who have not yet been assigned a category.

Figure 6

First Commitment Rates in Most Counties Drop In Less Serious Offense Categories

1996 and 1997



Changing Admissions Patterns Have Resulted in a More Violent Youth Authority Population. These changes in the patterns of first admissions have also led to a significant change in the mix of offenders going into the Youth Authority. In 1996, the most serious offenders (categories I through IV) made up 42 percent of the first admissions, while in 1997 they represented 51 percent of first admissions, despite the fact that their numbers dropped in absolute terms by 15 percent. Because offenders in these categories are likely to have much longer stays in the Youth Authority, their proportion of the overall population tends to be significantly greater than their proportion of first admissions. Thus, at the end of 1998, 63 percent of the wards in institutions had committed more serious offenses (categories I through IV), and 37 percent had committed less serious offenses (categories V through VII).

Changes in Population Characteristics Highlight Need for New and Expanded Programming. In the *Supplemental Report of 1997-98 Budget Act,* the Legislature directed the Youth Authority to review its needs for treatment and programs for wards. In response to this requirement, the Youth Authority submitted to the Legislature a report on its program and treatment needs in the face of "an increasingly violent youthful offender population." This report described the changing character of the wards served and described the existing needs in this population that were going unmet. This report focused on the new security and programming needs that have arisen as the Youth Authority population has become more violent and more emotionally disturbed.

In our view, however, the Youth Authority has not considered how it can change its programming for *less serious offenders* in order to better serve the needs of counties as they face the new demands of the sliding scale legislation. These new programming challenges are discussed in detail below.

Counties Have Responded to New Fees in Variety of Ways

Significant Changes in Some Counties, But Not Others. Figure 6 shows that most counties have reduced their admission rates in the less serious categories in response to the sliding scale reform, but only a few have done so dramatically. The effects on the counties range from fairly insignificant in counties such as Contra Costa, to more moderate reductions in Alameda, San Joaquin, Los Angeles, and Fresno, to truly dramatic reductions in counties such as Kern, Santa Clara, and San Mateo.

The main issue raised by these reductions is how these counties are dealing with the wards who are no longer being sent to the Youth Authority and whether the counties are providing appropriate alternative services to them. For the most part, we found that counties are adopting fairly similar strategies. These include expansion or creation of boot camp or ranch programs and implementation of programs inside juvenile halls for offenders already adjudicated by the juvenile court (traditionally juvenile halls are used solely for short-term detention of offenders awaiting adjudication). There are a number of out-of-state placements that counties might have used in lieu of a Youth Authority commitment, but the recent controversies surrounding these placements, as well as the new licensing requirements imposed by Chapter 311, Statutes of 1998 (SB 933, Thompson), have made these options less viable.

Counties Frustrated by Certain Intractable, Less Serious Offenders. The programs implemented by the counties are filling the gaps for a large share of chronic delinquents. However, counties find themselves frustrated by the persistence of a small subset of less serious offenders who do not respond to county programs. Many counties are opting to send these "intractable" offenders through the same county program two or three times despite failure, rather than face the costs of a Youth Authority commitment. They have indicated particular concern about this approach because they fear it will lessen the effectiveness of the sanction for first-time participants.

Some counties have opted to separate these program failures from the other offenders, while other counties have shifted them into juvenile hall-based programs in order to impress upon them the consequences of program failure. In either case, it is clear that many counties are frustrated in their attempts to adequately sanction and treat these chronic and intractable delinquents.

Counties Are Expanding Their Prevention and Early Intervention Activities. Despite these difficulties, most counties we spoke to understood the underlying policy rationale that motivated the change in the fees, and are in the process of implementing new prevention and early intervention strategies. In fact, the fees served as an incentive for the counties to increase their array of locally available programming, particularly at the front end of the system. The state funds available from TANF, the Challenge Grants, and ROPP are aiding the counties in these prevention and intervention efforts. The benefits of these efforts are still a few years away, but counties are optimistic that they will help them reduce their dependence on the Youth Authority as a sanctioning option.

Conclusion: Sliding Scale Legislation Is Achieving Its Intended Objectives

The sliding scale legislation was intended to achieve two primary objectives: (1) reduce the over-reliance by counties on the Youth Authority for less serious juvenile offenders and (2) encourage counties to create a fuller spectrum of locally available programming to meet the needs of juvenile offenders. Available data demonstrate that the first objective has been met. Counties are being significantly more judicious in their use of the Youth Authority as a placement option for wards of the juvenile court. Although it is premature to declare the second objective a success as well, it is clear that many counties are responding to the change by creating new local program options.

On the whole, we believe that these trends are positive, as local programming is likely to be more effective and less expensive than a Youth Authority commitment for less serious offenders. Moreover, because their offense histories do not involve serious violent crimes, these wards are not likely to pose a serious threat to public safety if kept within the community.

Given these positive developments, we do not recommend any fundamental changes to the structure of the sliding scale legislation itself, as it appears to be a success. In the analysis below, however, we make several recommendations that we believe would maximize the benefits that the sliding scale legislation was designed to produce.

Target Future State Juvenile Justice Funds

To the extent that the Legislature chooses to continue to provide funding to counties for new or expanded juvenile justice programs, we recommend that the funds be awarded on a competitive basis and modeled after the Challenge Grant program.

As we indicated earlier, the Legislature has provided a substantial amount of funding to counties for juvenile justice programs since enactment of the sliding scale fees. To the extent that the Legislature continues to provide funding to county probation departments or other juvenile justice agencies and service providers, we believe that it should use the Challenge Grants as a model. This would include requiring that counties first undergo a planning process to reach a consensus on where the service gaps are, and include some kind of evaluation component to ensure accountability and cost-effectiveness.

Similarly, allocating funds on a competitive basis rewards counties for excellence in program design and insures a higher level of commitment to the program from the participating agencies. For these reasons we recommend that each of these elements—planning, evaluation, and competitive allocation—be included as requirements for any new juvenile justice funds provided by the state.

Counties Should Have Input Into Length of Stay Decisions

We recommend enactment of legislation to modify the process by which parole consideration dates are established for Youth Authority wards with less serious offenses (categories V though VII). Specifically, the process should be modified in order to permit counties to have a greater say in the length of stay of wards that they send to the Youth Authority.

Under current law, once a young offender is accepted by the Youth Authority as a new admission, he becomes a ward of the department, and all decisions regarding length of stay, parole, and parole revocation are within the sole jurisdiction of the YOPB (see our analysis of the YOPB later in this chapter for a more detailed discussion of this process).

This method of determining length of stay may be appropriate for wards where the state is bearing almost all of the costs. However, it is less appropriate for wards in categories V through VII where counties are paying 50 percent or more of the cost to house the ward. This issue takes on particular importance given the large disparities that apparently exist between what the counties and the YOPB view as appropriate periods of secure confinement for these less serious offenders. For example, as discussed in our analysis of the YOPB, parole consideration dates (PCDs) for less serious offenders in the Youth Authority ranged from 19 months for Category V to 13 months for Category VII. By contrast, most counties are implementing programs for these offenders that are generally six to nine months in duration.

Counties Should Have Greater Say in Length of Stay. Because the counties are now paying a large share of the costs for these wards and given that the wards will likely return to the county from which they were committed when paroled, we believe that the counties should have some role in determining the optimal length of stay for the wards.

For these reasons, we recommend the enactment of legislation to modify the process by which PCDs are established. There are a number of different alternatives that the Legislature could choose from, including:

- ***Require That the Juvenile Court, Rather Than the YOPB, Set the Initial PCD.*** One option is for the juvenile court, instead of the YOPB, to decide the PCD. The juvenile court offers advantages over the YOPB in that it would already be familiar with the ward's file, and would likely be more responsive to the concerns of the county, while still exercising independent discretion. The main disadvantage with this approach is that the juvenile court would not have access to the lengthy assessment information that is compiled by the Youth Authority staff before each ward's initial hearing before the board.

- ***Require a Juvenile Court or County Probation Department Recommendation.*** This alternative would have the YOPB continue in its current role, but would allow counties to have more input. For example, counties could recommend an initial PCD to the board and the board would have the discretion to deviate up or down by a fixed amount set in statute. The main advantage of this approach is that it would preserve the input of the Youth Authority, while still allowing counties some control. The primary weakness of this approach is that it would result in a duplication of effort by the board and the county.

- ***Allow the Juvenile Court or the County Probation Department to Make a Recommendation to the YOPB.*** This alternative would allow, but not require, the court or county to make a nonbinding recommendation to the YOPB as to the appropriate PCD. Under this approach the status quo would be largely maintained except that counties would have the option of having their concerns heard by the board.

These alternatives are intended to be suggestive, and only take into account the initial PCD decision. Subsequent decisions that are currently made by the board could be left with it or county input could again be sought in a manner similar to those recommended above.

Fees Should Be Regularly Adjusted To Account for Effects of Inflation

We recommend the enactment of legislation to adjust the sliding scale fees periodically to account for the effects of inflation.

As discussed above, Chapter 632 capped the sliding scale fees charged to counties at the January 1, 1997 level. It makes sense to protect counties from facing higher sliding scale fees simply because the Youth Authority population is dropping as the natural and intended consequence of the

fee change. However, we believe that this 1997 base rate should be periodically adjusted to account for the effects of inflation. Likewise, the $150 fee needs periodic adjustment so that the state is not in the position of making such a radical upward adjustment as was the case in 1996 when the $25 fee set in 1961 was adjusted for inflation.

As a result, we recommend the enactment of legislation to require the Youth Authority to make an inflationary adjustment of the 1997 per capita sliding scale fees, and the $150 monthly fee set by Chapter 6 periodically, at least every three years, based on changes in the Consumer Price Index.

Youth Authority Needs to Develop Targeted Programming for Certain Less Serious Offenders

We recommend that the Legislature adopt supplemental report language directing the Youth Authority to report on the feasibility of developing programming targeted to chronic and intractable offenders in the less serious categories.

The Youth Authority Has a Role to Play With Some Less Serious Offenders. When the sliding scale reform was implemented, the intent was not to eliminate all offenders in categories V to VII from the Youth Authority, but rather to provide counties with more neutral cost incentives when choosing the proper treatment for these offenders. The recent significant declines in first admissions in these categories appear to be driven by two primary factors: the creation at the local level of new program options for these offenders and a new reluctance to use the Youth Authority for any of these offenders based on the high costs. Discussions with county probation departments make it clear that even with the creation of new programs, there are certain offenders in the less serious categories that they would have sent to the Youth Authority but for the high cost burden. The offenses committed by these offenders are generally property crimes or nonserious assaults, but they are persistent, and the juveniles appear to be unresponsive to the programming made available by the counties.

Shorter Institutional Stays Are Needed With More Services Delivered on Parole. In recent years, the Youth Authority has focused significant attention on the growing proportion of its population who pose a greater threat to staff security and also demand more intensive treatment services. The risk to public safety posed by these wards is significant, such that an extended stay at the Youth Authority which includes a wide array

of programming is necessary to meet the demands of public safety as well as the rehabilitative needs of these wards.

For the chronic and intractable delinquents discussed above, however, institutional confinement time is not required primarily to protect the public, but rather to provide structure and accountability for the offender. As a result, institutional confinement time for these offenders should be limited to the time necessary to achieve this objective. At present, the average PCD for these offenders is more than 17 months, while the programs that they are failing at the county level are generally about six months in duration. This 11-month difference appears unnecessarily large, especially given the fact that a Youth Authority commitment of any duration is a more severe and punitive sanction than spending time in a county ranch or camp.

The YOPB is currently responsible for making all decisions on length of stay. One way to encourage it to reduce the length of commitments for these less serious, intractable offenders would be to provide shorter-term institutional programming directly addressed to their needs. Because the counties are opting to use six- to nine-month locally based secure programs, we recommend that the Youth Authority examine the feasibility of providing institutional programming in a similar time frame. We recognize that a six- to nine-month period would not be sufficient to address all of the needs of most of these wards, but many of the issues that require more time, such as substance abuse and academic and vocational skills, could be provided in a community setting under the supervision of Youth Authority parole.

Youth Authority Can Fill a "Market Niche." Clearly there will be wards for whom this intermediate approach is not sufficient, but at present there is a gap in the continuum of graduated sanctions available to most counties that the Youth Authority is in the position to bridge. The next few years present an opportunity for experimentation with such programs because declining populations within Youth Authority institutions and more notably on parole, will create some slack in existing resources that can be used to get pilot programs off the ground. Moreover, if such programs prove effective, they will allow the Youth Authority to more efficiently meet the needs of the greater number of wards expected to enter the juvenile justice system early in the next century.

What Are the Impacts on Counties? These programming changes would also help to ease the cost pressures on counties in a number of ways. Most directly, limiting the confinement time for many of the wards in the less serious categories to six to nine months would reduce the sliding scale fee costs that counties are currently facing. In addition,

providing a more cost-effective secure treatment option would relieve the current pressure on counties to recycle offenders through their existing programs despite repeated failure. Counties would prefer to avoid recycling offenders because it diminishes the effect of the local sanction for the offenders who fail as well as the other offenders who see that there is no enhanced penalty as a consequence of program failure. Finally, if the Youth Authority is a more cost-effective treatment option, counties will have less incentive to invest their resources in construction and operation of locally based Youth Authority-style facilities and programs for this group of offenders.

Analyst's Recommendation. We recommend that the Legislature adopt supplemental report language directing the Youth Authority to report on the feasibility of implementing a six- to nine-month institutional program for offenders in categories V through VII, with an intensive parole aftercare component. The report should identify the likely substantive content of such a program, as well as the changes in existing practice and procedures that would be required for implementation to occur. If the Youth Authority concludes that such a program is not feasible, it should report on what steps can be taken to reduce the duration of institutionally based programming for these offenders. We recommend that the report be submitted by December 1, 1999 in order for its findings to be incorporated into the *2000-01 Governor's Budget*. The following language is consistent with this recommendation.

> The Department of the Youth Authority shall report to the Legislature by December 1, 1999 on the feasibility of implementing a six- to nine-month institutional program for offenders in Youthful Offender Parole Board categories V through VII. The report shall include, but not be limited to: (1) an identification of the core institutional services and programming that less serious offenders require, as well as those that can be effectively delivered on parole; (2) one or more proposals to deliver those services in a sequence that minimizes required institutional time and maximizes the value of aftercare on parole; (3) an estimate of the costs per ward to deliver such programming and any changes in current procedures that would be necessary to implement the programming; and (4) an evaluation of the advantages and disadvantages of adopting the programming which includes discussions of the effects on the rehabilitation of the ward and public safety as well as the cost-effectiveness of the proposal relative to current practice.

YOUTHFUL OFFENDER PAROLE BOARD (5450)

The Youthful Offender Parole Board (YOPB) is the paroling authority for all juveniles committed by the juvenile court to the Department of the Youth Authority. The YOPB is composed of seven members appointed by the Governor. In addition, the board has hearing officers, known as board representatives.

A board member or representative reviews the proposed Youth Authority program proposed for every ward when they enter the custody of the Youth Authority. At this initial review, the board sets a parole consideration date (PCD) based on the ward's commitment offense. The PCD is the date when the board will review and determine whether a ward is fit to be paroled. Subsequent to the initial review, the board reviews ward progress annually or if the ward commits an infraction in the institution. For certain infractions, board members can add time to the ward's stay in the Youth Authority. The board also determines whether parole violators will be returned to the Youth Authority.

The budget proposes total expenditures of $3.3 million from the General Fund for the YOPB in 1999-00 which is essentially the same level of expenditures as was provided in the current year.

The YOPB Decisions Regarding Parole Consideration Dates Need Review

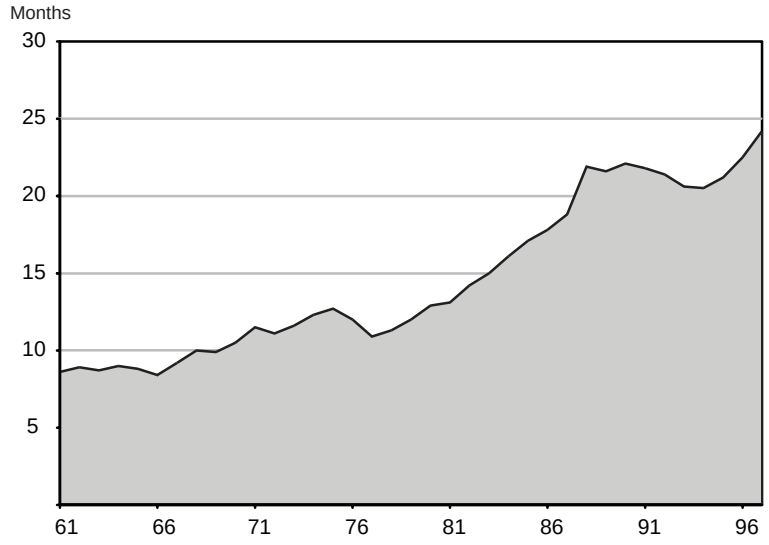
We recommend the adoption of supplemental report language directing the board to report semiannually on the justification for initial parole consideration dates that exceed the guidelines set forth in Title 15 of the Administrative Code.

Youth Authority Length of Stay Is Steadily Increasing. The average length of stay for offenders in the Youth Authority has been steadily rising over time since the data began to be collected in 1961, as shown in Figure 1.

Figure 1

Average Length of Youth Authority Stay Increasing

1961 Through 1997



One of the key reasons for this rise has been a steady increase in the average PCD assigned to wards by the YOPB at the initial hearings. Given that the Youth Authority is receiving more serious and violent offenders, it would stand to reason that the average PCD would increase because the board's PCD guidelines generally require a longer term of commitment for these offenders. However, our review found that the PCDs for the *less serious* offenders have been increasing much faster than those for more serious offenders.

For example, in 1993, the average PCD set by the YOPB for first commitments in categories I through IV (the more serious offenses) was 31.7 months, while the average for categories V through VII (the less serious offenses) was 14.4 months. By 1997, the average PCD for the more serious offenders had risen only 1.2 percent to 32.1 months, while the average for the less serious offenders had risen 19 percent to 17.1 months. Because categorical assignment is based on objective criteria which have changed little since 1993, offenders in each category should be quite comparable over time.

The Board Often Exceeds Its Own Guidelines. In attempting to gain a better understanding of the increasing length of stay, particularly for the

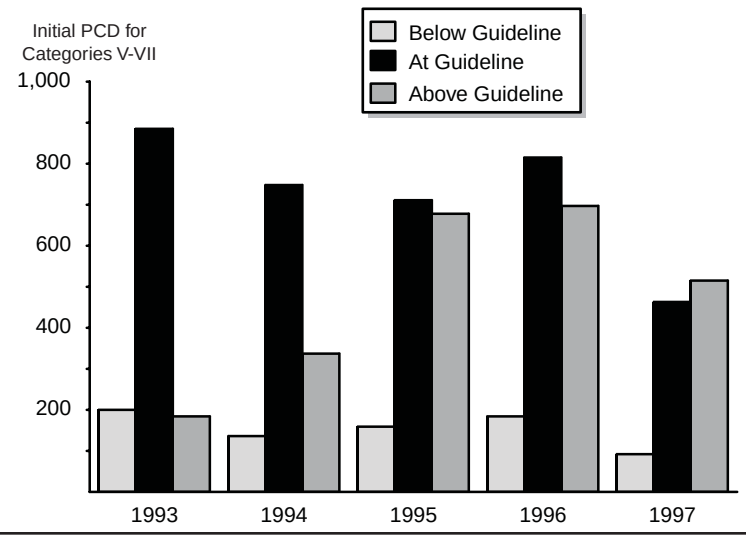
less serious offenders, we reviewed the distribution of PCDs compared to the board's PCD guidelines. These guidelines are set by the board as presumptive PCDs that the board believes are generally appropriate for each offense category, recognizing that special circumstances may call for shorter or longer lengths of stays. They are contained in Title 15 of the State Administrative Code (for examples of the offenses included in each category, see the Youth Authority analysis earlier in this chapter).

Our review found that in the past few years the board has consistently set PCDs that exceed its own guidelines, as shown in Figure 2. In 1993, 70 percent of wards in categories V through VII received PCDs at the guideline level, 14 percent were above the guideline, and 16 percent were below the guideline. By 1997, the percentage of wards at or below the guideline had shrunk to 43 percent and 9 percent respectively, while the proportion of wards receiving PCDs above the guideline more than tripled to become 48 percent of the total.

Figure 2

Initial Parole Consideration Dates Increasingly Exceed Guidelines

1993 Through 1997



Given that the board itself established these guidelines as appropriate for the offense categories, we would expect that absent compelling reasons their determinations should on average fall within guidelines.

Longer Stays in Youth Authority Increase County and State Costs. Longer stays are more expensive than shorter ones and therefore lead to higher costs per ward and higher costs for the Youth Authority overall. Legislation that took effect in January 1997 increased costs charged to counties for offenders committed to the Youth Authority, with the highest costs charged for the less serious offenders. Thus, the higher costs per ward committed to the Youth Authority not only cost the state General Fund more, but also the counties. (For further discussion on the recent change in fees charged to counties, please see our analysis of the Youth Authority earlier in this section.)

Counties Are Duplicating Youth Authority Services to Avoid Longer Stays. For the counties, these longer stays and higher costs provide a fiscal incentive to create Youth Authority-style programs and facilities on a local level, but with shorter periods of confinement. For example, for category V offenders in the Youth Authority, counties only pay half of the cost, but these offenders had an average parole consideration date of 19.1 months. This means that if counties can keep their per capita costs similar to those of the Youth Authority, we estimate that it is almost $10,000 cheaper to house offenders in a six-month county program than to send them to the Youth Authority.

Although such actions by counties may make fiscal sense to the counties and are within their discretion, we do not believe that the intent of the recent fee changes was to encourage counties to recreate the Youth Authority on the local level, but rather to use the Youth Authority for those wards truly requiring secure confinement, and to create local alternatives for less dangerous wards.

Analyst's Recommendation. To address these deviations from the guidelines, we recommend that supplemental report language be adopted to direct the board to strive to keep the average PCD within the guidelines, and to report semiannually on the justification for initial PCDs set in excess of the guideline. Similar language was included in the *1988-89 Supplemental Report* and it led to a significant, if temporary, decline in the number of PCDs set above the guidelines. The following language is consistent with this recommendation.

> It is the intent of the Legislature that the Youthful Offender Parole Board (YOPB) establish parole consideration dates at all initial appearances that, on average, do not exceed the prescribed parole consideration date intervals as established in Title 15 of the California Administrative Code. The YOPB shall report to the Legislature on November 1, 1999 and April 1, 2000, regarding justification for establishment of parole consideration date intervals that exceed the prescribed interval contained in Title 15 of the Administrative Code.

There are additional actions that can be taken to fully address the issues raised by increasing the length of stay for less serious offenders. One response would be to allow counties to have some input into the various decisions regarding length of stay for the wards they send to the Youth Authority. Another alternative would be for the Youth Authority to develop programming for less serious offenders that is geared towards shorter stays. Both of these options are discussed in greater detail in our analysis of the Youth Authority.

TRIAL COURT FUNDING (0450)

The Trial Court Funding item provides state funds for support of the state's superior and municipal courts. The budget proposes total expenditures in 1999-00 of $1.8 billion for support of the Trial Court Funding Program. This is $108 million, or 6.5 percent, greater than estimated current-year expenditures. Figure 1 shows proposed expenditures for the trial courts in the past, current, and budget years. The figures for 1997-98 are somewhat misleading because the Trial Court Funding restructuring took effect halfway through that year and the expenditures shown do not fully account for funding provided by the counties for courts in that year.

Figure 1

Trial Court Funding Program

1997-98 Through 1999-00
(All Funds, In Millions)

	Actual[a] 1997-98	Estimated 1998-99	Proposed 1999-00
Trial court operations	$950.1	$1,509.6	$1,572.9
Court interpreters	36.6	42.1	44.6
Superior court judges salaries	88.7	94.7	142.2
Assigned judges	18.5	19.4	14.0
Totals	**$1,093.9**	**$1,665.8**	**$1,773.6**

[a] Display represents half-year effect of trial court funding restructuring. Actual expenditures totaled $1.6 billion.

Trial Court Funding Restructuring

The Legislature adopted Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle)—the Lockyer-Isenberg Trial Court Funding Act of 1997—which resulted in (1) a major change in the way funding is pro-

vided to trial courts, (2) major new fiscal responsibility for the state, and (3) significant fiscal relief to local governments (especially counties). The major elements of this legislation are shown in Figure 2.

Figure 2

Major Features of Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle) Trial Court Consolidation Plan

- ***County Costs Reduced and Capped.*** Established a cap on county contribution for support of the trial courts roughly equivalent to 1994-95 funding provided by the counties.
- ***Twenty Smallest Counties.*** State pays 100 percent of court costs beginning in 1998-99.
- ***Future Cost Increases.*** State funds entirely.
- ***Fine and Penalty Revenues.*** Counties transfer these revenues to the Trial Court Trust Fund (rather than the General Fund) equivalent to amount transferred in 1994-95; counties and courts retain any growth in revenues.
- ***Revenue to Cities.*** Cities keep all fine and penalty revenues.
- ***Court Filing Fees.*** Increased to generate additional revenues ($43.1 million 1997-98 and $86.2 million in 1998-99).

While the provisions of Chapter 850 became effective in 1997-98, many of the General Fund costs did not take effect until the current year. Consistent with the intent of Chapter 850, the state has accepted responsibility for growth in trial court costs. As a result, state General Fund costs have increased substantially and costs to the counties have decreased. Figure 3 shows the costs to the state General Fund and counties in 1997-98, 1998-99, and as proposed for the budget year.

Figure 3

Trial Court Funding Program—Comparison of State General Fund and County Contribution

1997-98 Through 1999-00
(In Millions)

	Actual 1997-98	Estimated 1998-99	Proposed 1999-00
General Fund	$399.2	$699.2	$814.8
County contribution	856.7	555.2	504.3

Budget Request. The budget proposes a number of augmentations for support of the trial courts in 1999-00. The major proposals include the following:

- $48.3 million to backfill for partial reductions in county contributions to the state for support of trial courts as specified in recent legislation (we discuss this proposal in more detail below).
- $20 million for salary increases for trial court employees that were negotiated previously between the counties and court employees.
- $19.2 million to pay for various services (such as information technology) that were previously provided to the courts by the counties.
- $9.1 million for various trial court administrative management positions, including accountants, human resources personnel, and legal research assistants.
- $1.8 million for increased civil and criminal case workloads.
- $1.8 million for increased court interpreter workload.
- $1.2 million to assist courts with reforms to the juror systems.
- $1 million for staffing for drug court programs.
- $300,000 for court security, including costs of overtime, training, and maintenance of security equipment.

Like all monies appropriated for support of the trial courts, the augmentations outlined above would be distributed to individual trial courts based on decisions of the Judicial Council. Thus, it is not possible at this time to determine which specific courts would receive the funds.

Budget Not Consistent With Law to Reduce County Costs

The Governor's budget proposes to reduce the county share of costs for support of trial courts, but not by as much as required under current law. The proposal results in a savings to the state (and corresponding costs to counties) of $48.3 million.

Under Chapter 850, the state pays for all costs of supporting the trial courts in the 20 smallest counties and the remaining 38 counties pay the state a specified amount for support, which is capped.

In September 1998, the Legislature enacted Chapter 1017, Statutes of 1998 (AB 2788, Thomson), which further reduced the amount that the remaining 38 counties must contribute beginning in the budget year. Specifically, Chapter 1017 requires the state to pay for all the costs of the next smallest 18 counties and reduced the contribution of the largest 20 counties by 10 percent. This change would have increased state General Fund costs by $96.6 million beginning in 1999-00, and resulted in fiscal relief to counties of the same amount.

Governor's Budget Proposes to Reduce County Buyout. The Governor's budget proposes that the state not fully implement the provisions of Chapter 1017, but rather reduce the additional buyout by half. In other words, the 18 counties that would have had their contributions eliminated in the budget year would instead have their contributions reduced by 50 percent, and the 20 counties that were to have their contributions reduced by 10 percent would instead realize a 5 percent reduction. The administration indicates that it will propose a budget trailer bill to make the necessary statutory changes. The *1999-00 Governor's Budget Summary* indicates that the change is a postponement of full implementation. It is not clear, however, whether the postponement will be for just one year or longer.

Effect of the Proposal. This proposal would result in savings to the state of $48.3 million and costs to the counties of the same amount. The administration indicates that it has proposed this smaller buyout due to the fiscal problem of the state budget.

Figures 4 shows the costs to the 38 counties resulting from the Governor's proposal.

Figure 4

Governor's Trial Court Funding Proposal Costs to Counties[a]

(In Thousands)

Contributions Reduced by 50 Percent Instead of Eliminated			
Butte	$1,093	Napa	$1,192
El Dorado	1,230	Nevada	308
Humboldt	901	Placer	905
Imperial	921	San Luis Obispo	2,255
Kings	820	Santa Cruz	2,196
Madera	568	Shasta	1,127
Marin	2,422	Sutter	208
Mendocino	780	Tulare	2,556
Merced	1,235	Yolo	1,182
Contributions Reduced by 5 Percent Instead of 10 Percent			
Alameda	$1,251	San Diego	$2,416
Contra Costa	665	San Francisco	1,072
Fresno	623	San Joaquin	364
Kern	513	San Mateo	677
Los Angeles	9,741	Santa Barbara	376
Monterey	251	Santa Clara	1,594
Orange	2,158	Solano	347
Riverside	992	Sonoma	342
Sacramento	1,152	Stanislaus	195
San Bernardino	1,124	Ventura	541

[a] Costs in excess of current-law requirements.

Shortfall in Court Filing Fees

We recommend that the Judicial Council report at budget hearings on the status of the current-year shortfall in civil filing fee revenues and on its proposed solutions to address the shortfall in the current and budget years.

One source of funding for support of the trial courts is revenues generated from court filing fees that are deposited into the state's Trial Court Trust Fund. Historically, the budget has assumed that the amount of revenues collected from these fees was about $150 million annually. As

a result of enactment of Chapter 850, certain court filing fees were raised. The Judicial Council estimated that the fee increases would generate additional revenues of $44 million in 1997-98 and $88 million each in the current and budget years.

However, there have been significant shortfalls in the amount of court filing fee revenues collected in the last several years. The Judicial Council has indicated that this has occurred due to (1) a decline in civil filings and (2) inaccurate revenue projections for the new filing fees. In 1997-98, the Judicial Council received a General Fund deficiency of $19 million to backfill the shortfall in civil filing fee revenues.

Significant Current-Year Shortfall. In the current year, the Judicial Council is projecting an $86 million shortfall in civil filing fees. The budget includes a current-year General Fund deficiency allocation of $43 million to compensate for half of the shortfall. In its deficiency request, the Judicial Council indicated that it would make up the remaining $43 million from savings. The Judicial Council has indicated that it is exploring several options to generate these savings including (1) using current-year Trial Court Funding monies that the Judicial Council had set aside in a reserve, (2) reducing allocations to the courts for the remainder of the current year, and (3) using projected growth in fine and forfeiture revenues.

Proposed Budget Assumes Increased Revenues. The proposed budget makes permanent the current-year $43 million General Fund backfill, but assumes that the remaining $43 million shortfall will be covered in the budget year through increased revenues. Given the recent history of filing fee revenues, we believe that it is unlikely that an additional $43 million will be generated from the existing court fees. According to Judicial Council, it is considering several options to make up for this continued shortfall, including additional increases in court fees through legislation, reductions in allocations to courts, and additional General Fund appropriations.

Analyst's Recommendation. It is not clear how the Judicial Council will generate savings in the current year to offset the shortfall in civil filing fees. Additionally, we believe that it is likely that the shortfall will continue in the budget year. Therefore, we recommend that the Judicial Council report at budget hearings on the status of the current-year shortfall and on its proposed solutions for the addressing the shortfall in the current and budget years.

Trial Courts Face Year 2000 Computer Problems

We recommend that the Judicial Council provide an update during budget hearings on the status of efforts by the trial courts to address Year 2000 computer problems, including how these efforts will be funded.

Surveys Indicate Serious Year 2000 (Y2K) Problems in Trial Courts. According to the Administrative Office of the Courts (AOC), many trial courts are experiencing difficulties in their efforts to prepare their computer systems to accommodate the year 2000 change. Based on surveys of the courts, the AOC estimates that the courts will need an additional $19.8 million statewide to correct, or "remediate," their computer problems. According to the AOC, $14.9 million of this amount is needed to address especially serious problems which, if not remediated, will result in courts having to use manual processing to perform critical functions and may lead to case processing backlogs that will seriously impair court operations.

As we point out in our analysis of the Department of Information Technology (DOIT) in the General Government Chapter of this *Analysis*, many state agencies are also facing Y2K difficulties. It is difficult to assess the severity of the problems in the trial courts compared to state agencies, however, because the information technology activities of the trial courts are not subject to review by DOIT.

No Funding Proposed. The Trial Court Funding budget does not include funding in the current or budget years specifically targeted for Y2K remediation. The AOC indicates that it had anticipated using portions of the Judicial Administration Modernization and Efficiency Fund (JAMEF) in the current year to address some information technology issues, such as Y2K remediation. However, no funds for JAMEF were included in the *1998-99 Budget Act* (We discuss the JAMEF proposal for the budget year below).

Analyst's Recommendation. Given the potentially critical nature of the Y2K problems that the trial courts are facing, we recommend that the Judicial Council provide an update to the Legislature during budget hearings regarding the status of remediation efforts, including how these remediation efforts will be funded.

Information Technology Problems Should Be First Priority for Modernization Fund

We recommend budget bill language directing the Judicial Council to prioritize spending from the Judicial Administration Efficiency and Modernization Fund for information technology projects related to Year 2000 remediation efforts and for those courts with greatest information technology needs.

Chapter 850 created the JAEMF and specified that monies from this fund may be expended by the Judicial Council to promote improved access, efficiency, and effectiveness in trial courts that have unified to the fullest extent permitted by law. Examples cited in Chapter 850 as the types of projects that may be funded by the JAEMF include education and training for judicial officers and court administrators, technology improvements in the trial courts, incentives to retain experienced judges, and improved law clerk staffing in the courts.

The budget requests $10 million for the JAEMF for various programs in the trial courts. Specifically, the budget requests:

- $4.3 million for technology projects.
- $2.9 million for education of judges and court administrators.
- $1.2 million for trial court administrative personnel.
- $875,000 for litigation and claims management, to support coordination of the trial courts' responses to lawsuits and claims.
- $800,000 for improving legal research.

Fund Proposes Several Duplicative Expenditures. Our review indicates that several of the program requests that the Judicial Council is seeking from the JAEMF duplicate other requests that have been proposed elsewhere in the budget.

First, the Judicial Council is proposing to improve legal research by implementing a pilot program for law clerks with funds from the JAEMF. However, the budget also includes a separate request of $5.1 million for new legal research positions in the trial courts. Our review indicates that the functions of the law clerks included in the JAEMF proposal are virtually the same as the other legal research positions that are being requested.

Second, the Judicial Council is requesting $1.2 million to provide one-time administrative personnel to the trial courts. While the request does not specify the specific services to be provided by these positions, we note

that the Judicial Council has also separately requested $4 million for new administrative personnel in the trial courts to perform accounting, management, and human resource functions.

Finally, the Judicial Council is proposing $875,000 to support coordination of the trial courts' responses to lawsuits and claims. According to the Judicial Council, the objective of the proposal is to establish coordinated, cost-effective management of litigation affecting the trial courts. However, the local assistance budget within the Judicial Council budget requests $300,000 for positions to provide litigation claims management. That request is intended to provide coordinated legal representation statewide and to provide coordinated management of litigation in the trial courts.

Courts Face Technology Problems. As noted above, the AOC has indicated that the trial courts are facing some critical Y2K remediation problems in the current year. Some of these remediation problems will continue into the budget year and will likely require additional funding. Additionally, we note that there are other information technology issues that the trial courts will continue to face. One such issue is the wide differences in the levels of technology available to the trial courts across the state. While some courts are well automated, others do not have access to some of the most basic or up-to-date computer technology to help them manage their workloads.

Analyst's Recommendation. In view of the above, we believe that it makes sense to prioritize funding from the JAEMF for information technology projects. Thus, we recommend that the Legislature adopt budget bill language directing the Judicial Council to prioritize monies provided in the budget year from the JAEMF for information technology projects for courts with Y2K remediation problems, and to assist those courts with the greatest information technology needs.

Specifically, we recommend the following budget bill language:

> The Judicial Council shall prioritize allocations from the Judicial Administration Efficiency and Modernization Fund to give priority to funding information technology projects (1) related to Year 2000 remediation efforts and (2) in those courts with the greatest information technology needs.

Drug Court Request Is Duplicative

We recommend a General Fund reduction of $1 million for drug court staffing because funding for these positions should be requested through the existing Drug Court Partnership Program. (Reduce Item 0450-101-0932 by $1 million and Item 0450-111-0001 by the same amount.)

Legislature Created New Program to Support Drug Courts. Chapter 1007, Statutes of 1998 (SB 1587, Alpert) established the Drug Court Partnership Program to assess the cost-effectiveness of drug courts. The measure established a competitive grant program to which local drug court programs can submit multiagency grant requests that identify the resources and strategies needed for effective drug court programs. The partnership program is administered by the Department of Alcohol and Drug Programs (DADP) with the collaboration of the Judicial Council. The program is funded with $4 million from the General Fund in the current year. The DADP is currently preparing the grant guidelines for applications in the current year and expects to release the award notifications in May 1999.

Chapter 1007 expressed the Legislature's intent to provide $8 million annually for the program for four years, and the *1999-00 Governor's Budget* requests $8 million in DADP's budget.

Trial Court Funding Request Is Duplicative. The budget requests $1 million in the Trial Court Funding budget to fund staffing costs for five local drug court programs. However, funding for staffing for drug courts is also available through the DADP's Drug Court Partnership Program.

The Legislature created the partnership program on a four-year limited-term basis to allow for the evaluation of the cost-effectiveness of drug court programs. We believe that the courts which need staffing for drug courts should apply for these positions through the competitive grant process available through the partnership program. For this reason, we recommend that the funding for these positions be deleted, for a General Fund savings of $1 million.

JUDICIAL
(0250)

The California Constitution vests the state's judicial power in the Supreme Court, the courts of appeal, and the superior and municipal courts. The Supreme Court and the six courts of appeal are entirely state-supported. Under the Trial Court Funding Program, the state also provides support (above a fixed county share) for the superior and municipal courts. (For more information on the Trial Court Funding Program, please see our analysis of the program earlier in this chapter).

Proposed Budget. The Judicial budget includes support for the Supreme Court, the courts of appeal, and the Judicial Council. The budget proposes total appropriations of $289 million for support of these judicial functions in 1999-00. This is an increase of $27.1 million, or 10 percent, above estimated current-year expenditures. Total General Fund expenditures are proposed at $238 million, an increase of $24.6 million, or 12 percent above current-year expenditures.

The increase in the Judicial budget is primarily due to requests for: (1) caseload increases for the Court-Appointed Counsel (CAC) Program and full-year implementation costs for the California Habeas Resource Center ($10.1 million), (2) increased staffing and related program costs for workload increases in the courts of appeal ($4.1 million), (3) increased salary funding for the Supreme Court and the courts of appeal ($3.3 million), (4) increased facilities expenditures ($26.9 million), and (5) new programs and operations support in the Administrative Office of the Courts (AOC) ($2.7 million). We discuss some of these proposals below.

Uncertainties About CAC Program for Capital Cases

Because of uncertainties about the funding needs for the Court-Appointed Counsel (CAC) Program, we recommend that the Legislature adopt budget bill language to restrict the use of funding provided to CAC so that any savings would revert to the General Fund.

The budget requests $13 million for the CAC Program in the Supreme Court. This is $1.6 million, or 14 percent, above estimated current-year expenditures. The increase is requested to support projected caseload growth in the program.

The CAC Program hires private attorneys to provide appellate defense services for indigent persons in death penalty and other cases. The Supreme Court is responsible for appointment of attorneys to handle death penalty cases. Appointments are made to private attorneys, the Office of the State Public Defender (OSPD), and the newly created California Habeas Resource Center (CHRC).

Uncertainties in Caseload Projections. Historically, the caseload for capital appeals cases has been difficult to project because of the relatively small number of cases and wide variation in the amount of time required for each case. In previous years, the projected expenditures have differed significantly from subsequent actual expenditures. For the current year, the Judicial Council is projecting that expenditures will be $360,000 less than the amount appropriated.

Recent Changes Create More Uncertainty. The Judicial Council is anticipating that additional appointments of private counsel will be made in the budget year as a result of (1) an increase in the rate paid to attorneys from $98 per hour to $125 per hour, (2) separate appointments for the direct appeals to the Supreme Court and habeas corpus proceedings, and (3) increased training and outreach efforts to attract and retain qualified counsel. These changes have already taken place, but their impacts on projected expenditures are unknown.

Analyst's Recommendation. We believe that it is possible that the amount requested could be substantially lower or higher than what will be needed. To the extent that the amount is too low, the Judicial Council can seek a deficiency allocation during the budget year. To the extent that it is too high, we think that savings should be captured and returned to the General Fund, rather than permitting savings to be redirected to other unbudgeted activities. Thus, we recommend that the Legislature adopt budget bill language which would restrict the use of these funds to the CAC Program only and provide that any savings revert to the General Fund.

Specifically, we recommend the following budget bill language:

> The funds appropriated by this item include an augmentation of $1,575,000 for the Court-Appointed Counsel (CAC) Program of the California Supreme Court. It is the intent of the Legislature that these funds are only used for the CAC Program. Any funds not used for this purpose shall revert to the General Fund.

Permanent Appellate Project Increase Premature

We recommend that the Legislature deny the Judicial Council's request to make permanent funding for the Supreme Court Appellate Project because the proposal is premature.

Budget Proposes to Make Limited-Term Funding Permanent. The California Appellate Project (CAP-SF) is a nonprofit corporation which contracts with the Supreme Court to provide assistance to private counsel who are appointed to capital appellate cases. In the *1998-99 Budget Act*, the Legislature approved on a two-year limited-term basis, an increase of $498,000 to the contract for the CAP-SF, representing a 24 percent increase over the prior-year contract. These increased funds were for 1998-99 and 1999-00. Between 1994-95 and 1997-98, the cost of the contract increased at an average annual rate of 6 percent. The Judicial Council is requesting that the current-year increase be made permanent.

Legislation Should Limit Workload. The Legislature enacted Chapter 869, Statutes of 1997 (SB 513, Lockyer) which created the CHRC, expanded the role of the OSPD, and changed the process for appointing counsel in capital appeal cases. Under these changes, the CHRC will be responsible for handling habeas corpus proceedings, as well as providing assistance to private attorneys appointed to handle habeas proceedings.

The legislative changes will limit the types of cases for which CAP-SF will provide assistance. Historically, CAP-SF has provided assistance to attorneys for both direct appeal cases and habeas corpus proceedings. With the establishment of the CHRC, the duties of CAP-SF will change to focus primarily on assistance to private counsel in direct appeals. The CHRC indicates that it will begin taking appointments to habeas cases in January 1999, and will begin providing training and assistance for private attorneys in the budget year. The CAP-SF will continue to provide assistance in habeas proceedings for which counsel is already appointed; however for new cases, it will only provide assistance for direct appeals.

Permanent Funding Request Is Premature at This Time. The Legislature included limited-term funding in the *1998-99 Budget Act* that will not expire until the end of the 1999-00 because of uncertainties surrounding the workload of CAP-SF and the newly created CHRC. Given that the changes in the process as a result of Chapter 869 are still occurring, and that funding is already set to continue in the budget year, we believe that it is not appropriate to make funding permanent at this time. Rather, we believe that the Judicial Council should justify the continued increase in funding for 2000-01 and beyond in next year's budget process. Thus, we recommend that the request be denied.

Salary Adjustments Not Justified

We recommend a General Fund reduction of $3.3 million for appellate court compensation because the augmentation has not been justified. (Reduce Item 0250-001-0001 by $3.3 million.)

The budget requests funding of $3.3 million for the Supreme Court and the courts of appeal to (1) reduce the required salary savings rate from 4 percent to 2 percent ($2 million) and (2) to fund salary adjustments and extend salary ranges for certain classifications ($1.3 million).

Budget Requests Reduction in Salary Savings Rate. All state agencies experience savings in their personnel services budgets based on staff vacancies that occur throughout the year. These savings are generated because it takes time to fill newly authorized positions, and there is often a lag from the time that one person leaves an existing position and another person is hired as a replacement. This accrued savings is referred to as "salary savings." Generally, state agencies have salary savings rates of between 5 and 10 percent, based on the historical vacancy rate of the particular agency.

In the current year, the budgets for the Supreme Court and the courts of appeal assume a salary savings rate of 4 percent. The budget requests a General Fund augmentation of $2 million in order to reduce the salary savings rate from 4 percent to 2 percent of salaries for authorized positions. We note that the 4 percent salary savings is already low compared to most state agencies. Additionally, our review indicates that the recent vacancy rates for the Supreme Court and the courts of appeal have been between 4 and 8 percent. Given this historical rate, and the fact that the required salary savings rate is already low, we believe that the request to reduce the rate to 2 percent is not justified.

Salary Adjustments and Extended Salary Ranges. The budget requests $1.3 million to fund salary adjustments and extended salary ranges for certain judicial staff classifications. The Judicial Council indicates that the increases are needed because the Supreme Court and the courts of appeal are generally located in high-cost labor markets and must compete with the trial courts and other local government bodies for the same labor pool.

The Judicial Council conducted a classification and compensation study in 1997 and 1998 comparing judicial branch salaries with salaries for other public sector employees in the Bay Area. As a result of the study, the Judicial Council changed the salary ranges for the deputy clerk and secretarial classifications effective January 1, 1999. Although the Judicial Council indicates that the costs for this change were funded

within the Judicial budget in the current year, it requests a General Fund augmentation of $686,000 to cover the costs in the budget year. In addition, the Judicial Council has approved an additional 5 percent step in the salary ranges effective July, 1, 1999. The budget-year cost for this change is $606,000, with additional costs in future years.

We do not believe that the Judicial Council has submitted a compelling reason for the Legislature to approve the request for $1.3 million for salary adjustments.

Unlike most state agencies, the Judicial Council is not required to seek approval from the Department of Personnel Administration (DPA) or the State Personnel Board (SPB) prior to making these types of salary adjustments. Generally, when state agencies are granted an increase in the salary range it is because they have *demonstrated* recruitment and retention problems. We believe that the recent vacancy rates for positions in the Supreme Court and the courts of appeal do not indicate that they have serious problems with recruitment and retention of staff. The vacancy rates for the Supreme Court and the courts of appeal are lower than those of other state agencies located in the Bay Area. For example, the vacancy rate for the Public Utilities Commission was recently 14 percent, and vacancy rates for the Administrative Office of the Courts have ranged from 9 percent to 20 percent in recent years.

Further, when agencies apply for approval for salary adjustments to DPA or SPB, the agency must be able to demonstrate that it has the necessary resources to fund any increase from within its *existing budget*. In the current year, the Judicial Council indicates that it will pay for these increases by redirecting resources. However, in the budget year, it is requesting additional resources for these adjustments. We believe that the judicial branch should be held to these same standards as other state agencies. We note that the total increase for these salary adjustments is 0.7 percent of the budget for the Supreme Court and the courts of appeal, and therefore they should have the flexibility to provide these adjustments within their existing budget.

In summary, we recommend that the proposal be deleted for a General Fund savings of $3.3 million.

DEPARTMENT OF JUSTICE (0820)

Under the direction of the Attorney General, the Department of Justice (DOJ) enforces state laws, provides legal services to state and local agencies, and provides support services to local law enforcement agencies.

Budget Proposal

The budget proposes total expenditures of $480 million for support of the DOJ in the budget year. This amount is $3.9 million, or about 1 percent, less than estimated current-year expenditures. The requested amount includes $238 million from the General Fund (a decrease of $26.3 million, or 10 percent), $81.1 million from special funds, $40.7 million from federal funds, and $121 million from reimbursements.

Division of Law Enforcement. The Governor's budget proposes $125 million for support of programs in the Division of Law Enforcement. Most of the major budget changes proposed for the division concern the Bureau of Forensic Services (BFS), which operates 11 regional crime labs and a special DNA lab in Berkeley. The department is requesting $4.8 million to begin a two-year effort to eliminate the backlog of DNA samples that need to be tested (we describe this proposal in more detail below). The budget also includes $2.3 million to replace or upgrade existing forensic lab equipment. In addition, the budget proposes to begin charging local and state agencies for the forensic services it provides in the state crime labs. This proposal results in a General Fund reduction (and corresponding increase in reimbursements) of $16 million (we discuss this proposal below). The budget also includes $2.4 million in federal funds to continue and expand the California Methamphetamine Strategy program, an $18 million-program targeting methamphetamine producers that is funded entirely by the federal government.

Division of Criminal Justice Information Services (CJIS). The budget proposes expenditures of $128 million for programs in the CJIS. This amount includes a number of new federally funded initiatives. These

initiatives are to improve and support ongoing activities in maintaining criminal history information, creating a national sex offender registry, and supporting narcotics-related intelligence activities conducted in coordination with local law enforcement agencies. In addition, the budget requests $3.5 million from the Fingerprint Fees Account and $419,000 from the General Fund to implement the provisions of Chapter 311, Statutes of 1998 (SB 933, Thompson), which requires the DOJ to provide state and federal criminal history checks for foster care providers and their employees.

Legal Divisions. The budget proposes $87.3 million for the Civil Law Division. Major changes proposed for the budget year include: (1) a reduction of $9.2 million for workload associated with the state's litigation against the tobacco companies, (2) an increase of $5.1 million to continue defense of the state in the *Stringfellow* case, and (3) an increase of $1 million to enhance enforcement of false claims actions.

The budget requests $79.8 million for the Criminal Law Division. The major change in this division is an increase of $1.5 million to support investigation and prosecution of elder abuse cases involving Medi-Cal patients.

For the Public Rights Division, the budget proposes $35.5 million. The amount includes: (1) an increase of $773,000 for civil rights enforcement, (2) an increase of $734,000 for consumer law enforcement, and (3) a General Fund increase of $778,000 (shifted from reimbursements) for the Natural Resources Section.

Additional Funding for DNA Lab Would Eliminate Backlog in Two Years

The budget proposes $4.9 million from the General Fund for one-time equipment purchases and 25 additional two-year limited positions in order to eliminate the existing backlog of violent offenders whose DNA samples require profiling in two years. We recommend that the Legislature maintain an oversight role over this program by adopting supplemental report language directing the department to report on its progress.

In recent years, we have pointed out that the DOJ has had a significant backlog of DNA samples from violent offenders. In this section, we review the department's 1999-00 budget proposal which is designed to eliminate this backlog in two years.

Background. The DOJ is required to analyze DNA samples from most convicted felony sex and violent offenders. In addition, Chapter 696, Statutes of 1998 (AB 1332, Murray) required DOJ to maintain a database (CAL-DNA) of their profiles. At present, the DOJ DNA lab has analyzed 45,000 DNA samples and maintains a database of 35,000 profiles. Most of these samples were drawn from sex offenders—considered the highest priority for DNA testing. However, DOJ also possesses 55,000 samples from violent felony offenders that it has been unable to analyze given its existing resources. In addition, the department needs to reanalyze 45,000 samples that have been profiled in order to conform with the new national standard which the FBI has established as a requirement for participation in its national DNA offender database. Participation in this database is essential to California if it is to take full advantage of the investigative benefits of DNA evidence.

Budget Request. In order to address these two issues—the backlog and the reanalysis—DOJ is planning to implement a new process for DNA analysis and profiling that will allow it to significantly reduce the time it takes to complete the tests, while improving on certain aspects of its procedures. In order to maximize the benefits of this more efficient testing, DOJ is requesting $4.8 million from the General Fund and 25 two-year limited-term positions so that it can eliminate the 55,000 sample backlog and convert the sex offender samples to the new national standard within two years. Absent the additional funding, DOJ estimates that it would take ten years to eliminate the backlog and five years to convert the existing sex offender file to the new standard. These delays would seriously weaken the value of the DNA database to law enforcement because the likelihood of finding a match between a DNA sample found at a crime scene and a DNA offender database is not great until there is a substantial collection of offender profiles.

Request Is Justified. Given the power of DNA testing to solve violent crimes, we believe that the elimination of this backlog is an important law enforcement objective and warrants this short-term investment. The proposed increase in funding for equipment and personnel should be sufficient to allow the DNA lab during the next two years to eliminate the existing backlog, convert existing samples, and keep pace with legislative requirements.

Because of the importance of this issue, however, we believe that the Legislature should be kept informed of the department's progress in reducing the backlog and converting the existing samples. We therefore recommend the adoption of supplemental report language requiring the

department to report to the Legislature on its progress on these issues. The following language is consistent with this recommendation:

> The Department of Justice shall report to the Legislature on December 1, 1999 on its progress in eliminating the backlog of offender samples requiring DNA profiling and converting the existing database to meet federal requirements.

Crime Lab Fee Proposal Is Sound Policy; Implementation Details to Be Worked Out

The Governor's budget calls for charging state and local agencies for the services provided by the Department of Justices' (DOJ's) crime laboratories. We support the underlying objective of this proposal, but recognize that the change would require enactment of legislation and the resolution of several implementation issues. As a result, we recommend that the DOJ and the Department of Finance provide the Legislature with the details of the proposal and a revised estimate of savings prior to budget hearings.

Background. The DOJ operates ten regional criminalistic laboratories throughout the state. These laboratories provide analysis of various types of physical evidence and controlled substances, as well as analysis of materials found at crime scenes. In addition, the department operates a state DNA laboratory in Berkeley that is responsible for maintaining the CAL-DNA database which contains profiles of DNA collected from certain violent and sex offenders. This lab also undertakes DNA testing for investigative and prosecutorial purposes.

While the DOJ labs provide services to state agencies, they primarily serve local law enforcement agencies in jurisdictions without their own crime labs. These local agencies are found in 43 counties representing 25 percent of the state's population. The remaining jurisdictions maintain their own forensic labs at their own expense and are generally ineligible for state forensic lab services.

Governor's Budget Would Require State and Local Agencies to Pay for Services. Except for blood alcohol testing, services undertaken by the DOJ crime labs for state and local agencies are currently provided at no charge. The labs began requiring reimbursement for blood alcohol testing in 1977, and these fees are paid from the penalties collected for driving under the influence (DUI) convictions. The Governor's budget proposes to charge local agencies and non-General Fund state agencies (such as the California Highway Patrol and the Departments of Motor Vehicles and Insurance) for the services provided by the state labs. As a consequence,

the budget includes a General Fund reduction of $15.5 million and an increase in reimbursements of $16 million (the additional $500,000 would come from fees for expanded trace evidence services that the department has proposed for the budget year).

Local Governments and State Agencies Should Pay for Their Lab Services. We have recommended in the past that the Legislature authorize the change in fee structure proposed by the Governor's budget, most recently in the *Analysis of the 1997-98 Budget Bill.* Because developing physical evidence through laboratory analysis is part of the responsibility of local governments for investigating and prosecuting crimes, we believe that the costs for these services should be borne by the counties and cities. Such a funding alignment appears even more appropriate when it is noted that 19 local law enforcement agencies—county sheriffs, district attorneys, or city police—have undertaken this responsibility by operating their own crime laboratories at their own expense. We can find no analytical basis for providing these services at no cost to the agencies currently served by the state while denying this subsidy to those agencies with their own labs. Similarly, state agencies should be required to reimburse the department for forensic services, just as they would be required to reimburse the department for legal services.

Transition to a Reimbursement Based System Will Raise Implementation Issues. While we concur with the administration that a shift in funding to reimbursements is preferable to the status quo, legislation will need to be enacted to provide for this change and it should address several issues in order for the new system to work effectively, including:

- ***Mitigating Unusually High Costs for Complex Investigations***. Some cases processed by the labs involve significant amounts of physical evidence that require weeks of analysis and testing. This is particularly true of investigations involving firearms, blood, semen, hairs, fibers, and other trace evidence. If local agencies were to be billed for the costs associated with each case, the investigation of some serious crimes could create a fiscal hardship for smaller agencies to support. In order to ensure that such crimes continue to be investigated, some mechanism should be provided to mitigate these costs for smaller agencies.

- ***Ensuring That the Labs Are Financially Protected From Lags in Payment or Nonpayment of Fees.*** If the labs are to be funded by reimbursements, they must have a mechanism to ensure full and timely payment of these fees. As fee requirements are expanded, BFS must either have the authority to refuse services to agencies

that do not pay their fees, or to receive payment out of some other state allocation of funds to the local jurisdiction.

- ***Establishing an Appropriate Fee Schedule for Charging State and Local Agencies.*** Determining the appropriate basis for allocating the costs of lab services can be challenging for some forensic services. For example, the costs of criminalistics analysis can vary widely depending on the case, such that a flat-fee schedule would probably be inappropriate. As a result, it will be necessary to undertake a review of the services provided by the labs and the costs associated with them in order to determine the appropriate fees.

- ***Revised Estimate of Reimbursements.*** The Governor's budget proposes that the DOJ begin collecting fees July 1, 1999. Because the details of the proposal are not yet available, it is likely that some delay in implementation will occur. As a result, a revised estimate of reimbursements should be provided.

Analyst's Recommendation. We recommend that the Governor's proposal to charge for lab services be approved. However, at the time this analysis was prepared, there were few details available on the proposed legislation to implement the proposal. For this reason, we recommend that DOJ and the Department of Finance provide the Legislature, prior to budget hearings, with the details of the proposed legislation, including its plan to resolve the issues we have raised, and provide a more accurate estimate of the General Fund savings that this change would generate in the budget year.

FINDINGS AND RECOMMENDATIONS

Judiciary and Criminal Justice

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Department of Corrections

Analysis Page

Department of the Youth Authority

Ward Population

Youth Authority Fees Charged to Counties

	Analysis Page
21. **Fees Should Be Regularly Adjusted Periodically to Account for the Effects of Inflation.** Recommend enactment of legislation to adjust the sliding scale fees to account for the effects of inflation.	D-106
22. **Youth Authority Needs to Develop Targeted Programming for Less Serious Offenders.** The changes in fee legislation requiring the counties to bear a significant share of the costs necessitate that the Youth Authority reconsider its programming for these offenders to determine if they can provide treatment for these offenders in a shorter period of institutional confinement time. Recommend adoption of supplemental report language directing department to consider ways in which its programming could be changed to meet these new conditions.	D-107

Youthful Offender Parole Board

23. **Parole Consideration Dates.** Recommend supplemental report language directing the Youthful Offender Parole Board to report semiannually on the justification for initial parole consideration dates that exceed the guidelines set forth in Title 15 of the Administrative Code.	D-110

Trial Court Funding

24. **Budget Not Consistent With Law to Reduce County Costs.** Governor's budget proposes to reduce the contributions to the state from counties for support of trial courts, but not by as much as required under current law.	D-118
25. **Shortfall in Court Filing Fees.** Recommend that the Judicial Council report at budget hearings on the status of the current-year shortfall in civil filing fee revenues and on its proposed solutions to address the shortfall in the current and budget years.	D-119
26. **Trial Courts Face Year 2000 (Y2K) Computer Problems.** Recommend that the Judicial Council provide an update during budget hearings on the status of efforts by the trial courts to address Y2K computer problems and information on how Y2K correction efforts will be paid for.	D-121

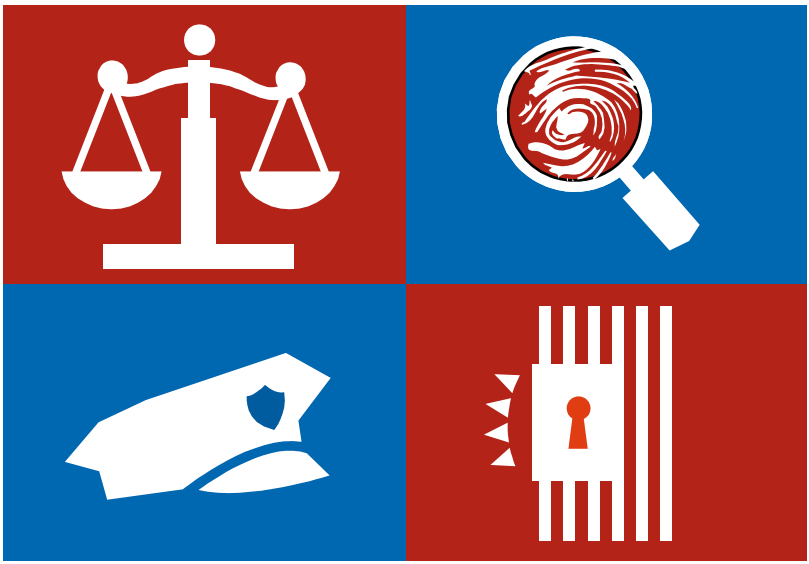
Judicial

Department of Justice

January 2007

California's Criminal Justice System

A Primer



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Contents

Acknowledgments

This report was prepared by Brian Brown, Edgar Cabral, and Paul Steenhausen, and reviewed by Dan Carson and Greg Jolivette. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the California Legislature.

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Chapter 1:

Introduction

In recent years, the Legislature and Governor have considered and enacted numerous laws to respond to the public's concerns with crime and the criminal justice system in California. The measures included stiffening penalties for existing criminal offenses, providing treatment for drug offenders, defining new criminal offenses, constructing new correctional facilities, providing financial assistance to law enforcement, and reorganizing the state corrections system.

In an effort to put the current discussion of crime in California in perspective, we have prepared this report to answer several key questions, including:

- How much crime is there in California? How has the level of crime changed over time? How does crime vary within California, and among the states?
- Who are the victims and perpetrators of crime?
- How does the California criminal justice system—local law enforcement, courts, and correctional agencies—deal with adult and juvenile offenders?
- What are the characteristics of adult and juveniles under the supervision of local and state correctional agencies?
- What are the costs of crime and the criminal justice system?
- What are the key criminal justice issues for policymakers today?

Although this report is not designed to present comprehensive answers to all of these questions, it does provide basic information on these issues. It does this through a "quick reference" document that relies heavily on charts to present the information. This report relies on the most recent data available from several federal and state agencies, including the U.S. Department of Justice (U.S. DOJ), the Federal Bureau of Investigation (FBI), the California Department of Corrections and Rehabilitation (CDCR), and the Criminal Justice Statistics Center in the California Department of Justice (state DOJ). Below we describe the main components of this report.

Overview of the Criminal Justice System. Chapter 2 provides a description of how the criminal justice system is structured in California, including the various roles of the federal, state, and local governments. In addition, we identify the major features of criminal sentencing law and the most significant criminal laws enacted in recent years.

The State of Crime in California. Chapter 3 provides a mixed picture of the current state of crime in California. The crime rate in California declined substantially throughout most of the 1990s, but has increased somewhat in more recent years. Violent crime in California, however, has continued to decline even in more recent years, but is still significantly higher than the national average.

Adult Criminal Justice System. Despite the decline in crime rates over recent decades, the state has experienced a significant increase in incarceration with approximately 250,000 adult inmates in jail and prison today, as well as another 450,000 adults supervised on probation or parole. Chapter 4 describes what happens to adult offenders in the criminal justice system, including a discussion of trends in criminal arrests, disposition of court cases, and incarceration.

We also discuss two important topics in today's adult justice system: (1) the discretion that police, prosecutors, and judges have in its operation, and (2) federal court involve-

ment in the provision of prison inmate health care. (See our November 2006 report, *California's Fiscal Outlook* [page 43], for our projections of the fiscal effect of three federal court cases concerning the state's inmate health care system. Future publications by our office will provide more detailed analysis of this important issue.)

Juvenile Justice System. In many ways, juvenile crime trends are similar to those for adults. For example, the majority of arrests for both groups are for misdemeanor offenses rather than felonies, and felony arrest rates for both adults and juveniles have declined in recent years. Chapter 5 describes the juvenile justice system, including arrest trends, disposition of court cases, and incarceration. We also discuss the rehabilitation mission of the juvenile justice system at both the local and state levels.

Costs of Crime and the Criminal Justice System. Chapter 6 documents how spending on the criminal justice system in California has grown steadily over the past decade, reaching $25 billion in 2003-04. Most of this spending is done by local governments, including $11 billion for police and sheriffs. The fastest-growing segment of the state's criminal justice system is state corrections, with these costs growing at an average annual rate of about 10 percent during the past ten years. These costs have been driven in large part by increases in employee salaries, court-ordered mandates (such as for the provision of health care services), as well as inmate population growth.

Conclusion. In Chapter 7, we identify two major state criminal justice system challenges facing policymakers. The first challenge is managing prison capacity in light of projected growth in the state's prison population. The amount of growth projected suggests that California's incarceration capacity, which is already strained, may be unable to adequately meet the future demand, and policymakers will have to carefully weigh options to balance population demands and the available capacity to meet those demands.

The second challenge regards correctional rehabilitation programs. While the Legislature and Governor have increased funding for programs such as education and substance abuse treatment for state inmates and parolees, this funding still only represents a very small share of the prison system budget, resulting in low participation rates for these programs. Given the number of inmates who are paroled to the community and then subsequently return to prison, it is important for policymakers to further consider the role that rehabilitation programs can play in reducing the state's high recidivism rates.

Chapter 2:

An Overview of California's Criminal Justice System

The criminal justice system operates at multiple levels of government: the local, state, and federal levels. Because the vast majority of criminal activity is handled by state and local authorities, we focus in this report on the role of the state and local governments in California's criminal justice system. The primary goal of the system is to provide public safety by deterring and preventing crime, incarcerating individuals who commit crime, and reintegrating criminals back into the community.

Criminal Sentencing Law

The criminal justice system is based on criminal sentencing law, the body of laws that define crimes and specify the punishments for such crimes. The majority of sentencing law is set at the state level.

Types of Crimes. Crimes are classified by the seriousness of the offenses as follows:

- A **felony** is the most serious type of crime, for which an offender may be sentenced to state prison for a minimum of one year. California Penal Code also classifies certain felonies as "violent" or "serious." Violent felonies include murder, robbery, and rape. Serious felonies include all violent felonies, as well as other crimes such as burglary of a residence and assault with intent to commit robbery.

- A **misdemeanor** is a less serious offense, for which the offender may be sentenced to probation, county jail, a fine, or some combination of the three. Misdemeanors include crimes such as assault, petty theft, and public drunkenness. Misdemeanors represent the majority of offenses in California's criminal justice system.

- An **infraction** is the least serious offense and is generally punishable by a fine. Many motor vehicle violations are considered infractions.

California law also gives law enforcement and prosecutors the discretion to charge certain crimes as either a felony or a misdemeanor. These crimes are known as "wobblers."

Determinate Sentencing. Prior to 1977, convicted felons received indeterminate sentences in which the term of imprisonment included a minimum with no prescribed maximum. For example, an individual might receive a "five-years-to-life" sentence. After serving five years in prison, the individual would remain incarcerated until the state parole board determined that the individual was ready to return to the community and was a low risk to commit crimes in the future.

In 1976, the Legislature and the Governor enacted a new sentencing structure for felonies, called determinate sentencing, which took effect the following year. Under this structure, most felony punishments have a defined release date based on the "triad" sentencing structure. The triad sentencing structure provides the court with three sentencing options for each crime. For example, a first-degree burglary offense is punishable by a term in prison of two, four, or six years. The middle term is the presumptive term to be given to an offender found guilty of the crime. The upper and lower terms provided in statute can be given if circumstances concerning the crime or offender warrant more or less time in state prison. We would note that, in January 2007, the U.S. Supreme Court *(Cunningham v. California)* restricted a judges

ability to assign the upper term. In some cases, offenders are still punished by indeterminate sentences today. Specifically, indeterminate sentences are provided for some of the most serious crimes, such as first-degree murder, as well as for some repeat offenders. In fact, about 19 percent of state prison inmates are currently serving indeterminate life sentences.

Components of the Criminal Justice System

The criminal justice system can be thought of as having three components: law enforcement, courts, and corrections. Figure 1 (see next page) shows the different actors in California's criminal justice system, including information on their level of government and responsibilities. We discuss these components in more detail below.

Law Enforcement. State sentencing laws are primarily enforced at the local level by the sheriff and police officers who investigate crimes and apprehend offenders. Law enforcement is a local responsibility in California, with funding typically provided by cities and counties. At the state level, the Attorney General provides some assistance and expertise to local law enforcement in the investigation of crimes that are multi-jurisdictional (occur in multiple counties) such as organized crime. The state also provides grants to local law enforcement for various crime-fighting activities.

Courts. Once an individual is arrested and charged with committing a crime, he or she must go through California's trial court system. Local district attorneys, employed by the county, charge them with a specific crime and prosecute them. If the individual cannot afford an attorney, he or she is represented by a public defender, also provided by the county. Superior Court judges preside over cases that come through the system. Judge salaries, as well as all other funding for the operation of the state's trial courts, are a responsibility of the state. The system is designed in a way that it provides flexibility for district attorneys and judges to decide

Figure 1

Roles Within California's Criminal Justice System

These Criminal Justice Officials…	Who Are Subject to the Control of…	Must Often Decide Whether or Not or How to…
Police/Sheriffs	Cities/Counties	• Enforce laws • Investigate crimes • Search people, premises • Arrest or detain people • Supervise offenders in local correctional facilities (primarily county sheriffs)
District Attorneys (prosecutors)	Counties	• File charges • Prosecute the accused • Reduce, modify, or drop charges
Judges	State	• Set bail or conditions for release • Accept pleas • Determine delinquency for juveniles • Dismiss charges • Impose sentences • Revoke probation
Probation Officials	Counties or Judges	• Recommend sentences to judges • Supervise offenders released on probation • Supervise offenders (especially juveniles) in probation camps and ranches • Recommend probation revocation to judges
Correctional Officials	State	• Assign offenders to type of correctional facility • Supervise prisoners • Award privileges, punish for disciplinary infractions
Parole Officials	State	• Determine conditions of parole • Supervise parolees released to the community • Revoke parole and return offenders to prison

how to prosecute specific cases and manage overall caseload. (See page 45 for a more detailed discussion of this topic.)

Corrections. The component of the system that supervises offenders is commonly referred to as "corrections" or the "correctional system." In California, individuals convicted of, or adjudicated for crimes are placed under supervision either at the local level (jail and probation) or the state level (prison and parole) depending on the seriousness of the crime and the length of incarceration. Generally speaking, low-level offenders are supervised at the local level, while more serious offenders who are sentenced to more than a year of incarceration are supervised at the state level. By law, individuals who serve prison sentences are required to be on parole, typically for a minimum of three years. Although those who serve jail sentences are not required by law to be on probation, the vast majority are in fact placed on probation after their release from jail.

What Is the Difference Between the State and Federal Criminal Justice Systems?

The state criminal justice system (including both state and local agencies) and the federal criminal justice system have much in common. For example, both systems have statutory criminal law, law enforcement agents, courts, and prisons. Procedurally, the systems are also similar, for example, offering the same protections to criminal defendants, such as the right to jury trial.

The key difference between the two systems relates to the criminal law statutes. Federal criminal law is limited to the powers of the federal government enumerated in the United States Constitution. Therefore, most federal criminal laws relate to the national government's role in the regulation of interstate commerce, immigration, and the protection of federal facilities and personnel. Consequently, federal law enforcement tends to focus on nonviolent crimes such as drug trafficking, immigration violations, fraud, bribery, and extortion.

Figure 2
Federal and State Inmate Population

2005

	Prison Inmates	
	California	Federal
Totals	**168,055**	**187,241**
Offense Type		
Violent	50%	10%
Property	22	8
Drug	21	53
Immigration	—	11
Other	8	17

Details may not total due to rounding.

By comparison, state criminal law is based on the general police powers of the state and is therefore broader in scope. For example, as shown in Figure 2, more than one-half of the federal prison population is made up of drug offenders, while only 21 percent of state prison inmates were imprisoned for a drug offense. However, there is some crossover, such that some crimes—for example, weapons offenses and robbery—that are prosecutable under state law may also be prosecuted under federal law. Nevertheless, most crimes are prosecuted under state law.

What Are Some Significant Changes in Criminal Law?

The underlying structure of California sentencing law has remained unchanged since the transition to determinate sentencing in 1976. However, concern about certain types of crimes, offenders, and law enforcement capabilities has led the Legislature and voters to make some significant changes to specific areas of law. We highlight below those changes to criminal law (since 1990) that have affected large numbers of offenders.

Proposition 115: Speedy Trial Initiative. Approved by the voters in 1990, this measure made significant changes to criminal law and judicial procedures in criminal cases. The measure provided the accused with the right to due process of law and a speedy public trial and required felony trials to be set within 60 days of a defendant's arraignment. Other provisions expanded the definition of first-degree murder and the list of "special circumstances" that could lead to a longer sentence; changed the way juries are selected for criminal trials; changed the rules under which prosecutors and defense attorneys had to reveal information to each other; and, under certain circumstances, allowed the use of hearsay evidence at preliminary hearings, which are conducted to determine if the evidence against a person charged with a crime is sufficient to bind them over for trial.

"Three Strikes and You're Out." In 1994, the Legislature and voters approved the Three Strikes and You're Out law (the legislative version is Chapter 12, Statutes of 1994 [AB 971, Bill Jones]). The most significant aspect of the new law was to require longer prison sentences for certain repeat offenders. Individuals who have *one previous* serious or violent felony conviction and are convicted of *any new* felony (it need not be serious or violent) generally receive a prison sentence that is twice the term otherwise required for the new conviction. These individuals are referred to as "second strikers." Individuals who have *two previous* serious or violent felony convictions and are convicted of *any new* felony are generally sentenced to life imprisonment with a minimum term of 25 years ("third strikers"). In addition, the law also restricted the opportunity to earn credits that reduce time in prison and eliminated alternatives to prison incarceration for those who have committed serious or violent felonies.

Proposition 21: Juvenile Crime. Proposition 21, approved by the voters in 2000, expanded the types of cases for which juveniles can be tried in adult court. The measure also increased penalties for gang-related crimes and required convicted gang members to register with local law enforcement.

Proposition 36: Drug Prevention and Treatment. Also approved by the voters in 2000, Proposition 36 provided for the sentencing of individuals convicted of a nonviolent drug possession offense to probation rather than prison or jail. As a condition of probation, the offender is required to complete a drug treatment program. The measure excluded certain offenders from these provisions, including those who refuse drug treatment or are also convicted at the same time for a felony or misdemeanor crime unrelated to drug use.

Megan's Law Database. As a result of legislation enacted in the 1950s, the state requires sex offenders to register with local law enforcement agencies at least once annually, and additionally within 14 days of moving to a new address. Various pieces of legislation enacted in the 1990s required law enforcement to provide public access to the state DOJ database, commonly referred to as the Megan's Law database, containing information on the residences of sex offenders. Initially, this information was available via a state-operated "900" telephone line and a CD-ROM disc available at local law enforcement agencies. In 2004, the Legislature enacted Chapter 745, Statutes of 2004 (AB 488, Parra), which made the Megan's Law database available electronically via the Internet.

Proposition 69: DNA Samples. Enacted in 2004, this measure required state and local law enforcement agencies to collect samples of deoxyribonucleic acid, commonly known as DNA, from all convicted felons, some nonfelons, and certain arrestees for inclusion in the state's DNA data bank. Samples from the data bank are compared to DNA evidence from unsolved crimes to look for potential matches. Although the state collected DNA samples from certain felons prior to passage of this measure, this measure greatly expanded the number of individuals from whom the state was required to collect DNA.

Senate Bill 1128 (Alquist) and Proposition 83: Jessica's Law. In 2006, the Legislature enacted Chapter 337, Statutes of 2006 (SB 1128, E. Alquist), and voters approved Proposi-

tion 83, commonly referred to as Jessica's Law. These new laws made a number of changes regarding the sentencing of sex offenses. Among other changes, they increased penalties for certain sex offenses, required global positioning system monitoring of felony sex offenders for life, restricted where sex offenders can live, and expanded the definition of who qualifies as a sexually violent predator who can be committed to a state mental hospital by the courts for mental health treatment.

Chapter 3:

The State of Crime in California

Measuring Crime in California

Crime is primarily measured in two different ways. One approach is based on official reports from law enforcement agencies, which are compiled and published by the FBI. California data is published by the Criminal Justice Statistics Center in the state DOJ. These are the statistics often cited in reports and newspaper articles. The other method is through national victimization surveys in which researchers ask a sample of individuals if they have been victims of crime, regardless of whether the crime was reported to the police.

Crimes Reported to Law Enforcement. Since 1930, the FBI has been charged with collecting and publishing reliable crime statistics for the nation, which it currently produces through the Uniform Crime Reporting (UCR) program. Local law enforcement agencies in California and other states submit crime information, which is forwarded to the FBI. In order to eliminate differences among various states' statutory definitions of crime, UCR reports data only on *selected* general crime categories, which are separated into violent and property crimes. The violent crimes measured under UCR include murder, forcible rape, robbery, and aggravated assault. Property crimes include burglary, larceny-theft, and motor vehicle theft. All crime rate data provided in this chapter are based on crimes reported by local law enforcement.

The UCR crime information is typically presented in terms of rates. A rate is defined as the number of occurrences of a criminal event within a population. Crime rates are typically presented as a rate per 100,000 people. For example,

California's 2005 murder rate was 6.9, which means that there were 6.9 murders per 100,000 Californians in 2005. Presenting information in terms of rates makes it easier to compare criminal activity in regions with differing population sizes.

Crime Estimates Through Victimization Surveys. Crime statistics from law enforcement do not tell the entire story of crime. There is a significant amount of crime committed each year that goes unreported to law enforcement authorities and therefore is not counted in official statistics.

In order to provide a more complete picture of the amount of crime committed, the U.S. DOJ, through its National Crime Victimization Survey (NCVS), surveys households and asks whether they have been victims of crime. The NCVS is conducted annually at the national level, not on a state-by-state basis. It provides useful nationwide information on such issues as the number of violent and property crimes in the nation, the likelihood of victimization for various demographic groups, the percentage of crimes reported to the police, the characteristics of offenders, and the location of crimes. The NCVS uses "victimization rates" to compare the frequency of victimization among various demographic groups. The victimization rate for a particular group is presented as a rate per 1,000 people and excludes individuals under the age of 12.

What Is the State of Crime in California?

Statewide. Providing an assessment of criminal activity in California depends on the time horizon one uses. From a longer-term perspective, the state has seen substantial decreases in crime over time. Crime rates have decreased 51 percent since reaching their peak in 1980. However, shorter-term trends are not as positive. Although violent crimes have continued to decline, property crimes have increased 7 percent since 2000. Comparing California to the rest of the U.S. also results in mixed conclusions. Although California's overall crime rate was significantly higher than the national crime rate throughout the 1980s and early 1990s, the state's

crime rate is now slightly lower than the national rate. California's violent crime rate, however, remains higher than the U.S. rate.

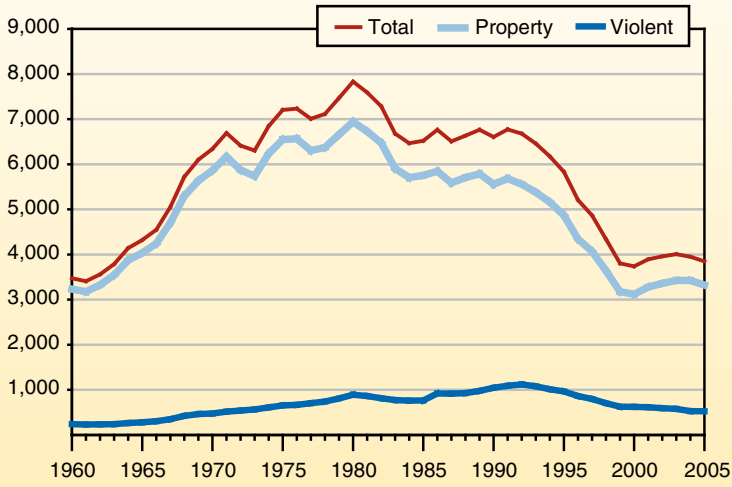
Regional Variation. It is important to note that there is also significant variation in crime rates among the regions of California. Generally, the Central Valley has the highest crime rates of any region in California. Among the most populous California counties, three of the four counties with the highest crime rates (San Joaquin, Sacramento, and Fresno) are located in the Central Valley. The counties with the lowest crime rates are in Southern California and the Bay Area—specifically, Ventura, Orange, and Santa Clara Counties, as shown on page 22.

This chapter provides information on crime rates in California. This includes data on the prevalence of crime in California—including comparisons of California's crime rates to those of other states and comparisons among California counties—as well as data on the offenders and victims of crime. The chapter also discusses two other crime-related topics: (1) the major factors that have caused a decline in crime rates, and (2) the prevalence of drug crimes, which are not included in traditional crime rate data.

How Prevalent Is Crime in California?

Rise and Fall of California's Crime Rates

Rate Per 100,000 Population
1960 Through 2005

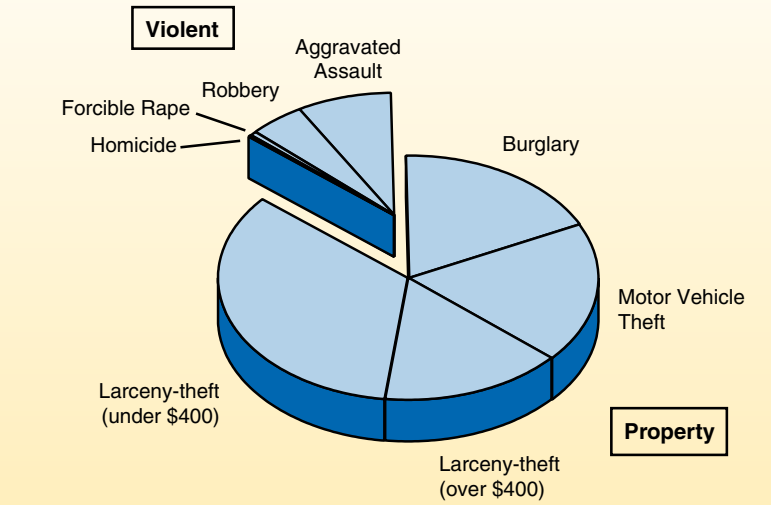


- California experienced a decline in crime rates for nine consecutive years, from 1992 to 2000. During this period, the overall crime rate decreased by 56 percent. This trend is similar to declines in crime patterns in the rest of the U.S.

- Since 2000, however, overall crime in California has increased 3 percent. The increase is driven by increases in property crime, which has increased 7 percent. The violent crime rate has continued to decline, dropping 15 percent since 2000.

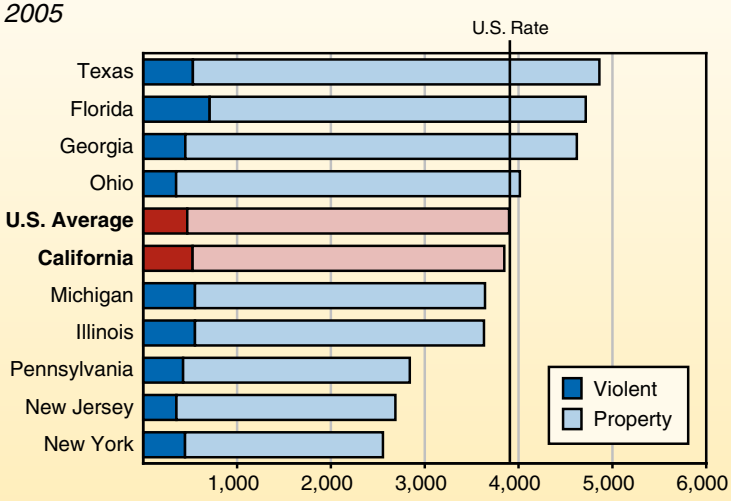
Most Crime Is Property Crime

2005



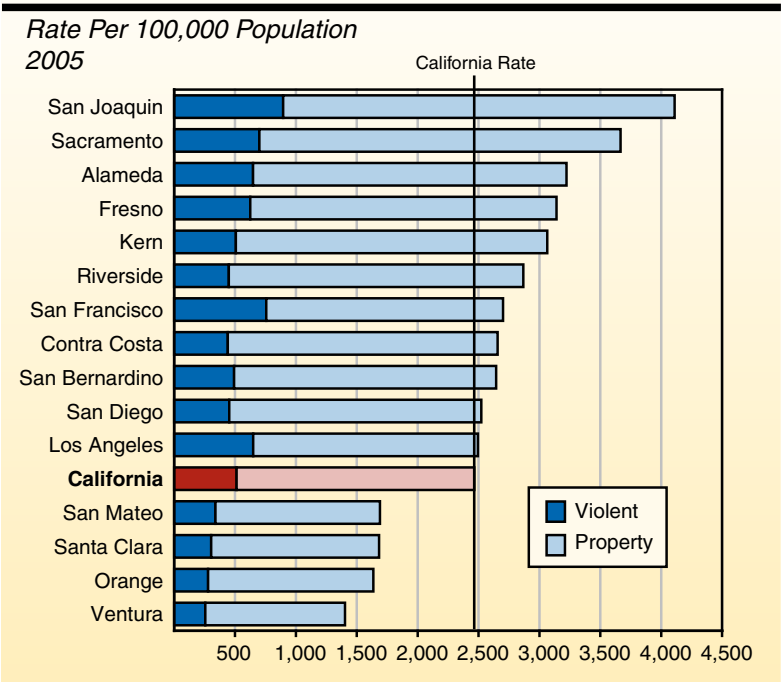
- Overall, California reported 3,849 crimes per 100,000 people in 2005.
- Property crime accounted for about 86 percent of reported crimes in California in 2005, and violent crime accounted for 14 percent.
- Although the proportion of crime changes slightly every year, property crimes consistently represent approximately 85 percent of all reported crimes.

California's Crime Rate Is Close to National Average



- California's crime rate was slightly lower than the U.S. crime rate in 2005, and was fifth highest among the ten largest states.
- California also has the fifth highest violent crime rate among the ten largest states, 11 percent higher than the U.S. rate. California's property crime rate ranks fifth among the largest states, 3 percent below the national rate.
- California's property crime rate has increased 7 percent since 2000, the only large state to have experienced a property crime increase. Much like the rest of the nation, however, California has continued to experience decreases in violent crime.

Crime Rates Vary Among Counties



- Among the 15 largest counties in California, San Joaquin had the highest violent crime and property crime rates. Ventura had the lowest violent and property crime rates.
- Since 2000, property crime rates have increased in 12 of the 15 large counties. Violent crime has increased in 5 of the 15 large counties.
- Kern had the largest increase in property crime since 2000, at 34 percent, while Fresno had the largest decrease, with a 9 percent decline.
- Between 2000 and 2005, San Mateo had the highest increase in violent crime, at 22 percent, while Los Angeles had a 30 percent decrease, the largest decrease of all the large counties.

Who Is Involved in Crime?

Who Commits Crime?

The NCVS, conducted annually by the U.S. DOJ, provides useful information about criminal offenders in the U.S. The 2005 NCVS shows that:

- About 79 percent of violent crimes involving one offender were committed by a male.
- In 52 percent of assaults, the offender was someone known to the victim. However, the offender was someone known to the victim in only 20 percent of robberies. In rapes and sexual assaults, offenders were known by 65 percent of their victims. For all violent crimes, females were more likely than males to be victimized by someone they know.
- About 45 percent of violent crimes were committed by individuals ages 15 through 29, despite representing only 21 percent of the overall population.
- About 28 percent of violent crimes involved an offender who was perceived to be under the influence of drugs or alcohol.

Who Are the Victims of Crime?

The 2005 NCVS also provides information on the characteristics of victims of crime. Of particular interest are the following:

- ***Age.*** Individuals age 12 to 24—those most likely to commit violent crimes—were also most likely to be the victims of violent crime. The chances of becoming a victim of violent crime were significantly lower for all other age groups.

- ***Sex.*** The likelihood of being a victim of violent crime was 45 percent higher for males than for females.

- ***Ethnicity.*** Violent victimization rates for blacks were 37 percent higher than those for whites. Hispanics had violent victimization rates 24 percent higher than whites. Black households were victims of property crimes at a rate 7 percent lower than whites, and Hispanic household victimization rates were 35 percent higher than whites. These rates, however, can vary significantly from year to year.

- ***Economic Status.*** Poorer households were much more likely to experience an unlawful entry into their homes (burglary) than wealthier households. However, while wealthier households do not experience burglary as often, they were more likely to be victims of theft, which includes the taking of household items, motor vehicle accessories, or other objects without entry into the home.

Key Topics in California Crime Trends

What Major Factors Have Caused Declining Crime Rates?

During the 1990s, the U.S. experienced an unprecedented decrease in crime rates at a time when many experts were predicting that crime would reach all-time highs. This decrease was consistent throughout the nation, from large urban cities to small rural areas. Numerous studies have been conducted to examine the causes of this drop in crime levels. Although there is no consensus on all causes of the decreases in the crime rate, the following factors are widely considered to be among the most significant factors in the crime drop:

- ***Increased Prison Population.*** Higher rates of incarceration reduce crime for two reasons. First, keeping a higher proportion of criminals in prison keeps them from committing new crimes. Second, high incarceration rates are believed to serve as a deterrent, discouraging others from committing future crimes. In California, the boom in the prison population was due to factors such as increases in the number of individuals sentenced to prison by the courts, higher rates of parole violators returning to prison, and the use of sentence enhancements.

- ***More Police.*** Studies have also shown that a nationwide increase in police officers per capita has been a factor in reducing crime rates. There has been little conclusive research, however, focusing on whether certain types of police strategies, such as so-called community policing, have been effective strategies for reducing crime.

- ***Demographic Factors.*** Changes in the state's crime rate follow changes in the portion of the population aged 18 through 24, the age group most likely to be involved in

criminal activity. In California, the share of the population in the 18 to 24 age group increased throughout the 1970s until reaching its peak in 1978, when 18 to 24 year-olds represented 14 percent of the population. The share of 18 to 24 year-olds decreased consistently throughout the 1980s and 1990s, until 1997, when the share had dropped to 10 percent. This pattern follows the peaks and valleys of the state's crime rates; California reached its peak crime rate in 1980 and its lowest crime rate in 2000, consistent with increases and decreases in the share of 18 to 24 year-olds in the population. During the next 15 years, the share of 18 to 24 year-olds in the state's population is projected to remain stable at approximately 10 percent of the population.

- ***Economic Factors.*** Changes in unemployment, poverty, and mean household income also affect crime rates. In the U.S., the economic boom of the late 1990s likely played a role in the reduction of crime rates. Although economic factors are often considered a central component to variations in crime, research shows that factors such as police officers per capita and prison population may have a greater impact on the crime rate.

Drug Crimes

A Significant Share of Felony Arrests and Incarceration. The FBI Crime Index focuses solely on crimes that involve violence against persons or the loss of personal property. These statistics do not include crimes related to the possession, sale, or manufacture of illegal drugs. However, drug crimes do represent a significant portion of all crimes committed in the U.S. and within California. In 2005, felony drug arrests represented 30 percent of all felony arrests in California. As a result, approximately 21 percent of inmates in California's prisons were incarcerated for a drug-related crime. This is a significant increase as compared to 20 years ago when only

11 percent of state inmates were incarcerated for drug offenses. This increase is likely due to changes in drug laws—particularly in the 1980s—that increased penalties for the possession and sale of illegal drugs.

Although there has not been a recent change in arrest or incarceration rates for drug crimes, there has been a change in the type of drugs most commonly used. California has experienced growth in the use of methamphetamines, which has become an increasingly popular drug in the western U.S. In addition, California is the primary source of methamphetamine sold in the U.S.

Drug Courts. Because a significant number of individuals are frequently imprisoned solely for drug-related crimes, several California counties began using drug courts for managing individuals with substance abuse problems. The first drug court was established in Alameda County in 1993. Rather than seeking imprisonment, drug courts use judicially supervised treatment, mandatory drug testing, and a system of sanctions and rewards to help individuals become sober and successfully return to their communities.

This focus on treatment rather than incarceration became a statewide priority after the enactment of Proposition 36 in 2000, which provided the option of treatment for drug offenders who had been convicted of only drug-related crimes. In 2006, the Legislature increased the state's annual funding for Proposition 36 programs, providing counties with a total General Fund appropriation of $145 million for this purpose in 2006-07. This action was intended to allow counties to maintain the level of support for these programs in 2005-06 using funding carried over from prior years. The Governor's 2007-08 budget plan proposes a net reduction of $25 million in support for Proposition 36 programs.

Chapter 4:

Adult Criminal Justice System

As indicated in the prior chapter, victimization studies show that a substantial amount of crime goes unreported to law enforcement. According to NCVS studies, about 60 percent of all crimes are not discovered or reported to law enforcement authorities. In addition, of the crimes reported to law enforcement officials, only about one-fifth are solved. In 2005, for example, only about 17 percent of all reported crimes were solved or "cleared" (that is, a person was charged with a crime). This figure has remained relatively stable for a number of years.

Following an arrest, a law enforcement agency may file a complaint against the individual and he or she may be prosecuted. Prosecution may result in the person being convicted. Persons who are convicted are given a fine and/or are sentenced to county probation, county jail, county probation with a jail term, or state prison. The vast majority of convicted offenders end up on county probation and/or in county jail (as shown on page 33).

Although the Legislature and Governor enact laws that define crimes and set penalties, criminal justice officials exercise a great deal of discretion in enforcing these laws. The greatest discretion is at the local level, when police decide whether to arrest someone for a crime, prosecutors decide whether or how to charge a person with a crime, and courts adjudicate suspected offenders (as discussed on page 45).

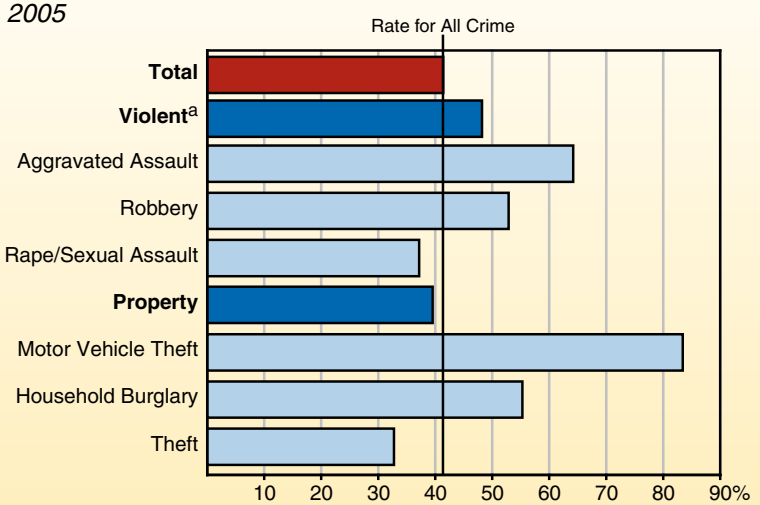
This chapter provides information on the adult criminal justice system. This includes data on what happens to adult offenders from arrest through incarceration. The chapter also provides information on the characteristics of those in the

criminal justice system, such as demographics and criminal history. In addition, this chapter discusses two topics affecting the adult criminal justice system: (1) the discretion of police officers, prosecutors, and judges affecting outcomes for adult offenders, and (2) federal court intervention in the prison health care system.

What Happens to Adult Offenders?

Most Crimes Are Not Reported to Authorities

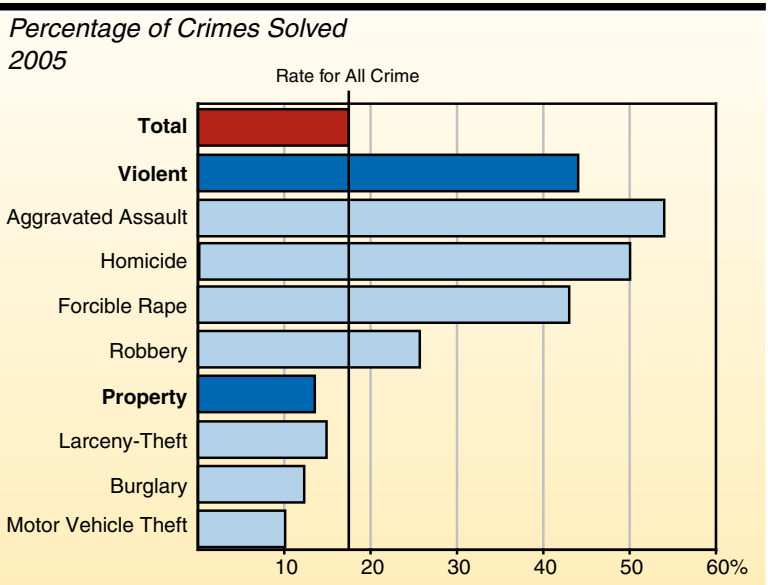
Percentage of Crimes Reported
2005



[a]Does not include homicide.

- According to NCVS studies, 41 percent of the crimes committed were reported to authorities in 2005. About 47 percent of all violent crimes were reported, while only 40 percent of property crimes were reported. (This report generally uses the term "violent" crimes to signify a category of offenses committed against persons—such as homicides and assaults—and is broader than the list of felonies defined as violent under the Three Strikes law.)
- About 83 percent of motor vehicle thefts were reported to the police, the highest rate of the major crime categories. This is likely due to the fact that individuals must file police reports in order to file auto insurance claims.
- Only 38 percent of rapes and sexual assaults were reported to the police, lowest among violent crimes.

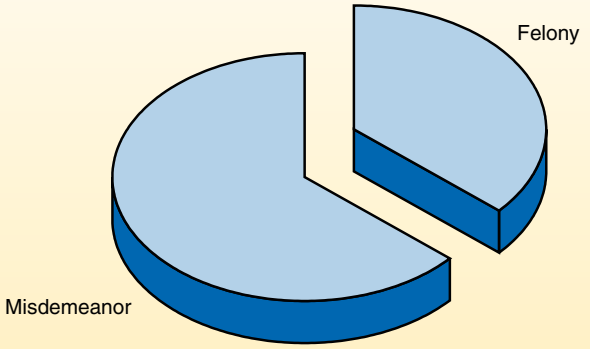
Most Reported Crimes Are Not Solved



- In 2005, 44 percent of violent crimes in California were solved, while 13 percent of property crimes were solved.
- A crime is typically considered solved, or cleared, when someone has been arrested, charged for the crime, and turned over for prosecution.
- Generally, those crimes in which the offender is more likely to be a relative or acquaintance of the victim, such as homicide and aggravated assault, have a higher likelihood of being solved.

Most Arrests Are for Misdemeanors

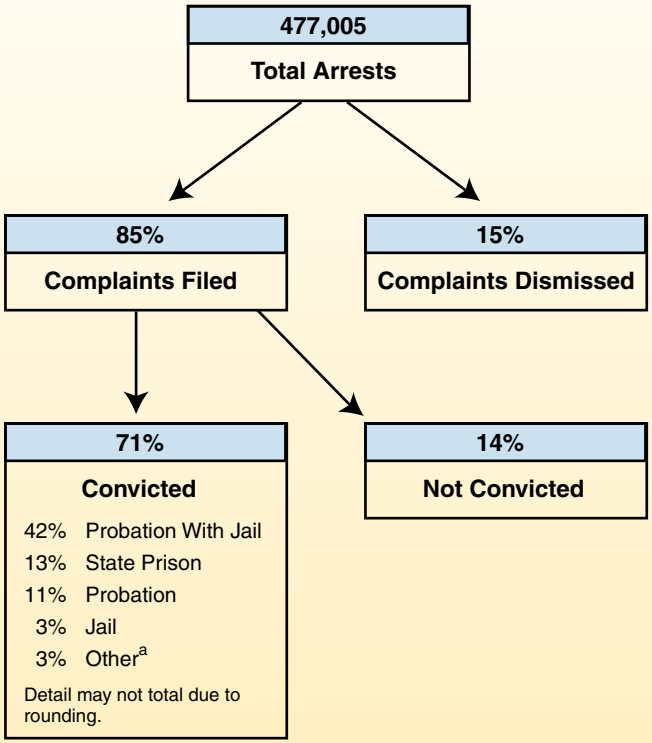
2005



- There were almost 1.5 million arrests of adults and juveniles for felonies and misdemeanors in California in 2005.
- About 64 percent of the arrests were for misdemeanors, while 36 percent were for felonies.
- The share of arrests that are misdemeanors and felonies has remained constant over the past ten years.

Outcomes of Adult Felony Arrests in California

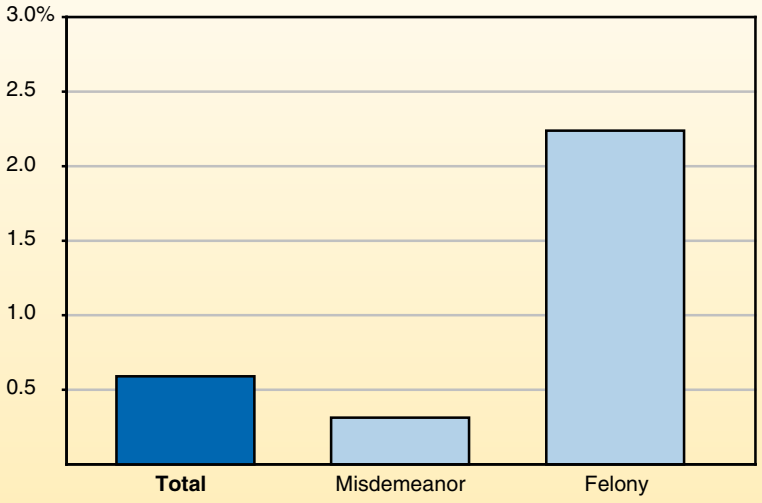
2005



[a] "Other" includes no sentence given, sentence suspended, sentence stayed, California Rehabilitation Center, Youth Authority, fine, and death sentence.

Very Few Criminal Cases Go to Jury Trial

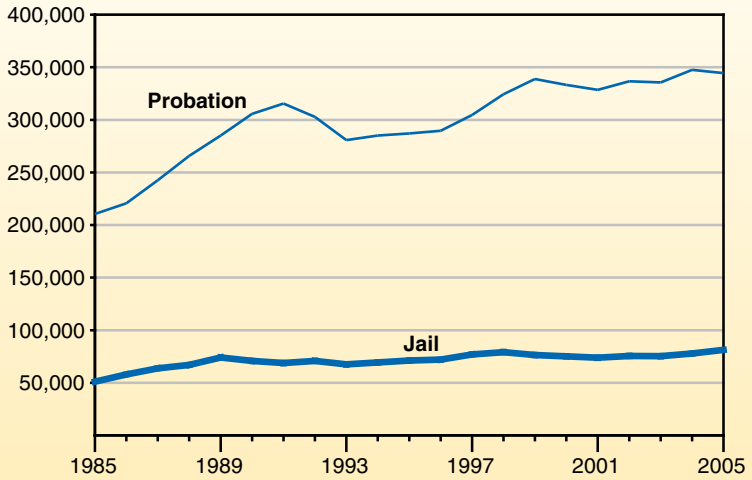
Cases Ending in Jury Trial
2004-05



- In 2004-05, there were 1.2 million felony and misdemeanor dispositions in California's Superior Courts. Only 8,000 of those cases, or 0.6 percent of all dispositions, reach a jury trial.
- Only 0.3 percent of misdemeanor cases reach a jury trial.
- About 2.2 percent of felony cases go to a jury trial, a significantly higher proportion than for misdemeanor cases, but still a very small portion of the total.
- Of felony cases that do not go to jury trial, 80 percent are plea-bargained and 20 percent result in acquittals, dismissals, or transfers. For misdemeanor cases, approximately 70 percent of cases that do not go to trial lead to a guilty plea by the defendant.

Growth in Adult Jail and Probation Populations

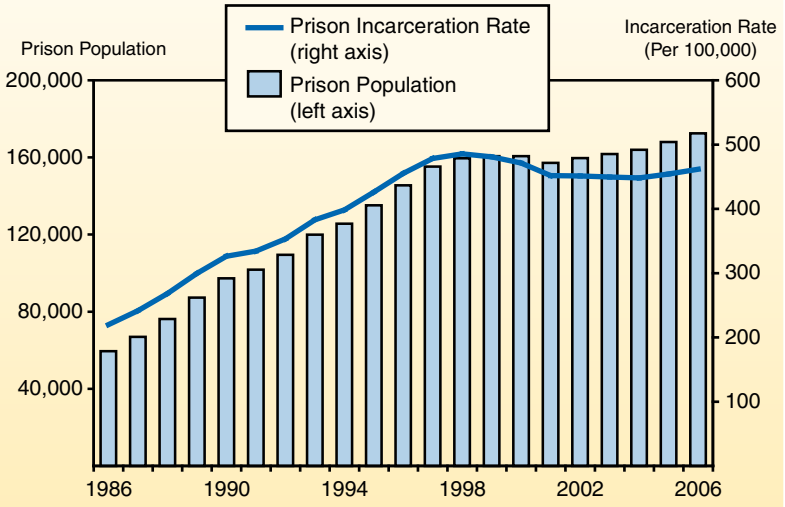
Average Daily Population
1985 Through 2005



- Between 1985 and 2005, the jail population grew from 51,000 inmates to 81,000 inmates (about 2 percent annually). Most of this growth occurred during the 1980s.
- The relative stability in the jail population since 1989 is in part due to federally-imposed caps on jail population. By 2005, 20 counties had jails placed under such caps.
- Many more offenders are on probation than in jail. The number of adults on probation in California grew by less than 3 percent annually between 1985 and 2005, going from 210,000 to approximately 344,000 probationers.
- Of the 344,000 adults on probation in 2005, 77 percent were on probation for a felony, with the remainder misdemeanors. In some counties all probationers are convicted of a felony. In other counties, less than 50 percent of probationers are convicted of a felony.

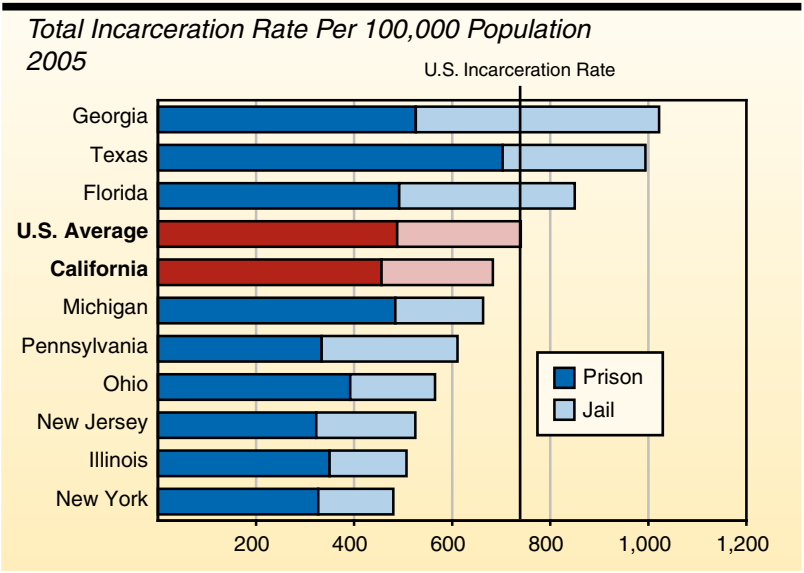
State Prison Population and Incarceration Rate Slowed in Recent Years

1986 Through 2006



- The prison population grew from about 59,000 inmates in 1986 to 173,000 inmates in 2006 (5 percent average annual growth). Similarly, the prison incarceration rate grew from 220 to 460 inmates per 100,000 Californians over the same period (4 percent average annual growth).
- Most of this growth occurred between 1986 and 1998. This period was one of declining crime rates but also included the implementation of tougher sentencing laws and a prison construction boom that activated 20 state prisons.
- The prison population is projected to grow by more than 17,000 inmates over the next six years. This level of growth would significantly exceed the total bed capacity of the prison system in the near term, including housing in non-traditional beds in gyms and dayrooms.

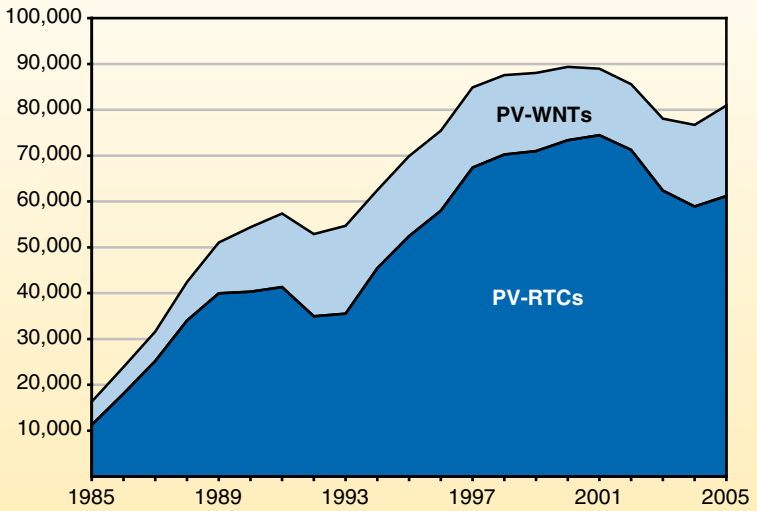
Total California Incarceration Rate Similar to U.S. Average



- California's total incarceration rate, including both inmates in local jails and prisons is 683 (per 100,000 population). This is relatively close to the national average of 740.
- As with most states, roughly two-thirds of California's incarcerated population is housed in state prisons.
- Of the ten largest states, Georgia has the highest incarceration rate (1,022), more than twice the rate of New York (480).

Growth in Number of Parole Returns to Prison

1985 Through 2005

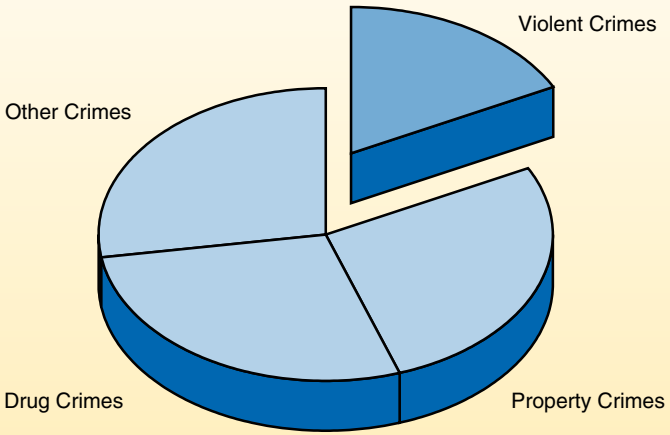


- Most parole violators (PVs) are returned to custody (PV-RTC) for violations of the conditions of their parole, while others are convicted in courts for new crimes with new terms (PV-WNT).
- The total number of parole violations that resulted in an offender being returned to prison has increased five-fold over the past 20 years from about 16,000 PVs in 1985 to 81,000 in 2005. There were about 115,000 individuals under state parole supervision at the end of 2005.
- The larger number of parole returns mostly reflects increases in the total prison and parole populations, which have grown by almost four-fold since 1985. This increase also reflects a rise in the rate at which parolees are returned to prison as PV-RTCs. The PV-RTC rate has increased by about 15 percent during the past 20 years due in part to changes in parole revocation regulations.

Who Is in Corrections?

Relatively Few Jail Inmates and Probationers Convicted for Violent Crimes

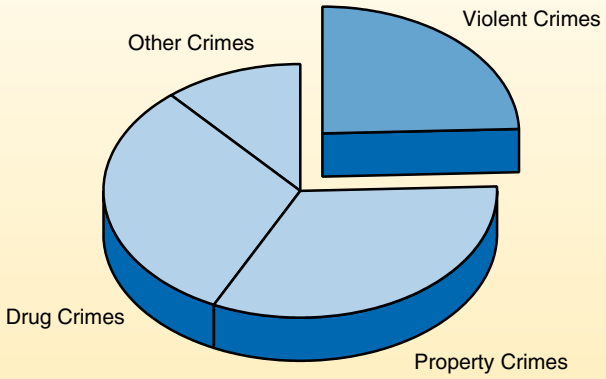
2005



- About 176,000 individuals were sentenced to local corrections—jail, probation, or both—in 2005. About 76 percent of the total were sentenced to both jail and probation.
- Of this total, about 18 percent were convicted for violent crimes, while 55 percent were convicted for property or drug offenses. About 27 percent were convicted for other crimes, including driving under the influence or possession of a weapon.
- The fact that individuals committing violent crimes make up a relatively small share of the total sentenced to local corrections largely reflects the fact that violent crimes represent less than 19 percent of all felony convictions.

Most Inmates Sent to Prison For Property and Drug Crimes

2005



- Almost two-thirds of court admissions to state prison are for property and drug offenses, including drug possession (15 percent), drug sales (15 percent), burglary (9 percent), and auto theft (7 percent).
- About one-quarter of admissions to prison from the courts are for violent crimes. Of these, the most common offenses are assault (13 percent) and robbery (5 percent).
- The "other crimes" category include weapons possession (5 percent) and driving under the influence (2 percent).

Demographics of the Prison Population

2006

	Prison Population	California Adult Population
Total Population	**172,508**	**27,648,604**
Gender		
Male	93%	50%
Female	7	50
Ethnicity		
Black	29%	6%
Hispanic	38	29
White	28	51
Other	6	14
Age		
18-19	1%	4%
20-29	31	19
30-39	31	20
40-49	26	21
50-59	9	16
60 and older	2	20

Details may not total due to rounding.

- The prison population is predominantly comprised of male blacks and Hispanics age 20 through 39.
- By comparison, the California population has significantly higher percentages of women, whites, and older individuals than are in prison.
- During the past 20 years, the percentage of inmates who are Hispanic has increased by about 10 percent, while the percentage that is white or black has decreased. Over this period, the percentage of inmates age 50 or older, more than doubled. The gender distribution of the prison population has remained stable.

Striker Population by Most Recent Offense

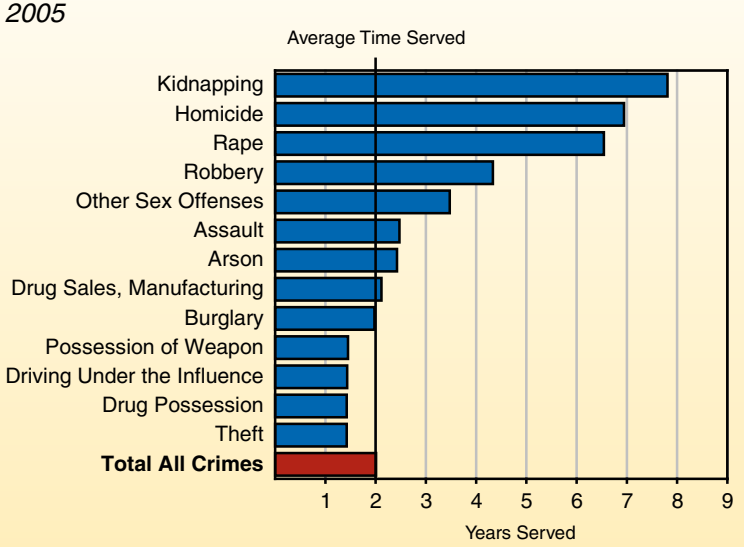
2006

Current Offense	Third Strikers	Second Strikers	Total Number	Total Percent
Violent Crimes	**3,514**	**12,935**	**16,449**	**40%**
Robbery	1,821	4,884	6,705	16
Assault With a Deadly Weapon	458	2,645	3,103	8
Assault/Battery	426	2,432	2,858	7
Property Crimes	**2,414**	**9,147**	**11,561**	**28%**
1st Degree Burglary	931	2,502	3,433	8
2nd Degree Burglary	479	1,701	2,180	5
Petty Theft With a Prior	359	1,400	1,759	4
Drug Crimes	**1,295**	**7,880**	**9,175**	**22%**
Possession of a Controlled Substance	681	3,782	4,463	11
Possession of a Controlled Substance for Sale	313	2,369	2,682	7
Sale of a Controlled Substance	198	1,091	1,289	3
Other Crimes[a]	**722**	**3,313**	**4,035**	**10%**
Possession of a Weapon	432	1,825	2,257	5
Totals	**7,945**	**33,275**	**41,220**	**100%**

[a] For example, arson and driving under the influence.

- About 40 percent of all strikers committed a violent crime as their current offense, while 50 percent committed a property or drug offense.
- Third strikers are more likely than second strikers to have a current offense that is a violent crime. About 44 percent of third strikers (3,514) and 39 percent of second strikers (12,935) are currently incarcerated for a violent crime.
- In 2006, strikers made up about 24 percent of the total prison population.

Violent Offenders Serve Longer Sentences Than Others



- In 2005, there were more than 64,000 inmates released from prison after completing their prison sentence. On average, these inmates were incarcerated for two years.
- About 78 percent of inmates released served time for a property, drug, or other nonviolent offense. These offenders were incarcerated for an average of less than two years. On average, inmates who committed violent crimes—such as kidnapping, sex offenses, or homicide (including murder and manslaughter)—were incarcerated for an average of more than three years.
- Data on the average time served in prison shown above is for offenders released from prison. But some offenders are never released. As of December 31, 2005, about 31,700 inmates (19 percent of the inmate population) were serving life terms in prison and over 600 inmates were on death row awaiting execution.

Three-Fourths of Parole Population Resides in Ten Counties

2006

County	Parolees	Percent
Los Angeles	35,376	30%
San Bernardino	8,815	8
San Diego	7,626	7
Orange	7,229	6
Riverside	7,193	6
Santa Clara	5,344	5
Fresno	4,743	4
Kern	4,106	4
Sacramento	3,603	3
Alameda	3,309	3
All other counties	29,453	25
Total California	**116,797**	**100%**

Detail may not total due to rounding.

- Under state law, all inmates released from prison must serve a term on parole. In the 2007-08 budget, the Governor proposed modification of this policy, which would provide an exception for certain low-level offenders.
- Generally, inmates leaving prison are required by law to parole to the county in which they were prosecuted. About 75 percent of the 117,000 parolees statewide are concentrated in ten counties. These counties represent 72 percent of the total California population.
- Los Angeles County has more than 35,000 (30 percent) of the total parole population. In total, 28 percent of Californians reside in Los Angeles County.

Key Topics in Adult Criminal Justice

Discretion Among Police Officers, Judges, and District Attorneys

Although it is sometimes overlooked, police (including county sheriffs), judges and district attorneys (DAs) have a great deal of discretion in carrying out their responsibilities that can significantly affect trends in punishment and incarceration within county jails and the state prison system.

Police. The actions of law enforcement agencies primarily affect the nature of the criminal cases that will be reviewed by DAs and judges. Law enforcement agencies decide how to distribute officers throughout their jurisdiction and prioritize the use of their resources in enforcing criminal laws. When they encounter different types of crime, police officers decide which investigations to conduct and which individuals to arrest. Once an arrest has been made, police officers also can decide to release an arrestee without filing criminal charges.

District Attorneys. The DAs have a significant amount of authority that affects the outcome of many criminal cases. The DAs review information for various cases and decide which cases to prosecute and which to dismiss, based on available evidence and the county's priorities. Once they decide to prosecute a case, they also decide whether to plea bargain with a defendant, thereby foregoing a jury trial in exchange for a guilty plea to a lesser offense. Since a very small percentage of cases end up in a jury trial (as shown on page 34), the bargaining decisions of DAs ultimately determine the punishment for virtually all criminal cases. In addition, DAs can have a significant impact on the cases that do end up in a jury trial. For example, the DA decides whether to pursue the death penalty for an individual who has been charged with murder. Also, DAs can decide whether to seek a sentencing enhancement that would ensure a longer prison sentence upon conviction, such as under the Three Strikes law.

Judges. Once an individual has been convicted of a crime, judges have final discretion in determining prison or jail sentences. Under California sentencing law, a range of punishments is provided for many types of crimes. For example, first-degree burglary is punishable by imprisonment for either two, four, or six years; the particular sentence that a convicted burglar receives depends on the decision of the judge. However, we would note that a ruling made by the U.S. Supreme Court in January 2007 *(Cunningham v. California)*, restricts a judge's ability to assign sentences that are higher than the presumptive term. In addition, judges have the discretion to sentence a convicted felon to probation in lieu of a prison term, and dismiss prior strikes so that a felon is not required to serve additional prison time as otherwise required by the Three Strikes and You're Out law.

Overall. A number of factors play a role in the decisions made by police, DAs, and judges. Some relate to the specifics of each case, such as the severity of the crime and the criminal history of the defendant. Other, broader considerations can also come into play. For example, a judge might be less likely to require jail time for a defendant if county jails are over capacity. Similarly, a DA might be more likely to plea bargain if the court is facing an overwhelming number of cases. On the other hand, a growing problem in the community, such as drugs or gangs, might lead to stronger action by law enforcement, judges, and DAs, leading to higher arrest rates, less plea bargaining, and longer sentences. County sheriffs, county DAs, and superior court judges are publicly elected in each county. This explains in part why certain counties tend to hand down harsher sentences to criminal offenders than others. For example, after adjusting for population and arrest rates, Kern County is much more likely to impose longer prison sentences under the state's Three Strikes law than San Francisco County.

The discretion that police, judges, and DAs have in these matters can have significant effects on the state criminal

justice system. Together they affect rates of arrest, lengths of imprisonment, the number of individuals incarcerated in county jails and state prison, the length of parole and probation, and, ultimately, the overall costs of the state criminal justice system and the share of these costs borne by the state and local governments.

Correctional Health Care: Federal Court Supervision

Court Findings. The CDCR operates three main types of health care programs: medical, mental health, and dental care. Each program is currently under varying levels of federal court supervision based on court rulings that the state has failed to provide inmates with adequate care as required under the Eighth Amendment to the U.S. Constitution. The courts found key deficiencies in the state's correctional programs, including: (1) an inadequate number of staff to deliver health care services, (2) an inadequate amount of clinical space within prisons, (3) failures to follow nationally recognized health care guidelines for treating inmate-patients, and (4) poor coordination between health care staff and custody staff.

The health care case with the greatest level of court involvement relates to CDCR's medical program. Since April 2006, medical services have been administered by a federal receiver, whose mandate is to bring the department into compliance with constitutional standards. To that end, the receiver's powers include hiring and firing medical staff, entering into contracts with community providers, and acquiring and disposing of property, including new information technology systems.

Potential Costs. Compliance with court requirements in the three health care programs is expected to result in significant additional costs to the department over the next several years, including costs to attract high-quality health care professionals and expand clinical space to accommodate added staff. We have estimated that these costs could even-

tually exceed $1.2 billion annually by 2010-11, particularly if the federal courts order the state to construct new health care facilities. The Legislature will play a key role as it (1) reviews support and capital outlay proposals intended to improve the delivery of health care services to inmates and (2) monitors the steps taken to improve inmate patient care with the goal of eventually having the court shift jurisdiction over these matters back to the state.

Chapter 5:

Juvenile Justice System

Unlike the adult criminal justice system, the stated purpose of the juvenile justice system is to focus *primarily* on rehabilitation rather than punishment. To this end, counties and state juvenile facilities provide significantly more education, treatment, and counseling programs to juvenile offenders as compared to adult offenders. Consequently, correctional programs for juveniles tend to be more expensive to operate than for adults.

Generally, the juvenile justice system is a local responsibility. Following the arrest of a juvenile, the law enforcement officer has the discretion to release the juvenile to his or her parents, or to take the suspect to juvenile hall and refer the case to the county probation department. Probation officials decide how to process the cases referred to them. For example, they can choose to close the case at intake or, with the permission of the juvenile's parents, place a juvenile offender on informal probation. About one-half of the cases referred to probation result in the filing of a petition with the juvenile court for a hearing. In 2005 approximately 99,000 petitions were filed in juvenile court (as shown on page 57).

Taking into account the recommendations of probation department staff, juvenile court judges decide whether to make the offender a ward of the court and, ultimately, determine the appropriate placement and treatment for the juvenile. Placement decisions are based on such factors as the juvenile's offense, prior record, criminal sophistication, and the county's capacity to provide treatment. Judges declare the juvenile a ward of the court almost two-thirds of the time.

Most wards are placed under the supervision of the county probation department. These youth are typically placed in a county facility for treatment (such as juvenile hall or camp) or supervised at home. Other wards are placed in foster care or a group home.

A small number of wards (under 2 percent annually), generally constituting the state's most serious and chronic juvenile offenders, are committed by the juvenile court to the CDCR's Division of Juvenile Justice (DJJ) (previously known as the Department of the Youth Authority) and become a state responsibility (as shown on page 57). In addition, juveniles tried in adult criminal court for particularly serious or violent crimes are placed in a DJJ facility until their 18th birthday, at which time they are transferred to state prison for the remainder of their sentence.

This chapter provides information on the juvenile justice system. This includes data on juvenile arrest rates, the characteristics of juvenile offenders, and the outcomes for juvenile arrestees. The chapter also discusses two topics affecting the juvenile justice system: (1) reforming DJJ juvenile facilities, and (2) the changing roles of the state and local governments in the juvenile justice system.

Who Are Juvenile Offenders?

Legal Categories of Juvenile Offenders

Informal Probationers *Welfare and Institutions Code Section 654* Known as "654s"	• Juveniles who have committed a minor offense. • Probation officers have a great deal of flexibility and can place a juvenile on informal probation if the officer decides the juvenile is under the jurisdiction of the juvenile court or *is likely* to be under its jurisdiction in the future. • These juveniles are often diverted into substance abuse, mental health, crisis shelters, or other services.
Status Offenders *Welfare and Institutions Code Section 601* Known as "601s"	• Juveniles who have committed offenses unique to a juvenile, such as truancy, a curfew violation, and incorrigibility. • They can be placed on formal probation but cannot be detained or incarcerated with criminal offenders.
Criminal Offenders *Welfare and Institutions Code Section 602* Known as "602s"	• Offenders under the age of 18 years who commit a misdemeanor or felony. • Subject to the jurisdiction of a juvenile court. • Can be placed on formal probation, detained before adjudication in a juvenile hall, and/or incarcerated after adjudication in a county or state facility. • They are treated differently from adults; they are not "tried", but "adjudicated"; they are not "convicted," but rather, their "petition is sustained."
Juveniles Remanded to Superior Court *Welfare and Institutions Code Section 707* Known as "707Bs" or remands	• Any juvenile age 14 or older, who commits specified felonies and is determined not fit for adjudication in juvenile court. • Tried in superior court as an adult. • If convicted, is sentenced to state prison and held in a DJJ facility for all or part of sentence. • If convicted, is sentenced to state prison and held in a DJJ facility for all or part of sentence.

Juvenile Arrests by Gender, Race, and Age

2005

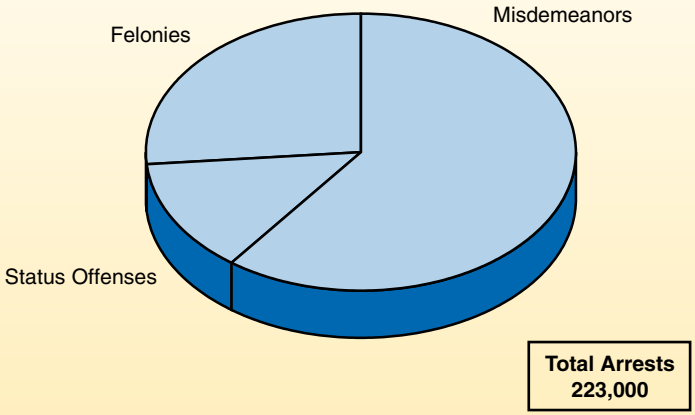
	Juvenile Arrests	California Youth Population
Totals	**222,512**	**4,493,439**
Male	74%	51%
Female	26	49
Black	17%	8%
Hispanic	48	46
White	28	33
Other	7	14
Ages 10-11	2%	24%
Ages 12-14	27	38
Ages 15-17	71	38

- In 2005, males accounted for about 74 percent of all juvenile arrests in California. Males accounted for more than 80 percent of all juvenile *felony* arrests.
- Most juveniles arrested in 2005 were age 15 through 17. Only 2 percent of juvenile arrests were in the 10 and 11 age group.
- Black and Hispanic juveniles represented about one-half of California's juvenile population age 10 through 17 in 2005, but they accounted for almost two-thirds of juvenile arrests.

How Prevalent Is Juvenile Crime in California?

Most Juvenile Arrests Are For Misdemeanor Crimes

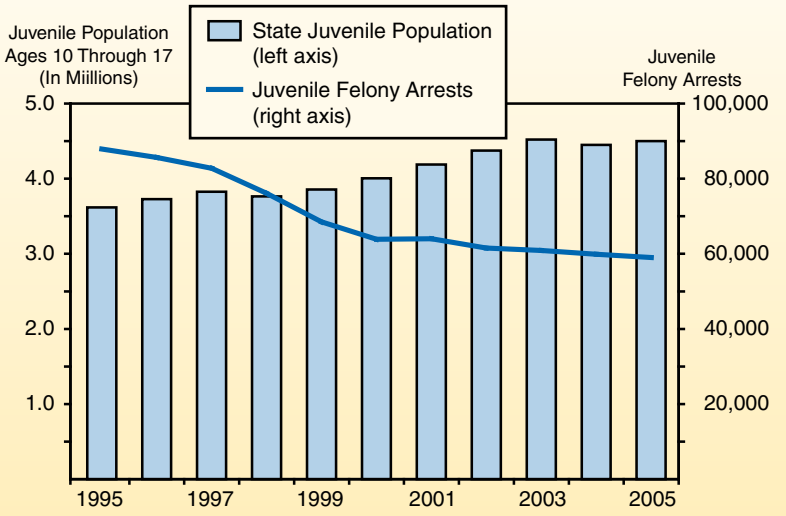
2005



- There were almost 223,000 juvenile arrests in California in 2005.
- Misdemeanor crimes—including crimes such as petty theft and assault and battery—accounted for 60 percent of all juvenile arrests.
- Felony arrests, such as burglary, accounted for 27 percent of all juvenile arrests.
- So-called status offenses, which include truancy and curfew violations, accounted for 13 percent of juvenile arrests in 2005.

California's Juvenile Population Is Up, But Juvenile Felony Arrests Are Down

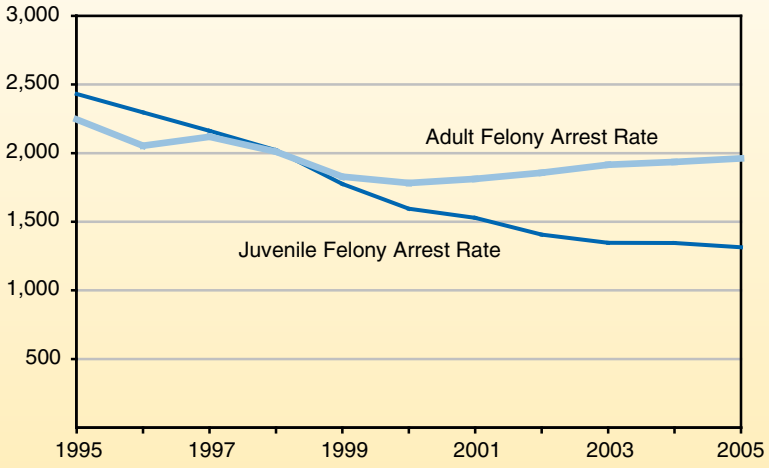
1995 Through 2005



- Although the population of juveniles in California has increased by about 24 percent since 1995, the number of juvenile felony arrests has *decreased* by 33 percent.
- Juvenile *misdemeanor* arrests declined by about 6 percent between 1995 and 2005, from about 142,000 arrests in 1995 to less than 134,000 arrests a decade later.
- There is no consensus among researchers as to the cause of the declining juvenile arrest rates. One possible explanation is the implementation of more effective prevention and intervention programs. In addition, some of the same factors that have led to declining crime rates nationwide—such as increased law enforcement personnel and economic factors—may be contributing to declining juvenile crime.

Felony Arrest Rates for Adults Overtook Those for Juveniles in the Late 1990s

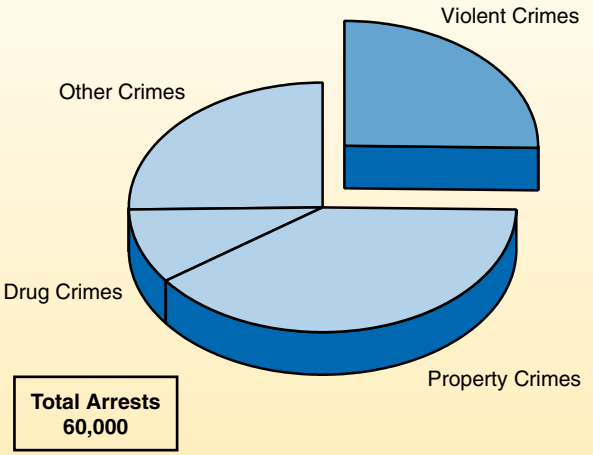
Arrests Per 100,000 Population
1995 Through 2005



- The juvenile felony arrest rate in California decreased by 46 percent between 1995 and 2005. Specifically, the number of juvenile felony arrests per 100,000 juveniles fell from more than 2,400 in 1995 to about 1,300 in 2005.
- The adult felony arrest rate also decreased during this period but has increased in more recent years. The number of adult felony arrests per 100,000 adults was almost 2,000 in 2005.
- The adult felony arrest rate surpassed the juvenile felony arrest rate in 1999 and the "gap" between the two rates has widened every year since that time.

Three-Quarters of Juvenile Felony Arrests Area For Nonviolent Crimes

2005

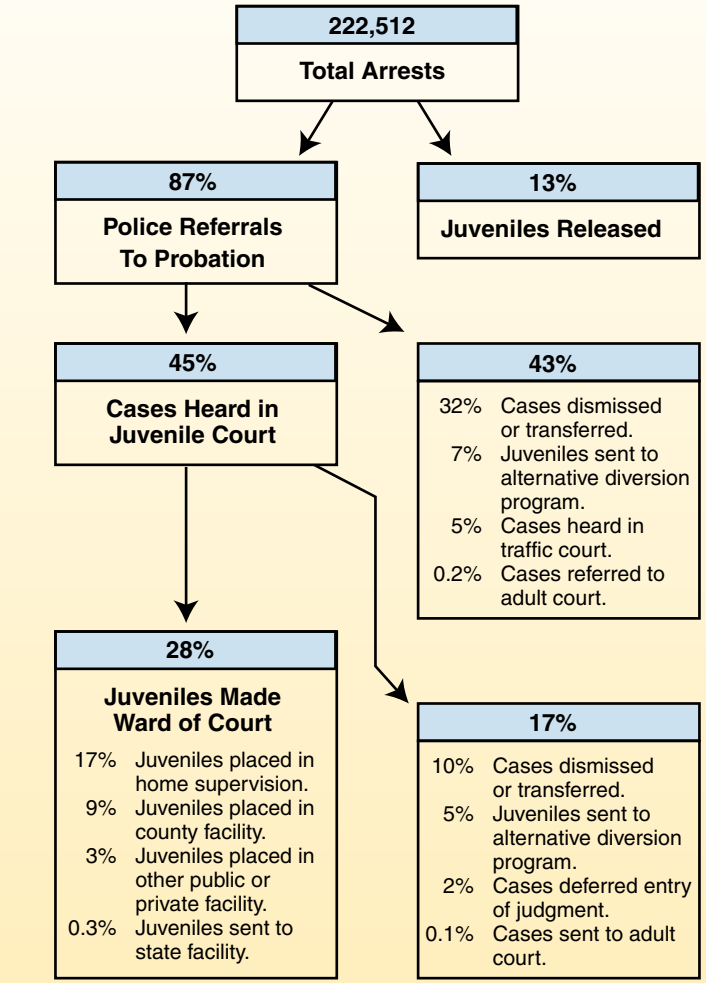


- There were about 60,000 juvenile felony arrests in 2005.
- Property crimes—such as burglary and theft—accounted for about 40 percent of all juvenile felony arrests.
- Drug offenses accounted for 10 percent of juvenile felony arrests in 2005. The "other crimes" category, which includes such felonies as illegal possession of a firearm, accounted for 25 percent of arrests.
- Violent crimes, including homicide, rape, and robbery, accounted for 25 percent of all juvenile felony arrests. There were a total of 171 juvenile arrests for homicide in 2005, less than one-half of 1 percent of all juvenile felony arrests.

What Happens to Juvenile Offenders?

Outcomes of Juvenile Arrests In California

2005



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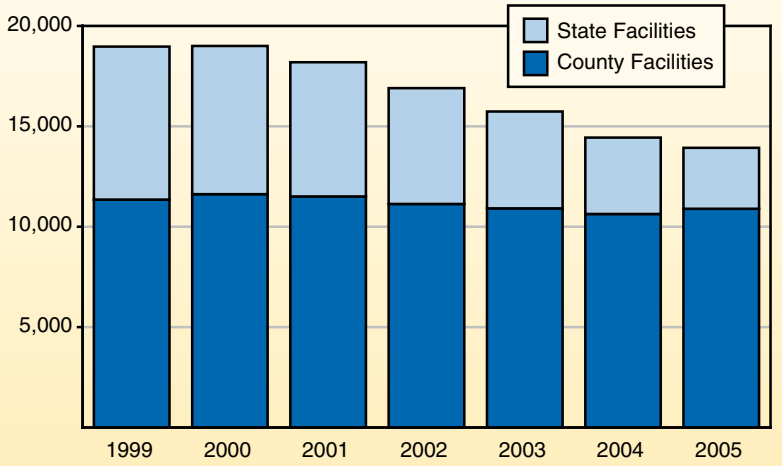
Number of Offenders in Youth Correctional Facilities is Decreasing

Average Daily Population
1999 Through 2005



- The population of juveniles incarcerated in state or county facilities has decreased every year since 2000 from about 19,000 in 2000 to 14,000 in 2005, a 27 percent decrease.
- Since 1999, the number of juveniles incarcerated in county facilities has declined by about 4 percent, from about 11,400 to 10,900.
- The number of juveniles incarcerated in state facilities declined by about 60 percent between 1999 and 2005, from almost 7,600 in 1999 to about 3,000 in 2005.
- The decline in juvenile incarceration is due largely to the decline in juvenile arrest rates and the implementation by counties of more alternatives to incarceration, such as placements in home supervision and group homes.

Key Topics in Juvenile Justice

Reforming the Division of Juvenile Justice

Farrell *Lawsuit.* In January 2003, a lawsuit, *Farrell v. Allen*, was filed against the Department of Youth Authority (as noted above, later renamed DJJ), contending that it failed to provide adequate care and effective treatment programs to youthful offenders (known as "wards") incarcerated in state facilities. In November 2004, the administration agreed to plaintiffs' demand that the state develop and implement remedial plans that addressed operational and programmatic deficiencies identified by court experts in six areas: education, sex behavior treatment, disabilities, health care, mental health, and ward safety and welfare. The overarching goal of these reforms is to transform the state's youth correctional system into a "rehabilitative model" of care and treatment for youthful offenders.

Remedial Plans. During the next several years, DJJ is required to implement reforms consistent with the remedial plans. The first priority is to reduce the level of ward-on-ward and ward-on-staff violence in the correctional facilities in order to create a suitable environment for treatment and rehabilitation. To do this, the remedial plan requires the division to hire various additional staff, particularly security officers, and place them in living units that will be limited to no more than 38 wards. Another priority is to train staff on treatment practices that have been successfully implemented in other states such as Texas and Washington. These "best practices" are intended to improve treatment for substance abuse, mental illness, and sex-offender behavior.

Fiscal Impact. Implementing these reforms will be a long-term project. States such as Colorado report that it can take ten years or more to transform an underachieving youth correctional system into a successful rehabilitative model. Current estimates are that the implementation of these

reforms will cost the state more than $100 million annually once fully implemented. This amounts to approximately a 25 percent increase in state spending on juvenile corrections.

Defining State and Local Responsibilities for Juvenile Offenders

Current Local Role. As noted earlier, the juvenile justice system is primarily a local responsibility. Counties currently are responsible for more than 98 percent of all juvenile offender cases, typically through their probation departments, which provide incarceration, rehabilitation services, and community supervision. The state, through DJJ, provides these services for the relatively small number of remaining juvenile offenders who generally have committed crimes that are more serious in nature or have repeatedly failed to respond to local juvenile justice programs.

Current State Role. The state's role in the juvenile justice system has been changing in recent years. The number of offenders held in the state facilities operated by DJJ has dropped dramatically, as shown on page 58, from about 7,600 wards in 1999 to about 3,000 in 2005. (The number of wards in state facilities is even lower now and still dropping.) Meanwhile, the state has invested significant additional funding in recent years to improve its institutional programs (largely in response to litigation over conditions in DJJ facilities), as well as to expand grants to counties for community services to prevent at-risk youth from being involved in criminal activities.

Future Roles. What roles the state and the counties should play in the juvenile justice system in the future—both in terms of funding and in setting overall policy governing the state's approach to dealing with juvenile offenders—is the subject of continuing policy debate and discussion among criminal justice experts and governmental officials. One perspective is that, since criminal justice policies are often established by actions at the state level (such as by voter ap-

proval of Proposition 21 in 2000, which expanded the types of cases for which juveniles can be tried in adult court), the state is obligated to retain a significant role in funding and operating youth institutions as well as parole supervision of wards who have been released into the community. In our past analyses of these issues, however, we have noted that, upon their release from state facilities, most juvenile offenders return to their home communities and that these local communities thus have a significant interest in their future behavior. Counties also already administer many of the programs these individuals need to reduce their likelihood of recidivism, such as drug and alcohol treatment programs and mental health treatment.

Accordingly, one option is for part or all of the operation of existing DJJ institutions as well as parole supervision responsibilities to be shifted to counties, along with the resources to continue these programs. The Governor's 2007-08 budget plan proposes to shift part of the DJJ institutional population—primarily lower-level juvenile offenders—to counties along with block grant funding to offset the additional cost of this shift.

Chapter 6:

The Costs of Crime And the Criminal Justice System

A number of studies have attempted to estimate the total direct and indirect costs of crime to government and society. The estimates resulting from these studies have varied, but generally conclude that nationwide costs of crime range from the tens to hundreds of billions annually.

Some components of the cost of crime can be readily estimated. For example, in 2003-04, California spent more than $25 billion to fight crime, which included costs for police, prosecution, courts, probation, and incarceration (as shown on page 63). This amount was primarily funded by the state and local governments.

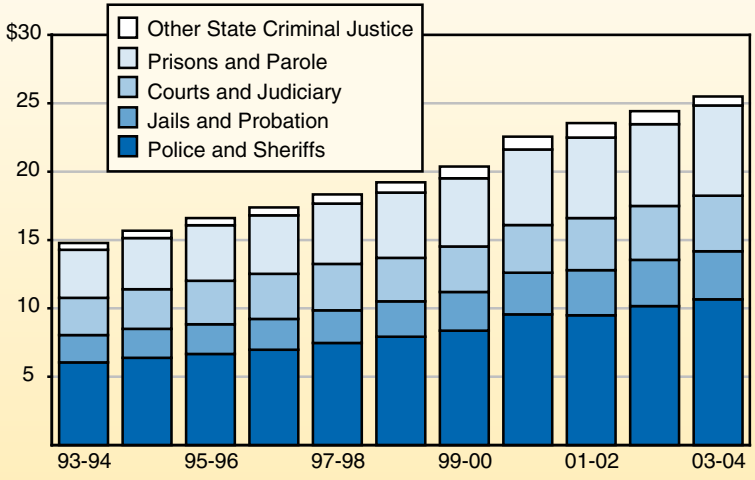
Other costs cannot be easily measured. For example, many crimes—such as fraud, embezzlement, or arson—often go undetected or unreported and thus their costs to society are not fully captured in some estimates. Also, some costs are difficult to estimate because the costs are "transferred" from one party to another. For example, the costs of crime in terms of the loss of goods and services may be transferred from manufacturers and retailers to consumers as the price of their products are adjusted to reflect the costs for crime prevention activities or losses from crime.

This chapter provides information on the costs of the criminal justice system. This includes data on the costs to state and local governments over time, criminal justice personnel compared to other states, and state expenditures on youth and adult corrections. The chapter also discusses two topics related to the costs of crime: (1) the cost of crime to society and (2) cost-effective crime prevention strategies.

What Does It Cost to Operate the California Criminal Justice System?

California Spends More than $25 Billion Annually to Fight Crime

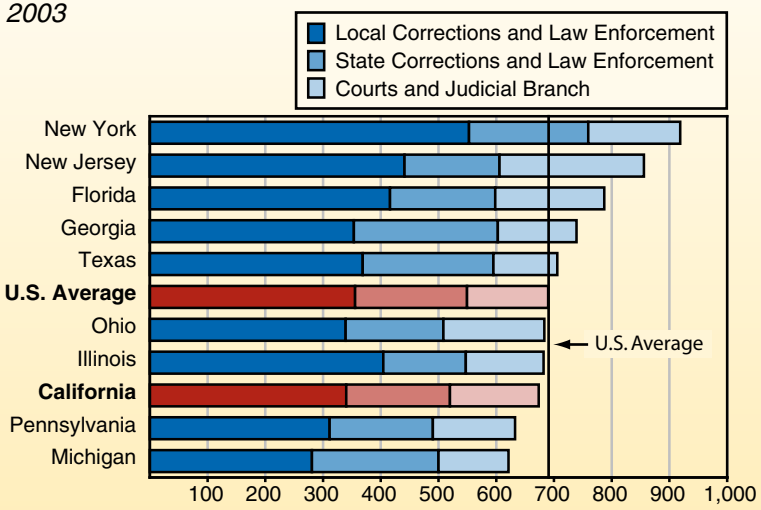
1993-04 Through 2003-04
(In Billions)



- Total state spending on criminal justice grew from about $15 billion in 1993-94 to more than $25 billion in 2003-04 (the most recent complete data available).
- Criminal justice spending grew by about 6 percent annually during this period. Spending on prisons and parole grew slightly faster than other criminal justice programs, at a rate of 7 percent annually.
- Local governments support about 62 percent of total annual criminal justice costs, including approximately $11 billion for police and sheriffs.

California Has Comparatively Fewer Criminal Justice Personnel Than Most Other Large States

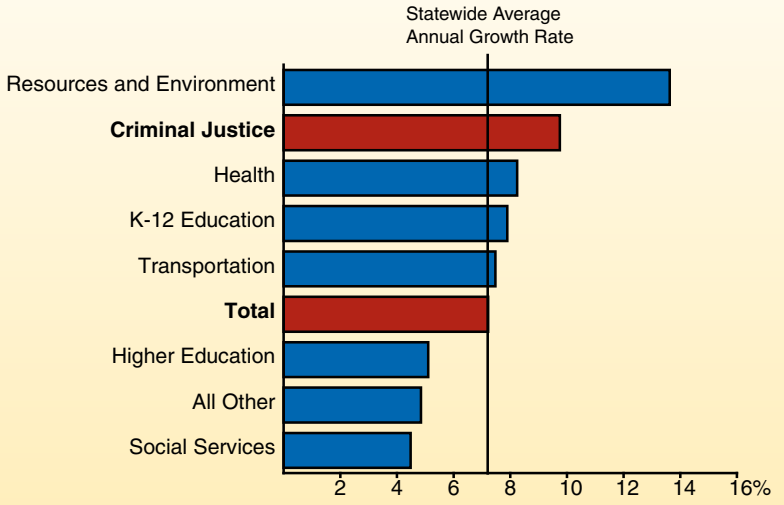
Criminal Justice Staffing Rate (Per 100,000 Population) 2003



- In 2003, California had about 240,000 personnel (as measured by the number of full-time equivalent staff) working in the state and local criminal justice system, the highest total of any state.
- However, California ranked eighth among the ten largest states in terms of the number of criminal justice personnel per population. Specifically, California had less than 700 criminal justice staff per 100,000 people, slightly less than the U.S. average. Of these ten states, New York had the most criminal justice personnel per capita, with 900 per 100,000 population.
- One-half of California criminal justice personnel worked in local corrections and law enforcement, 27 percent worked in state corrections and law enforcement, and 23 percent worked in the court system.

California Criminal Justice Spending Grew Faster Than Total State Spending

1996-97 Through 2006-07



- State spending for criminal justice reached $14 billion in 2006-07, an average annual increase of about 10 percent since 1996-97. This growth rate outpaced that for total state spending and was only eclipsed by the growth in funding for resources/environmental programs.
- Most of the increase in spending in criminal justice programs is due to increases in salary costs, as well as court-ordered mandates to improve parts of the prison system, such as medical care. The prison inmate population grew at an average annual rate of 2 percent over this period.
- Spending on criminal justice programs takes up a greater share of total state expenditures today than a decade ago, increasing from about 6 percent of total expenditures in 1996-97, to about 7 percent in 2006-07. Spending for corrections makes up two-thirds of total state criminal justice expenditures in the current year.

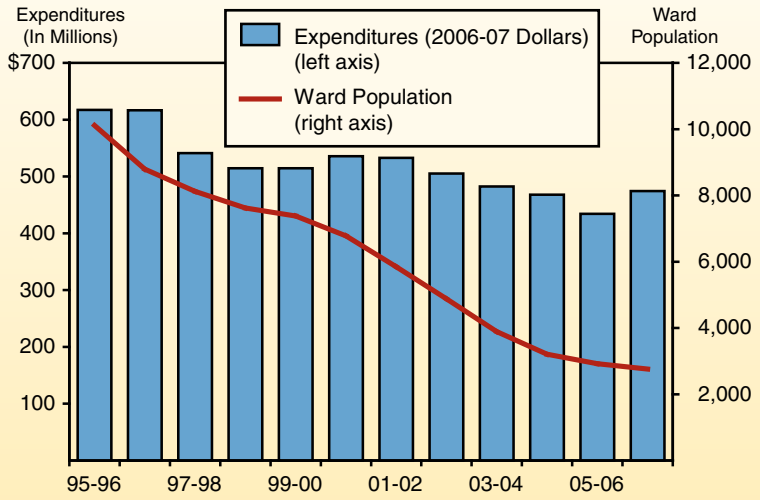
California Annual Costs to Incarcerate an Inmate in Prison

2006-07

Type of Expenditure	Per Inmate Costs
Security	**$19,561**
Inmate Health Care	**$9,330**
Medical care	$6,186
Psychiatric services	1,751
Pharmaceuticals	977
Dental care	416
Operations	**$6,216**
Facility operations (maintenance, utilities, etc.)	$4,377
Classification and inmate services	1,582
Reception, testing, assignment	240
Transportation	17
Administration	**$3,351**
Inmate Support	**$2,527**
Food	$1,437
Inmate activities and canteen	485
Clothing	309
Inmate employment	296
Employment/Training	**$2,053**
Academic education	$949
Substance abuse programs	823
Vocational training	281
Miscellaneous	**$246**
Total	**$43,287**

Spending for State Juvenile Corrections Declined More Slowly Than Ward Population

1995-96 Through 2006-07



- Adjusting for inflation, state expenditures for juvenile corrections declined by about $137 million or 22 percent since 1995-96.
- The ward population declined much more quickly over that period, falling from about 10,000 wards in 1995-96 to fewer than 3,000 projected in 2006-07, a decrease of more than 70 percent. This decrease is due primarily to the decline in juvenile arrest rates and the implementation by counties of more alternatives to incarceration, such as placements in home supervision and group homes.
- The annual cost of housing a ward in a state facility is estimated to be approximately $180,000 in 2006-07. These costs are substantially higher than the state costs to house adult offenders, primarily because juvenile facilities have higher staffing ratios and provide more education and rehabilitation programs than adult facilities.

Key Topics in Criminal Justice System Spending

The Cost of Crime to Society

While the state's criminal justice system requires substantial investment of government personnel and public resources, it is also important to note that crime has other significant effects on victims, families, businesses, and governments. Some of these impacts on society include:

- ***Medical costs*** paid by victims, families, and businesses and government because of injuries suffered due to crime.
- ***Stolen and damaged property*** resulting from crime. In the NCVS, victims reported that their property was either stolen or damaged in 95 percent of property crimes and 18 percent of violent crimes, resulting in an average loss of almost $700 per incident.
- ***Loss of productivity to society*** because of death or medical and mental disabilities resulting from crime.
- ***Loss of work time*** by victims of crime and their families. According to NCVS data, about 6 percent of victims missed time from work due to crime.
- ***Loss of property values*** in neighborhoods with high rates of crime.
- ***Pain and suffering of crime victims***, their families and friends, as well as communities plagued by crime.
- ***Foster care and other social services costs*** to provide homes and other services for children of offenders.

It is difficult to identify the magnitude of these costs because they vary so much from case to case depending in large part on the nature of the crime and the severity of the damage inflicted by criminals. In addition, some costs, such

as pain and suffering and loss of productivity, are not easily quantifiable. Experts on crime have found it difficult to translate these very real costs into definitive dollar amounts.

Cost-Effective Crime Prevention Strategies

The rising costs of crime and the criminal justice system have prompted policymakers to consider redirecting resources to crime prevention programs. Crime prevention generally refers to a broad array of strategies and programs that prevent crime by addressing the root causes of or risk-factors associated with criminal behavior. These strategies range from early childhood development programs to mentoring and education to behavioral intervention programs targeting at-risk juveniles and their families. The policy appeal of crime prevention programs is that such approaches would result in fewer victims of crime and reduce future taxpayer costs. Moreover, effective prevention strategies have the potential to reduce crime at a much lower cost than incarceration.

Research Findings. While crime prevention programs have long offered such benefits in concept, historically there has been only limited research available on the variety of different approaches to demonstrate which of these strategies work best and which are most cost-effective. Fortunately, today there is more research available, particularly research evaluating the effectiveness of juvenile delinquency prevention and early intervention strategies. These studies have found that certain strategies are more effective than others. Some of the most effective programs at reducing juvenile crime and other delinquent behavior include parenting training for parents of at-risk children, early education programs, and behavior modification training and therapy for juvenile offenders and their families.

Importantly, new research has found that some of these crime prevention programs and strategies, particularly those that target delinquency prevention, can be cost-effective when well designed and implemented. That is, these pro-

grams can provide greater savings to taxpayers, victims, offenders, and families than the costs to operate the programs. Research by the Washington State Institute for Public Policy shows that investment in certain prevention programs can yield significant net savings. For example, effective intervention programs for juvenile offenders yield net benefits between $1,900 to $31,000 per youth participant. Some programs that involve professionals, such as nurses or social workers, visiting the homes of high-risk mothers and children are also cost-effective, yielding between $6,000 and $17,000 per youth. In addition, there are a number of other programs that generate net savings. Even some that yield comparatively small net savings, such as certain substance abuse prevention programs, are cost-effective and are relatively inexpensive to operate. In California, a wide array of state and local agencies offer prevention and intervention programs. The degree to which these programs are evaluated for their cost-effectiveness varies considerably.

Fiscal Outcomes. It is important to note, however, that not all prevention and early intervention programs produce net savings, either because they are ineffective strategies or because they are too expensive. Program effectiveness also depends on which individuals are selected for participation. Some individuals may be more likely than others—based on their criminal history, age, or other risk factors—to be successful in a program or otherwise amenable to treatment. Therefore, it is important that state and local government agencies that implement prevention and intervention programs target them to those individuals shown to most likely benefit from the services.

Chapter 7:

Conclusion

The criminal justice system affects all Californians, either directly or indirectly. Moreover, it costs taxpayers tens of billions of dollars annually to operate the agencies that make up the criminal justice system, including police, courts, jails, probation, prisons, and parole.

Because the criminal justice system plays an important role in the lives of Californians and is a significant share of state and local government budgets, it is important for policymakers to consider the major challenges facing the future of criminal justice in California. We discuss two of the most important challenges facing the Legislature below.

Inmate Population Management

During the past 20 years, jail and prison populations have increased significantly. County jail populations have increased by about 66 percent over that period, an amount that has been limited by court-ordered population caps. The prison population has grown even more dramatically during that period, tripling since the mid-1980s.

Projected Growth. Of particular concern is the projected growth in the state prison population. As shown in Figure 3 (see next page), the inmate population is projected by CDCR to increase from its current level of about 173,000 to about 190,000 inmates during the next five years. This growth, should it materialize, would put significant pressures on an already overcrowded prison system. More than 15,000 inmates—approximately 10 percent of the total prison population—are housed in gyms, dayrooms, holding cells, and even hallways, and it would be very difficult for the current facilities to safely accommodate the additional 17,000 prisoners that have been projected. Moreover, corrections officials state

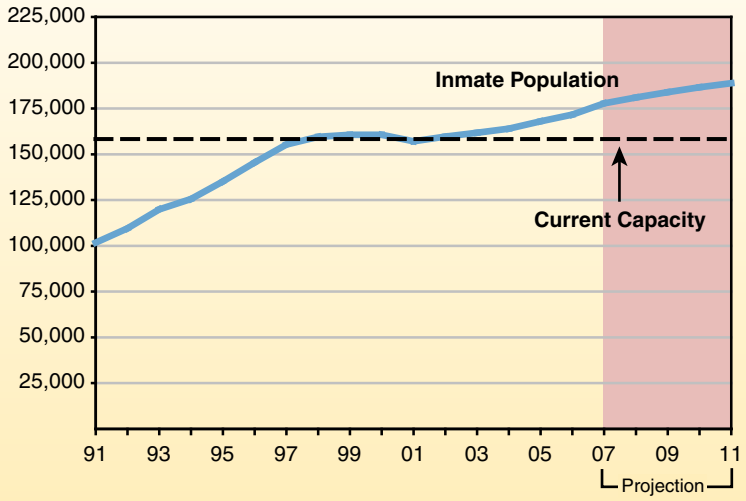
that the existing overcrowding has serious consequences for prison operations. These include added difficulty in providing supervision and security, increased inmate violence, more limited availability of inmate rehabilitation programs (see the rehabilitation discussion below), and increased operational costs. In October 2006, the Governor declared a state of emergency to allow him to transfer inmates to prisons in other states in order to help relieve some of the overcrowding. He also proposed a number of changes to address overcrowding as part of the 2007-08 budget, including building new prison and jail beds.

Strategies to Address Growth. Given the above concerns, the state faces serious questions about how to address the challenges resulting from the growing inmate population. In general, the state has available two main strategies to respond

Figure 3

Prison Population Projected to Further Exceed Capacity

1991 Through 2011



separately or in combination to this situation: expand system capacity and reduce population.

- ***Expand Capacity.*** The prison system can be expanded in a number of ways. New prison construction is the most expensive option—especially given that the most recently constructed state prison cost about $400 million. Individual housing units could also be constructed at a number of existing prison sites. Finally, CDCR could expand its use of contracts with public and private community correctional facilities (CCFs) to house additional inmates. Currently, the state has 14 such contracts for about 6,000 inmate beds for low-level offenders. Historically, the state cost on a per-inmate basis is similar for housing low-security offenders in either a state-operated prison or a CCF when taking into account the type of inmates placed in CCFs as well as medical costs. Expansion of CCF contracts could allow the state to add new facilities for offenders without having to directly pay for construction costs.

- ***Reduce Inmate Population.*** There are also a number of ways to reduce the inmate population, or at least slow its rate of growth. Expansion of the state's inmate rehabilitation programs and the broader use of alternative sanctions for parole violators could reduce the number of offenders who return to prison. Shorter sentences could be provided for some inmates through (1) early release of selected groups of inmates—such as the elderly or very sick—or (2) changes in state sentencing laws. In late 2006, the Governor proposed changes in sentencing laws to house certain nonviolent felons in local jails instead of state prisons as required under current law. It is also worth noting that the administration could use its existing authority regarding parole returns, parole discharges, and release of certain inmates with life sentences to reduce population without

a change to current law or additional resources. The options provided above would reduce the prison population, but would also entail some level of risk to the public, in that they permit some offenders to remain in the community who would otherwise be in prison under existing law and correctional practices.

Both of these general strategies have advantages and disadvantages. One approach would be to combine both strategies by targeting different strategies towards different types of offenders. For example, early-release options could be implemented for nonviolent and low-risk offenders. Alternative parole sanctions could be used primarily for offenders who would also benefit from available treatment services. New construction could be targeted at housing higher-security inmates who may not be suitable candidates for the other strategies.

Interconnectivity. Finally, it is worth noting that while local governments are responsible for funding and operating local jails, actions taken at one level of the criminal justice system can often affect other levels. For example, an expansion of state prison capacity could result in more inmates being sentenced to state prison by the courts due to local constraints on jail populations. Alternatively, changes in sentencing law or parole practices that resulted in some offenders spending less time in state prison could increase the likelihood that they end up in the local corrections system. These examples suggest that any changes made by the Legislature to affect prison population or capacity should also consider the possible impacts to, and responses by, the criminal justice system at the local level.

Prison and Parole Rehabilitation Programs and Public Safety

A second challenge facing the Legislature is the lack of rehabilitation programs for state prison inmates and parol-

ees and the resulting public safety consequences. More than 80 percent of all inmates currently in prison will eventually be paroled to local communities, most within a couple of years of being sent to prison. More than 122,000 inmates were released in 2005 including 64,000 offenders released after serving their court-imposed sentence, as well as 58,000 offenders released afer being returned for a parole violation. Unfortunately, California has one of the highest recidivism rates in the nation, with almost 60 percent of released offenders returning to prison within three years, often because of new criminal activity. With so many offenders returned to the community, and with such high recidivism rates among parolees, state officials have emphasized the need to design and implement effective strategies to reduce recidivism.

Benefits from Rehabilitation Programs. Various studies have demonstrated that well-designed rehabilitation programs such as drug treatment, academic and vocational education, and cognitive behavioral therapy can reduce recidivism when targeted to the right offenders by addressing issues that contribute to their criminal behavior. Such programs can benefit public safety by reducing criminal behavior, as well as reducing the prison population and ameliorating overcrowding conditions. Some corrections officials also argue that prison rehabilitation programs benefit prison operations and staff safety by engaging inmates in meaningful work and preventing idleness.

Availability of Programs. Despite these apparent benefits, the availability of rehabilitation programs is limited in California. For example, currently about 5 percent of spending on prison operations is for rehabilitation programs such as academic and vocational education (as shown on page 66). Studies suggest that most inmates have significant substance abuse problems and only about one-third can read at a high school level. Nevertheless, at any given time the state has only enough drug treatment slots for about 6 percent of all inmates and classroom academic and vocational education

programs are only available to about 12 percent of the total inmate population. In part, this reflects the state's historical emphasis on punishment over rehabilitation, as well as ongoing funding constraints due to state budget problems. The 2007-08 state budget does include about $51 million in additional funds for inmate and parolee rehabilitation programs. Most of this funding is part of the administration's "Recidivism Reduction Strategies" proposal, and amounts to about a 12 percent increase in funding for these programs.

Barriers to Programs. Should the state wish to make rehabilitation programs a higher priority, it will need to invest additional funds, as well as address other barriers to the implementation of effective programs for inmates and parolees. Most notably, those inmates who are assigned to rehabilitative programs are often not able to attend them because of high teacher vacancies and frequent prison lockdowns. In addition, program expansion is difficult in existing prisons because the physical space within prison walls that could be used for prison programs is now often filled with bunks of inmates due to prison overcrowding.

Ultimately, an approach that addresses inmate population management as well as increased rehabilitation programs would likely reduce prison overcrowding, inmate recidivism and, therefore, criminal justice system costs.

May 1995

Please note:
Our **January 2007** publication, ***California's Criminal Justice System: A Primer***, provides updated data related to the juvenile justice system in California as well as answers to the following questions: Who Are Juvenile Offenders? How Prevalent Is Juvenile Crime in California? What Happens to Juvenile Offenders? It also discusses (a) reforming the division of juvenile justice and (a) defining state and local responsibilities for juvenile offenders.

Juvenile Crime--Part I

Introduction

The public's fear of crime, including juvenile crime, is a major concern for policymakers. In California, and throughout the nation, nightly news programs often begin their broadcasts with accounts of violent crime committed by juveniles.

The Legislature and the Governor have enacted numerous laws to address the public's concerns about juvenile crime. Despite these efforts, polls show that the public continues to see crime as one of the most pressing problems in society.

In January 1994, we released our report *Crime in California* describing overall crime trends in the state. This report, while similar, focuses on juvenile crime trends andthe juvenile justice system in California.

Difference Between the Juvenile and Adult Justice Systems. California's juvenile justice system is different from the state's adult justice system. This is because society recognizes that many juveniles need to be treated differently from adults. Generally, the juvenile system emphasizes treatment and rehabilitation, while the adult system concentrates on punishment of offenders. The juvenile justice system also consists of a large number of nonlaw enforcement agencies. Social services agencies, schools, and community-based organizations all provide

services to both juveniles "at-risk" of committing crimes and to juveniles who have committed crimes.

The State of Juvenile Crime in California. Juvenile crime peaked in California in 1974 and then decreased through 1987. This decrease occurred at the same time as the proportion of juveniles in California's population was declining. Juvenile crime has increased since 1987. It is likely that juvenile crime will continue to increase given the projected future increase in California's juvenile population. In order to address this growth in crime, policymakers will have to pursue multiple strategies including prevention, intervention, suppression, and incarceration efforts.

Contents of This Report. We have prepared this report in an effort to help those concerned with addressing the problems of juvenile crime.

This report is not designed to present comprehensive answers to all of the questions concerning juvenile crime, but rather it provides basic information on the issues. It does this through a "quick-reference" document that relies heavily on charts to present information.

What Is Juvenile Crime?

In its simplest definition, "crime" is any specific act prohibited by law for which society has provided a formally sanctioned punishment. This also can include the failure of a person to perform an act specifically required by law.

Types of Offenses. Crimes, whether committed by adults or juveniles, are classified by the seriousness of the offenses as follows:

- A **felony** is the most serious offense, punishable by a sentence to a state institution (Youth Authority facility or adult prison). Felonies generally include violent crimes, sex offenses, and many types of drug and property violations.
- A **misdemeanor** is a less serious offense for which the offender may be sentenced to probation, county detention (in a juvenile facility or jail), a fine, or some combination of the three. Misdemeanors generally include crimes such as assault and battery, petty theft, and public drunkenness.
- An **infraction** is the least serious offense and generally is punishable by a fine. Many motor vehicle violations are considered infractions.

Many types of crimes in California can be charged as either a felony or a misdemeanor (known as a "wobbler"), or as either a misdemeanor or an infraction.

Juveniles, like adults, can be charged with a felony, a misdemeanor, or an infraction. However, as we discuss later, juveniles can also be charged with offenses that are unique to youth.

Categories of Crimes. In general, felonies, misdemeanors, and infractions fall into one of three broad categories: violent, property, and drug-related. Violent crimes refer to events such as homicide, rape, and assault that result in an injury to a person.

Property crimes are offenses with the intent of gaining property through the use or threat of force against a person. Burglary and motor vehicle theft are examples.

Drug-related crimes, such as possession or sale of illegal narcotics, are generally in a separate category altogether. This is because such offenses do not fall under the definition of either violent or property offenses.

The Juvenile Justice System Is Different. The juvenile justice system has evolved over the years based on the premise that juveniles are different from adults and juveniles who commit criminal acts generally should be treated differently from adults. Separate courts, detention facilities, rules, procedures, and laws were created for juveniles with the intent to protect their welfare and rehabilitate them, while protecting public safety.

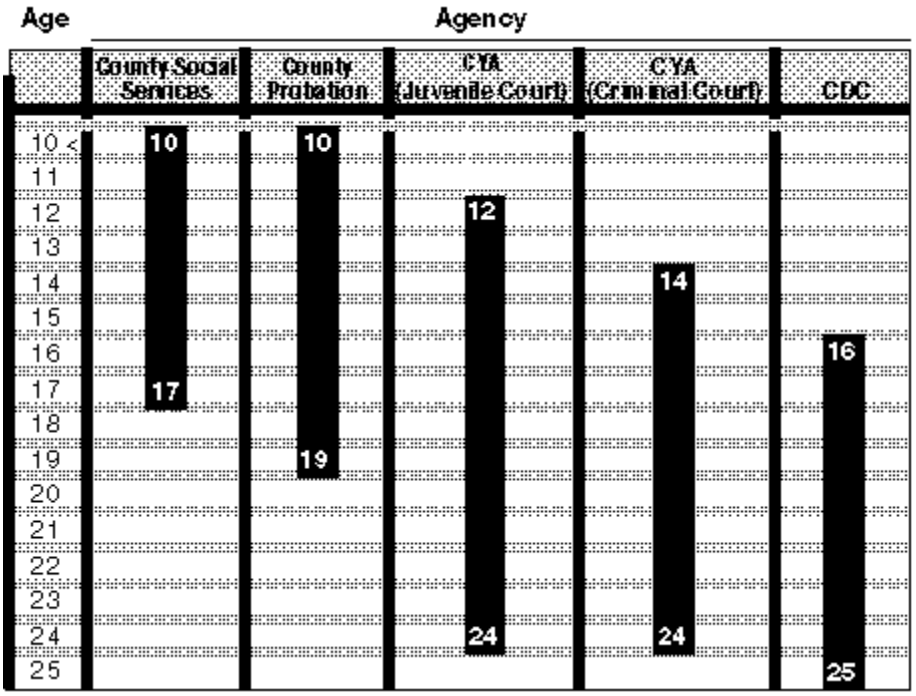
Under certain circumstances, youthful offenders can be tried either as juveniles or as adults. But even in these situations, their treatment is different from that of adults. For example, a juvenile who is arrested for an "adult" offense can be adjudicated in either juvenile court or adult court; if convicted, he or she can be incarcerated in either a county or state correctional facility or left in the community; and if incarcerated, he or she can be placed with either other juveniles or adults. In contrast, an adult charged with the same offense would be tried in an adult court; if convicted, he or she would be incarcerated by the state and would be housed with adults.

Legal Categories of Juvenile Offenders.Juvenile offenders are generally placed in one of four legal categories depending primarily on the seriousness of the offense committed (see page 6). Two of these categories ("criminal offenders" and "juveniles remanded to superior court") are for juveniles who have committed adult-like crimes. The other categories ("informal probationers" and "status offenders") are for youth who have committed less serious offenses or offenses unique to juveniles, like curfew violations.

Legal Categories of Juvenile Offenders

Informal Probationers *Welfare and Institutions Code Section 654* Known as "654s"	♦ Juveniles who have committed a minor offense. ♦ Probation officers have a great deal of flexibility in placing a juvenile on informal 654 probation. ♦ Juvenile can be placed on 654 probation if the officer decides that the juvenile is under the jurisdiction of the juvenile court or *is likely to be* under the jurisdiction in the future. ♦ These juveniles are often diverted into substance abuse, mental health, crisis shelters, or other services.
Status Offenders *Welfare and Institutions Code Section 601* Known as "601s"	♦ Juveniles who have committed offenses unique to a juvenile, such as truancy, curfew violation, and incorrigibility. ♦ They can be placed on formal probation but cannot be detained or incarcerated with criminal offenders.
Criminal Offenders *Welfare and Institutions Code Section 602* Known as "602s"	♦ Offenders under the age of 18 years who commit a misdemeanor or felony. ♦ Subject to the jurisdiction of a juvenile court. ♦ Can be placed on formal probation, detained before adjudication in a juvenile hall, and/or incarcerated after adjudication in a county ranch or camp or the Youth Authority. ♦ They are treated differently from adults; they are not "tried," but "adjudicated"; they are not "convicted," but rather, their "petition is sustained".
Juveniles Remanded to Superior Court *Welfare and Institutions Code Section 707* Known as "707Bs" or "remands"	♦ Juveniles determined by court as not fit for adjudication in juvenile court. ♦ Any juvenile age 16 or 17, who commits one of over 30 serious felonies, or juvenile age 14 or older, who commits murder. ♦ Tried in superior court as an adult. ♦ If convicted, is sentenced to either a Youth Authority institution or a state prison (if age 16 or over).

Who Is Treated As a Juvenile in California?



- Generally, any individual age 18 or older is considered an adult and treated as such in California. Depending on the circumstances, however, someone as young as 14 can be tried in the adult court system and sentenced to the California Department of Corrections (CDC) and housed in the California Youth Authority (CYA); and if 16 years old can be sent to prison. On the other hand, someone as old as 24 can be incarcerated as a juvenile in the CYA.
- There are over 6,000 offenders incarcerated in the CYA who are age 18 or older. The CYA can accept juveniles younger than age 12 after a review by the CYA Director, however, these offenders generally are kept in the community under county probation supervision.

How Much Juvenile Crime Is There in California?

Crime in California, whether committed by an adult or juvenile, is counted in two different ways. One is based on official reports to law enforcement agencies, and is reflected in the national Uniform Crime Reporting (UCR) data and the California Crime Index (CCI) data. Crime is also counted based on surveys of individuals to determine if they have been victims of crime, even though the crime may not have been reported to the police. These data are obtained through national victimization surveys.

Limited Data Available About Juvenile Crime. Many types of data on juvenile crime are not collected or aggregated for the state. For example, we know how many juveniles were arrested for felonies and misdemeanors, but we don t know the disposition of those juvenile arrestees. This is because the state Department of Justice (DOJ) stopped collecting statewide disposition data for juveniles in 1990 for budgetary reasons. As a consequence, we do not know, since 1990, how many juvenile arrestees were adjudicated as juveniles or prosecuted as adults; how many were convicted; how many were placed on probation in the community or incarcerated at the local level. The DOJ reports that it will resume collecting these data in 1995-96.

Consequently, the most currently available data are limited to the number of juvenile arrests, juvenile arrest rates, and the number of juveniles incarcerated at the state level.

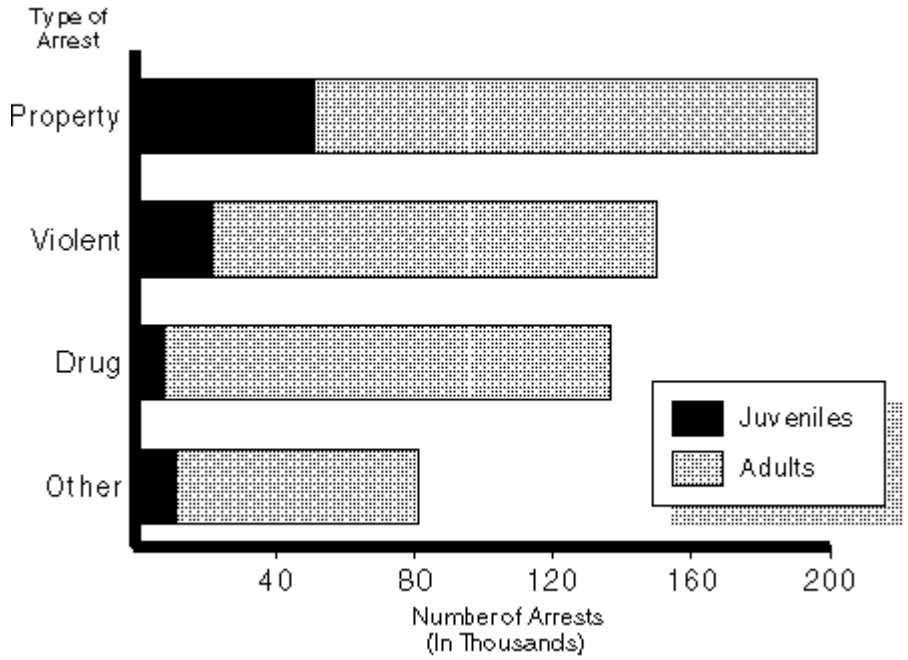
Arrest "Rates." Crime data are often presented in terms of "rates." A rate is defined as the number of occurrences of an event within a given population. For example, the overall juvenile arrest rate for California in 1993 was 6,772.8, which means that there were about 6,773 juvenile arrests for every 100,000 youth under the age of 18.

Crime Is Underreported. Crime statistics (for juveniles and adults) from law enforcement agencies don t tell the entire story about the extent of crime for two reasons. First, victimization surveys generally show there is a significant amount of crime committed each year that is not counted in official statistics because it is not reported to law enforcement authorities. According to the U.S. Department of Justice, in 1993 about two-thirds of all crimes went unreported to the police. Specifically, about 50 percent of violent victimizations, almost 60 percent of household crimes, and 70 percent of all personal thefts went unreported.

A second reason crime is underreported is that when several crimes are committed by an offender at the same time, only one (usually the most severe) is counted in the data. For example, if a juvenile offender robbed a store, assaulted a clerk, and killed a customer, only the homicide would be reported.

Juveniles Account for a Significant Number of All Arrests

1993

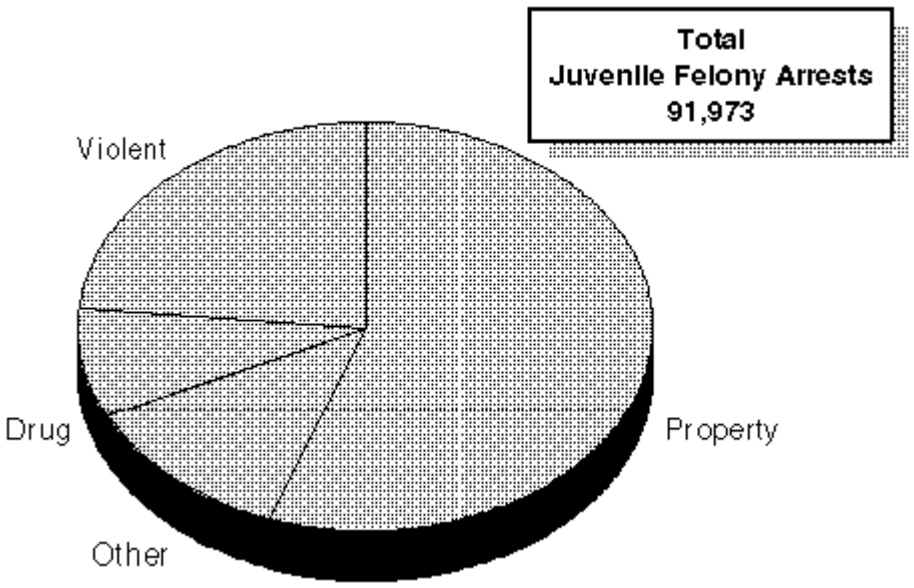


- In 1993, juveniles accounted for 16 percent of all felony arrests in California.
- Juveniles accounted for 26 percent of all property arrests and 14 percent of violent crime arrests, in 1993.

- In 1988, juveniles accounted for 24 percent of property arrests and 12 percent of violent arrests.

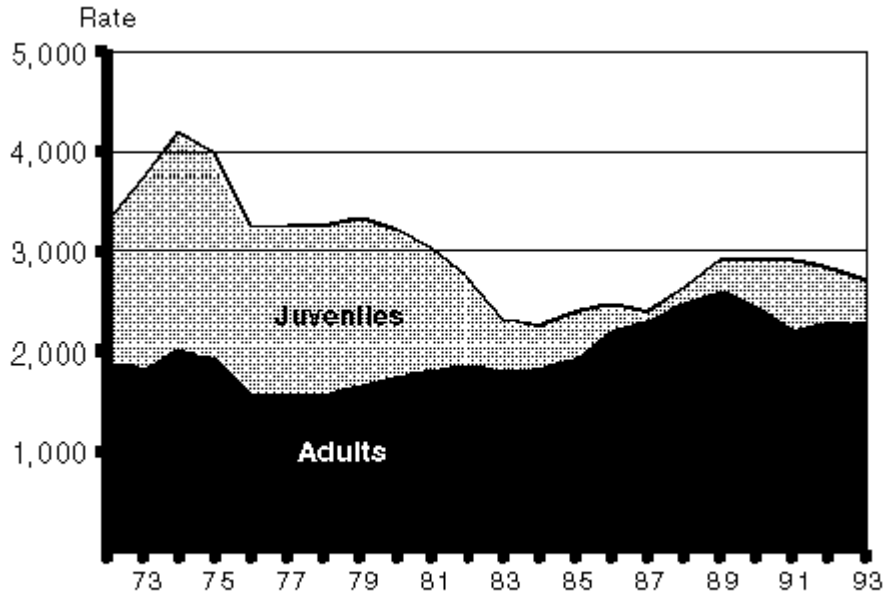
Most Juvenile Felony Arrests Are for Property Crimes

1993



- Juvenile arrests for property crime (burglary, theft, motor vehicle theft, forgery, and arson) accounted for about 57 percent of all juvenile felony arrests in 1993 and arrests for violent crime (homicide, rape, robbery, assault, and kidnapping) accounted for almost 24 percent of all juvenile arrests.
- In contrast, in 1988 property arrests accounted for 61 percent of all juvenile arrests, while violent crime arrests accounted for 17 percent.
- In 1993, there were 2,696 juvenile felony arrests per 100,000 juveniles in California, compared to 2,618 such arrests in 1988.

Total Arrest Rates Higher for Juveniles[a]

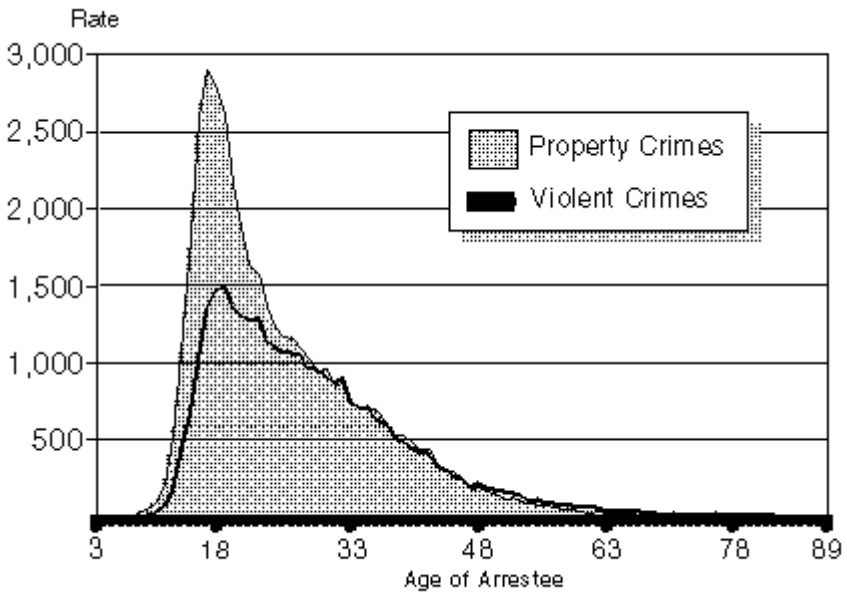


a Rate based on total misdemeanor and felony arrests per 100,000 population within each group.

- Although the arrest rates for juveniles (ages 11 to 17) have consistently been higher than the arrest rates for adults over the past 20 years, they have become much closer in the past five years.
- There is evidence that a major reason that arrest rates for juveniles are higher than for adults is that young men tend to be arrested in *large groups* on suspicion of committing a crime or at the scene of a crime, although charges may never be filed.
- Juvenile arrest rates peaked in 1974. This was probably due to demographics, that is, the at-risk juvenile population was a larger proportion of the overall state population.

Felony Arrest Rates Highest Among Juveniles[a]

1993



[a] Rate per 100,000 age-eligible population.

- Felony arrest rates for juveniles are consistently higher than those for adults.
- The felony arrest rate peaks at age 16 for property crime and at age 18 for violent crime.
- Although juveniles have a higher arrest *rate* than adults, juveniles account for a smaller proportion of *total* arrests than do adults (16 percent versus 84 percent). (Data not shown in figure.)
- While juveniles (11 to 17) accounted for 16 percent of the arrests in California in 1993, they made up only about 9.3 percent of the state's total population.

How Many Juveniles Become Repeat Offenders?

Findings:

- **Small number of offenders commit majority of crime.**
- **Strong relationship between age at onset of criminal behavior and continued criminality.**

Based On:

- *Research in Orange and Los Angeles Counties.*
- *Longitudinal study.*

Details:

- In Orange County, between 8 and 12 percent of offenders account for 60 percent of juvenile and subsequent adult crime.
- In Los Angeles County, research showed similar results.
- Other studies, including those from foreign coutries, have drawn similar conclusions.
- These repeat offenders are arrested between 4 and 14 times during criminal careers.
- Younger the arrestee, the greater likelihood of subsequent arrests.

Caveats:

- Most individuals arrested as juveniles will not be arrested as adults.
- Large portion of arrested adults were not arrested as juveniles.

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BILL ANALYSIS

SENATE COMMITTEE ON Public Safety
Senator Bruce McPherson, Chair
2003-2004 Regular Session

SB 459

SB 459 (Burton)
As Amended March 12, 2003
Hearing date: March 13, 2003
Welfare and Institutions Code
AA:br

YOUTHFUL OFFENDER PAROLE BOARD :

CONSOLIDATION INTO CYA; CURRENT YEAR APPROPRIATION

HISTORY

Source: Author

Prior Legislation: SB 1793 (Burton) - 2001-02 session; vetoed

Support: Unknown

Opposition:None known

KEY ISSUES

SHOULD THE YOUTHFUL OFFENDER PAROLE BOARD ("YOPB") BE CONSOLIDATED UNDER THE DEPARTMENT OF THE YOUTH AUTHORITY, AS SPECIFIED?

SHOULD THE NUMBER OF YOPB MEMBERS BE REDUCED?

SHOULD THE DIRECTOR OF CYA BE THE EX OFFICIO, NONVOTING CHAIR OF THE YOPB?

(More)

SHOULD THE DUTIES OF YOPB MEMBERS BE CONCENTRATED TO RELEASE, REVOCATION AND DISCIPLINARY APPEALS?

(CONTINUED)

SHOULD YOPB MEMBERS AND THEIR DESIGNEES BE SUBJECT TO SPECIFIED TRAINING?

SHOULD CERTAIN DUTIES NOW PERFORMED BY THE YOPB BE SHIFTED TO THE CYA?

SHOULD THE CYA BE REQUIRED TO PROVIDE COUNTIES AND COURTS WITH SPECIFIED INFORMATION CONCERNING THE TREATMENT OF CYA WARDS?

SHOULD THE CYA BE REQUIRED TO COLLECT AND MAKE PUBLICLY AVAILABLE SPECIFIED DATA?

SHOULD THE AUTHORITY OF JUVENILE COURTS TO REMOVE A WARD FROM THE CYA BE CLARIFIED?

SHOULD JUVENILE COURTS BE AUTHORIZED TO SET A MAXIMUM TERM OF PHYSICAL CONFINEMENT IN THE CYA BASED UPON THE FACTS AND CIRCUMSTANCES OF THE MATTER OR MATTERS WHICH BROUGHT OR CONTINUED THE MINOR UNDER THE JURISDICTION OF THE JUVENILE COURT?

SHOULD $1.55 MILLION BE APPROPRIATED FROM THE GENERAL FUND TO YOPB AS AN APPROPRIATION FOR THE CURRENT YEAR USUAL AND CURRENT EXPENSES OF THE YOPB?

SHOULD THE NAME OF YOPB BE CHANGED TO "THE YOUTH AUTHORITY BOARD"?

PURPOSE

The purpose of this bill is to consolidate the operations of the Youthful Offender Parole Board under the Department of the Youth Authority and make related changes to the juvenile law, as specified.

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Current law generally authorizes juvenile courts to commit juvenile offenders to the Department of the Youth Authority. (See Welfare and Institutions Code ("WIC") 731; 732; 733; 734; 736; 1736.)

Current law requires counties to pay the state a monthly fee for persons who have been committed to the Youth Authority, generally ranging from $150 per ward to 100 percent of the per capita institutional cost of the Youth Authority, as specified, depending upon the nature of the offense upon which the commitment is based. (WIC 912; 912.5.)

Current law establishes the seven-member state Youthful Offender Parole Board ("YOPB"), comprised of gubernatorial appointees confirmed by the Senate, which generally is responsible with overseeing a number of decisions regarding Youth Authority wards, including length of stay and readiness to parole, handling certain disciplinary matters, revoking parole, and required programming. (WIC 1716 et seq.; 1766.)

Structural Consolidation: YOPB into CYA

This bill would recast, effective January 1, 2004, the powers and duties of the YOPB, and consolidate some of its functions into the CYA with the following changes:

Place YOPB under CYA;
Reduce board from 7 to 3 appointees, plus the chair;
Grandfather-in existing board members (3), with one term expiring March '04, one term expiring on March '05 and one term expiring March '06;
Provide for transfer of YOPB staff to CYA pursuant to the applicable Government Code section;
Add mandatory training for board members and their designees;
Make the CYA director the board's ex officio nonvoting chair;
Distill the board's powers to 3: releases (discharges

(More)

and parole), parole revocations and disciplinary appeals;
Authorize the board to use designees who are subject to the same training as board members;
Give wards a right to appeal time adjustments to a panel of at least 2 board members; and
Restore the YOPB's old name, "Youth Authority Board" (changed to YOPB in 1980).

In addition, this bill would enact the following changes pertaining to CYA powers and duties:

Shift the following powers and duties from YOPB to CYA:

? return of persons to the court of commitment for redisposition by the court;
? determination of offense category;
? setting of parole consideration dates using existing guidelines;
? conducting annual reviews;
? ordering treatment programs;
? making institutional placements;
? making furlough placements;
? return of nonresident persons to the jurisdiction of the state of legal residence;
? disciplinary decision making (with appeals to the Board); and
? referrals pursuant to section 1800 (continued commitment of dangerous persons).

Require CYA to promulgate regulations for its disciplinary system, as specified;
Require CYA to provide specified ward treatment information to county probation and courts; and
Require CYA to collect and make public specified aggregate data concerning its population.

Juvenile Law Changes

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Current law provides that "(a) minor committed to the Department of 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." (WIC 731.)

This bill would additionally provide that a "minor committed to the Department of the Youth Authority also may not be held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court, which may not exceed the maximum period of adult confinement as determined pursuant to this section."

Current law provides that "(t)he court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment . . . In changing, modifying, or setting aside such order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority." (WIC 779.)

This bill would clarify that this "section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734."

Appropriation

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Under current law, "(t)he Youthful Offender Parole Board is limited in its expenditures to funds specifically made available for its use." (WIC 1724.) The 2002-2003 budget bill (AB 425 (Oropeza), Ch. 379, Stats. 2002, contained only half ($1,644,000) of the YOPB's budget for fiscal year 2002-2003; the other half was in SB 1793 (Burton), which was vetoed by the Governor on September 30, 2002. As a result, the YOPB is without funding to conduct its operations for the entire 2002-2003 budget year.

This bill would make an immediate appropriation for the usual current expenses of the YOPB for the current year budget in the amount of $1.55 million.

COMMENTS

1. Stated Need for This Bill

The author states:

> This bill consolidates the work of the Youthful Offender Parole Board under the Department of the Youth Authority in a manner that makes both fiscal and policy sense. Up until 1980, the YOPB was part of CYA. Returning to this general framework will greatly improve the link between board members and the CYA, which will result in a more effective and efficient Youth Authority. This bill also contains important checks and balances that will enhance the relationship between CYA and the counties, which will improve CYA correctional services.
>
> In addition, this bill ensures that the Youthful Offender Parole Board is adequately funded to perform its duties mandated by law for the remainder of the 2002-2003 budget year.

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2. Prior Legislation

Last year, SB 1793 (Burton) proposed to eliminate YOPB and shift its functions to local probation and the juvenile courts. SB 1793, which passed this Committee (4-0), was vetoed by the Governor on September 30, 2002.

3. Current Structure and Operation of the Youthful Offender Parole Board

The Youthful Offender Parole Board (YOPB), comprised of seven gubernatorial appointees, is the paroling authority for young persons committed by the courts to the Youth Authority. The YOPB budget is approximately $3.4 million annually. YOPB was established originally in 1941 by the Legislature as the "Youth Authority Board." When the Department of the Youth Authority was created in 1942, the Director also served as the Chairman of the Board. The Board separated from CYA in 1980 and was renamed the Youthful Offender Parole Board.

YOPB members and hearing officers conduct about 20,000 hearings a year at the 11 CYA institutions, 4 camps, and regional parole offices for the approximately 6,400 wards at CYA and 4,000 on parole. Hearing officers include YOPB staff or retired annuitants who are authorized to conduct hearings. YOPB hearings fall into the following general categories:

Within approximately 45-60 days, YOPB used to conduct an Initial Hearing where the initial parole consideration date (PCD) is set and treatment is ordered; however, the Legislature has been advised by the administration that since November of 2002, this function has been shifted to the CYA, with CYA staff recommendations subject to YOPB approval.

Once a year YOPB conducts an Annual Review to assess the progress of the ward and if they deem appropriate, modify the parole consideration date (PCD). YOPB can also hold Progress Reviews more frequently to review progress or modify the PCD.

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At the request of CYA, YOPB holds disciplinary hearings to determine whether a time-add should be given (extending the parole consideration date) as a disciplinary action.

At the ward's parole consideration hearing, YOPB determines whether to grant parole or extend the institution stay. If parole is granted, YOPB sets conditions of parole.

YOPB also conducts Parole Revocation Hearings for parole violators to determine whether parole should be revoked and the ward returned to the institution.

Unlike the Board of Prison Terms, the YOPB has parole authority over every ward at CYA. However, all wards committed to CYA will be released eventually regardless of whether they are granted parole by YOPB. Wards must be released if all of their available confinement time has been exhausted, or if the ward reaches the age of juvenile court jurisdiction (age 21 or 25 depending on the offense).<1>

4. What This Bill Would Do

This bill would consolidate and restructure the Board's powers and duties under the CYA. As explained above, this bill would rename and move YOPB to be sited within the CYA, with the CYA director serving as the ex officio nonvoting chair of the Board.

The size of the Board would be reduced to three members, who

<1> A ward can be detained beyond the age of 25 through a civil commitment-type process. Welfare and Institutions Code section 1800 allows YOPB to request that the prosecuting attorney petition the committing court for further detention if YOPB determines that discharging the ward would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality. This bill would retain this process, but amend it to authorize CYA, rather than YOPB, to request commencement of this process.

(More)

would be gubernatorial appointees subject to Senate confirmation. The board's duties would be condensed to releases, revocations and disciplinary appeals. These duties would be supported by CYA staff. The author's office estimates that the number of hearings required for the board will drop significantly, from 19,733 (2001-2002 data) to between 7,684 and 10,985 as a result of narrowing the board's duties to these functions and shifting the remainder of their current duties to CYA. The administration argues that five board members are necessary to perform the board's functions, even with those functions narrowed to releases, revocations and disciplinary appeals.<2>

This bill would shift the remainder of YOPB's current duties to the CYA, as described above. In addition, CYA would be required to provide county probation and juvenile courts with specified information concerning ward treatment and progress, and would be required to compile specified data concerning its population and treatment effectiveness.

This bill would authorize the court to additionally set maximum terms of physical confinement in the CYA based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court. This new provision would provide for court consideration of factors about the offense and the offender's history which would be comparable to those employed now for

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<2> The CYA estimates that under the bill's proposed framework, the board would be required to conduct 655 hearings a year in 77 available hearing days, resulting in the need for 5 board members. This calculation assumes between 1800 to 2400 disciplinary appeals a year, which would be approximately 60 to 80 percent of the disciplinary appeals conducted by the board in 2001-2002 (3301 hearings). The author's office estimates that the number of disciplinary appeals will be appreciably reduced by focusing the board's consideration to those cases where wards are appealing a time adjustment. In addition, the number of these appeals may be further impacted by the decline in the Youth Authority population.

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the triad sentencing of adults, and have those considerations reflected in the CYA confinement term ordered by the court. Also, this bill would make clear that Welfare and Institutions Code section 779 does not limit the authority of the court to change, modify, or set aside an order of commitment to the Youth Authority, as specified.

5. Concerns About the YOPB

Experts and advocates have expressed serious concerns about the YOPB for many years. In testimony before the Senate Select Committee on Children and Youth (chaired by Senator Robert Presley) in 1988, former CYA director and chairman of the National Council on Crime and Delinquency Allen Breed endorsed abolishing the YOPB. In 2000, the Technical Assistance Plan (TAP) for the Youth Authority administered by the Board of Corrections similarly recommended eliminating the YOPB.

More recently, in December 2002 the Office of the Inspector General severely criticized the YOPB. Among other findings, the OIG concluded:

The YOPB "lacks treatment expertise";
The YOPB "appears to order more programs than wards can reasonably complete by the parole consideration date";
"board hearing staff routinely checks off programs to be provided without documentation linking the programs to the ward's history and treatment needs as identified by the (CYA)"; and
"board hearing staff members who recommend the treatment programs are not necessarily trained in fields related to the programs at issue and in some cases appear to lack basic understanding of the programs available."

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In addition, the OIG examined a random sample of 121 wards with an average confinement time of approximately 36 months.

> The wards had been ordered to complete an average of 5.4 programs, and, after approximately three years of confinement, had completed an average of 1.6 programs (approximately 30 percent of the programs ordered). Those statistics are consistent with data from the (CYA) showing that while the average confinement time given to wards at the initial hearing was 17.8 months in 2001, the average length of stay was 28.3 months. The extended confinement time results from board-imposed additional time either because of disciplinary action or because of the ward's failure to complete board-imposed programs. That the wards in the sample had completed only 30 percent of the board-ordered programs after three years of confinement also raises questions about the adequacy of efforts by the (CYA) to provide programs to wards.

6. Background: CYA Population; California's Juvenile Justice System; Juvenile Arrest Rates

CYA houses about 5,300 youthful offenders, and provides them with education, training and treatment services. CYA's institutional population has dropped by over 46 percent since 1996. Although wards are committed to CYA by local courts, decisions relating to length of stay and parole are made by YOPB.

County probation departments now supervise approximately 97% of all juvenile offenders; the remaining 3% are committed to CYA. State policies have increasingly recognized the need to strengthen the local juvenile justice system and its array of alternatives and graduated sanctions for juvenile offenders. For example:

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CYA Sliding Scale Fee Legislation . In 1996, a new fee structure was imposed to provide incentives for counties to treat less serious offenders in county-level placements. Counties are required to pay 100% of the average cost for "category 7" wards, 75% for "category 6" wards and 50% for "category 5" wards. Counties now pay over $50 million annually for their commitments to CYA.

Crime Prevention Act . Over the past two years, the state has provided counties with $237.6 million to develop and implement comprehensive juvenile justice strategies. An additional $116.3 million is proposed in the Governor's 2002-03 budget.

Juvenile Facility Construction Funds . Since 1997-98, a total of $464.1 million in state and federal funds have been dedicated to assist counties remodel and construct local juvenile facilities.

Juvenile Justice Challenge Grants . Since 1996, a total of $131 million has been allocated to counties for grants to develop innovative approaches to juvenile crime.

Responding to these state initiatives, local leaders have established innovative strategies emphasizing collaborative and interdisciplinary responses to juvenile crime. Judges, probation departments, local law enforcement agencies, district attorneys and public defenders, health and human services agencies, and community based organizations have come together to plan, identify gaps in services, and coordinate resources and interventions.

The juvenile arrest rate in California has declined dramatically over the last several years. From 1995 - 2000, for example, the felony arrest rate for juveniles dropped over 34%; from 1980 - 2000, the felony juvenile arrest rate declined 50%. During the same 20-year period, the total

juvenile arrest rate dropped over 38%.<3>

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<3> Source: California Department of Justice.

rejected, the sum of five dollars ($5) shall be returned to the applicant.

CHAPTER 1616

An act to repeal Chapter 2 (commencing with Section 550) of Part 1 of Division 2 of, and to add Chapter 2 (commencing with Section 500) to Part 1 of Division 2 of, the Welfare and Institutions Code, and to add Section 272 to the Penal Code, and to add Chapter 4 (commencing with Section 232) to Title 2 of Part 3 of Division 1 of the Civil Code, and to amend Section 27706 of the Government Code, Section 1407 of the Probate Code, and Section 40502 of the Vehicle Code and to repeal Sections 131 and 131.1 of, and to amend Sections 131.2 and 131.5 of, the Code of Civil Procedure, relating to care and custody of minors.

[Approved by Governor July 14, 1961. Filed with Secretary of State July 14, 1961.] In effect September 15, 1961

The people of the State of California do enact as follows:

SECTION 1. Chapter 2 (commencing with Section 550) of Part 1 of Division 2 of the Welfare and Institutions Code is repealed. Repeal Effect, etc

The repeal of said chapter does not terminate or affect the jurisdiction of any court in any case pending on the effective date of this section, nor does it terminate or affect any right accrued before such date, but to the extent that any such case or the exercise of any such right is otherwise subject to the provisions of Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code, as added by Section 2 of this act, proceedings in the case, on or after such effective date, shall conform to the requirements of that chapter.

In any case in which a statute refers by number to a section or sections or other portion of Chapter 2 (commencing with Section 550) of Part 1 of Division 2 of the Welfare and Institutions Code, repealed by this act, and the same or substantially the same provisions of such section or sections or other portion of the chapter are re-enacted by this act, such reference shall be construed as a reference to the section or sections containing such re-enacted provisions as enacted by this act and as subsequently amended.

SEC. 2. Chapter 2 (commencing with Section 500) is added to Part 1 of Division 2 of said code, to read:

CHAPTER 2. JUVENILE COURT LAW

Article 1. General Provisions

500. This chapter shall be known and may be cited as the "Juvenile Court Law." Short title

Construction

501. The provisions of this chapter, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations thereof, and not as new enactments.

Purpose of chapter

502. The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes.

Noncriminal proceedings

503 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.

Information relating to arrest of minors under 18 years

504. The Bureau of Criminal Identification and Investigation shall not knowingly transmit to any person or agency any information relating to an arrest or taking into custody of a minor under the age of 18 years at the time of such arrest or taking into custody unless such information also includes the disposition resulting therefrom.

"Disposition"

"Disposition," as used herein, includes a release of such minor from custody without the filing of an accusatory pleading or the filing of a petition under the provisions of this chapter, a determination of the issue of wardship by the juvenile court, or a determination by the juvenile court that such minor is not a fit subject to be dealt with under the provisions of this chapter.

This section shall not be construed to prohibit the Bureau of Criminal Identification and Investigation from transmitting fingerprints or photographs of a minor under the age of 18 years to a law enforcement agency for the purpose of obtaining identification of the minor or from requesting from such agency the history of the minor.

This section shall not be construed to prohibit the Bureau of Criminal Identification and Investigation from transmitting any information relating to an arrest or taking into custody of a minor under the age of 18 years received by said bureau prior to the effective date of this section

Religious placement

505. All commitments to institutions or for placement in family homes under this chapter shall be, so far as practicable, either to institutions or for placement in family homes of the same religious belief as that of the person so committed or of his parents or to institutions affording opportunity for instruction in such religious be-

Separation of certain persons

506. No person taken into custody solely upon the ground that he is a person described in Section 600 or adjudged to be such and made a dependent child of the juvenile court pursuant to this chapter solely upon that ground shall, in any detention or commitment under this chapter, be brought into direct contact or personal association with any person taken into custody on the ground that he is a person described by Section 601 or Section 602, or who has been made a ward of the juvenile court on either such ground.

Separate, segregated facilities for such persons alleged to be within the description of Section 600, or persons adjudged to be such and made dependent children of the court pursuant to this chapter solely upon that ground shall be provided by the board of supervisors. Such separate, segregated facilities may be provided in the juvenile hall or elsewhere.

Detention

507. No court, judge, referee, or peace officer shall knowingly detain in any jail or lockup any person under the age of 18 years, unless a judge of the juvenile court shall determine that there are no other proper and adequate facilities for the care and detention of such person, or unless such person has been transferred by the juvenile court to another court for proceedings not under the juvenile court law and has been charged with or convicted of a felony. If any person under the age of 18 years is transferred by the juvenile court to another court and is charged with or convicted of a felony as herein provided and is not released pending hearing, such person may be committed to the care and custody of a sheriff, constable, or other peace officer who shall keep such person in the juvenile hall or in such other suitable place as such latter court may direct, provided that no such person shall be detained in or committed to any hospital except for medical or other remedial care and treatment or observation.

Separation from adult prisoners

508. When any person under 18 years of age is detained in or sentenced to any institution in which adults are confined, it shall be unlawful to permit such person to come or remain in contact with such adults.

Inspection of jails

509. The judge of the juvenile court of a county, or, if there is more than one such judge, the presiding judge of the juvenile court shall, at least annually, inspect any jail or lockup which, in the preceding calendar year was used for confinement for more than 24 hours of any minor under the age of 18 years. The judge shall note in the minutes of the court whether the jail or lockup is a suitable place for confinement of minors under the age of 18 years.

The Youth Authority shall likewise conduct an annual inspection of each jail or lockup situated in this State which, during the preceding calendar year, was used for confinement for more than 24 hours of any minor under the age of 18 years.

If either the judge of the juvenile court or the Youth Authority, after inspection of a jail or lockup, finds that it is not a suitable place for confinement of minors under the age of 18 years, the juvenile court or the Youth Authority shall

give notice of its finding to all persons having authority to confine such minors pursuant to this chapter and commencing 60 days thereafter such jail or lockup shall not be used for confinement of such minors until such time as the judge or Youth Authority, as the case may be, finds, after reinspection of the jail or lockup, that the conditions which rendered the facility unsuitable have been remedied, and such facility is a suitable place for confinement of such minors.

The custodian of each jail and lockup shall make such reports as may be required by the Youth Authority or the juvenile court to effectuate the purposes of this section.

Commitment to state prison

510. No person under the age of 16 years shall be committed to a state prison or be transferred thereto from any other institution.

Fee for filing petitions

511. There shall be no fee for filing a petition under this chapter nor shall any fees be charged by any public officer for his services in filing or serving papers or for the performance of any duty enjoined upon him by this chapter, except where the sheriff transports a person to a state institution. If the judge of the juvenile court orders that a ward or dependent child go to a state institution without being accompanied by an officer or that a ward or dependent child be taken to an institution by the probation officer of the county or parole officer of the institution or by some other suitable person, all expenses necessarily incurred therefor shall be allowed and paid in the same manner and from the same funds as such expenses would be allowed and paid were such transportation effected by the sheriff.

Contempt of court

512. Any willful disobedience or interference with any lawful order of the juvenile court or of a judge or referee thereof constitutes a contempt of court.

Failure to appear

513. In each instance in which a provision of this chapter authorizes the execution by any person of a written promise to appear or to have any other person appear before the probation officer or before the juvenile court, any willful failure of such promissor to perform as promised constitutes a misdemeanor and is punishable as such if at the time of the execution of such written promise the promissor is given a copy of such written promise upon which it is clearly written that failure to appear or to have any other person appear as promised is punishable as a misdemeanor.

"Probation officer"

514. As used in this chapter, unless otherwise specifically provided, the term "probation officer" shall mean the juvenile probation officer or the person who is both the juvenile probation officer and the adult probation officer, and the term "department of probation" shall mean the department of juvenile probation or the department wherein the services of juvenile and adult probation are both performed.

Persons fleeing the state

515. This chapter shall not apply to any person who violates any law of this State defining a crime and is at the time of such violation under the age of 18 years if such person thereafter flees from this State. Any such person may be pro-

ceeded against in the manner otherwise provided by law for proceeding against persons accused of crime. Upon the return of such person to this State by extradition or otherwise, proceedings shall be commenced in the manner provided for in this chapter.

Toys

516. The board of supervisors may by ordinance provide that any bicycles or toys, or both, in the possession of the sheriff of any such county which have been unclaimed for a period of at least six months may, instead of being sold at public auction to the highest bidder pursuant to the provisions of Section 1873 of the Civil Code, be turned over to the probation officer of such county for use by him in any program of activities designed to prevent juvenile delinquency.

Article 2. Commissions and Committees

Juvenile justice commission

525. In each county there shall be a juvenile justice commission consisting of not less than seven citizens. Each person serving as a member of a probation committee immediately prior to the effective date of this section shall be a member of the juvenile justice commission and shall continue to serve as such until such time as his term of appointment as a member of the probation committee would have expired under any prior provision of law. Upon a vacancy occurring in the membership of the commission and upon the expiration of the term of office of any member, a successor shall be appointed by the judge of the juvenile court or, in counties having more than one judge of the juvenile court, by the presiding judge of the juvenile court for a term of four years. When a vacancy occurs for any reason other than the expiration of a term of office, the appointee to fill such vacancy shall hold office for the unexpired term of his predecessor.

Regional juvenile justice commission

526. In lieu of county juvenile justice commissions, the boards of supervisors of two or more adjacent counties may agree to establish a regional juvenile justice commission consisting of not less than eight citizens, and having a sufficient number of members so that their appointment may be equally apportioned between the participating counties The judge of the juvenile court or, in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court of each of the participating counties shall appoint an equal number of members to the regional justice commission and they shall hold office for a term of four years. Of those first appointed, however, if the number appointed be an even number, half shall serve for a term of two years and half shall serve for a term of four years and if the number of members first appointed be an odd number, the greater number nearest half shall serve for a term of two years and the remainder shall serve for a term of four years. The respective terms of the members first appointed shall be determined by lot as soon as possible after their appointment. Upon a vacancy occurring in the membership of the commission and upon the expiration of the term of office

of any member, a successor shall be appointed by the judge of the juvenile court or, in counties having more than one judge of the juvenile court, by the presiding judge of the juvenile court of the county which originally appointed such vacating or retiring member. When a vacancy occurs for any reason other than the expiration of a term of office, the appointee shall hold office for the unexpired term of his predecessor.

Notice of appointment

527. The clerk of the court of the appointing judge shall immediately notify each person appointed a member of a county or regional juvenile justice commission and thereupon such person shall appear before the appointing judge and qualify by taking an oath faithfully to perform the duties of a member of the juvenile justice commission. The qualification of each member shall be entered in the juvenile court record.

Chairman

528. A juvenile justice commission shall elect a chairman and vice chairman annually.

Commission inquiries

529. It shall be the duty of a juvenile justice commission to inquire into the administration of the juvenile court law in the county or region in which the commission serves. For this purpose the commission shall have access to all publicly administered institutions authorized or whose use is authorized by this chapter situated in the county or region, shall inspect such institutions no less frequently than once a year, and may hold hearings. A judge of the juvenile court shall have the power to issue subpoenas requiring attendance and testimony of witnesses and production of papers at hearings of the commission.

Inspection of jails

A juvenile justice commission shall annually inspect any jail or lockup within the county which in the preceding calendar year was used for confinement of more than 24 hours of any minor under the age of 18 years. It shall report the results of such inspection together with its recommendations based thereon, in writing, to the juvenile court and to the Youth Authority.

Recommendations

530. A juvenile justice commission may recommend to any person charged with the administration of any of the provisions of this chapter such changes as it has concluded, after investigation, will be beneficial. A commission may publicize its recommendations.

Reimbursement of expenses

531. Members of a juvenile justice commission shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. Such reimbursement shall be made by the county of appointment or, in the case of a regional justice commission, the duty of reimbursement shall be divided among the participating counties in the manner prescribed by agreement of the boards of supervisors.

Additional agencies

535. The board of supervisors may by ordinance provide for the establishment, support, and maintenance of one or more agencies or departments to co-operate with and assist in co-ordinating on a countywide basis the work of those community agencies engaged in activities designed to prevent

juvenile and adult delinquency; and such agencies or departments may co-operate with any such public or community committees, agencies, or councils at their invitation.

Public councils or committees

536 The juvenile court and the probation department of any county may establish, or assist in the establishment of, any public council or committee having as its object the prevention of juvenile delinquency and may co-operate with, or participate in, the work of any such councils or committees for the purpose of preventing or decreasing juvenile delinquency, including the improving of recreational, health, and other conditions in the community affecting juvenile welfare.

Article 2.5. Probation Committee

Probation committee

540. In counties having a population in excess of 2,000,000 in lieu of a county juvenile justice commission, there shall be a probation committee consisting of not less than seven members who shall be appointed by the same authority as that authorized to appoint the probation officer in such county.

541. The members of a probation committee appointed and holding office under prior provisions of law on the effective date of this article, shall continue in office and shall be members of the probation committee created hereby for the same term as that for which they were appointed.

Terms of office

542. The members of the probation committee shall hold office for four years and until their successors are appointed and qualify. Of those first appointed, however, one shall hold office for one year, two for two years, two for three years, and two for four years; and the respective terms of the members first appointed shall be determined by lot as soon as possible after their appointment. When a vacancy occurs in a probation committee by expiration of the term of office of any member thereof, his successor shall be appointed to hold office for the term of four years. When a vacancy occurs for any other reason the appointee shall hold office for the unexpired term of his predecessor.

Function

543. The probation committee shall function in an advisory capacity to the probation officer.

Article 3. The Juvenile Court

Jurisdiction

550. Each superior court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction, shall be known and referred to as the juvenile court.

Designation of judge to handle judicial business of juvenile court

551. In counties having more than one judge of the superior court, the presiding judge of such court or the senior judge if there is no presiding judge shall annually, in the month of January, designate one or more judges of the superior court to hear all cases under this chapter during the ensuing year, and he shall, from time to time, designate such additional judges as may be necessary for the prompt disposition of the judicial business before the juvenile court.

In all counties where more than one judge is designated as a judge of the juvenile court, the presiding judge of the superior court shall also designate one such judge as presiding judge of the juvenile court.

Referees

553. The judge of the juvenile court, or in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more referees to serve on a full-time or part-time basis. A referee shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his order terminating the appointment of a referee, such referee shall continue to serve as such until the appointment of his successor. Except as otherwise provided by law, the amount and rate of compensation to be paid referees shall be fixed by the board of supervisors. Every referee first appointed on or after the effective date of this section must have been admitted to practice before the Supreme Court of this State for at least five years or have had at least five years experience in probation work at the supervising level or have had a combination of such experience in law, probation work, or any of them aggregating five years

Same Cases

554 A referee shall hear such cases as are assigned to him by the presiding judge of the juvenile court, with the same powers as a judge of the juvenile court. A referee shall promptly furnish to the presiding judge of the juvenile court and shall serve upon the minor's parent or guardian a written copy of his findings and order and shall also furnish to the parent or guardian, with the findings and order, a written explanation of the right of the parent or guardian to seek review of the order by the juvenile court. Service, as provided in this section, shall be by mail to the last known address of such parent or guardian or to the address designated by a parent or guardian appearing at the hearing before the referee.

Effect of order of referee

555 No order of a referee removing a minor from his home shall become effective until expressly approved by a judge of the juvenile court.

Same

556. Except as provided in Section 557, all orders of a referee other than those specified in Section 555 shall become immediately effective, subject also to the right of review as hereinafter provided, and shall continue in full force and effect until vacated or modified upon rehearing by order of the judge of the juvenile court.

Approval of referee orders

557 The judge of the juvenile court, or in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court may establish requirements that any or all orders of referees shall be expressly approved by a judge of the juvenile court before becoming effective.

Service of order and findings of referee

558. 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 or his parent or guardian may apply to the juvenile court for a rehearing. Such application may be directed to all or to any specified part of the order or findings. If all of

the proceedings before the referee have been taken down by an official reporter, the judge of the juvenile court may, after reading the transcript of such proceedings, grant or deny such application. If proceedings before the referee have not been taken down by an official reporter, such application shall be granted as of right.

Rehearing

559. A judge of the juvenile court may, on his own motion, order a rehearing of any matter heard before a referee.

Same: De novo

560. All rehearings of matters heard before a referee shall be before a judge of the juvenile court and shall be conducted de novo.

Traffic hearing officers Appointment

561. The judge of the juvenile court, or in counties having more than one judge of the juvenile court the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more persons of suitable experience, who may be judges of the municipal court or justices of the justice court or a probation officer or assistant or deputy probation officers, to serve as traffic hearing officers on a full-time or part-time basis. A hearing officer shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his order terminating the appointment of a hearing officer, such hearing officer shall continue to serve as such until the appointment of his successor. The board of supervisors shall determine whether any compensation shall be paid to hearing officers, not otherwise employed by a public agency or holding another public office, and shall establish the amounts and rates thereof An appointment of a probation officer, assistant probation officer, or deputy probation officer as a traffic hearing officer may be made only with the consent of the probation officer.

Same Disposal of cases

562. Subject to the orders of the juvenile court, a traffic hearing officer may hear and dispose of any and all cases wherein a minor under the age of 18 years at the date of the alleged offense is charged with any violation of the Vehicle Code not declared to be a felony, or a violation of an ordinance of a city or county relating to traffic offenses.

Conduct of hearing

563. With the consent of the minor, a hearing before a traffic hearing officer or a hearing before a referee or a judge of the juvenile court wherein such minor is charged with such traffic offense may be conducted upon an exact legible copy of a written notice given pursuant to Article 2 (commencing with Section 40500) of Chapter 2 of Division 17 or Section 41103 of the Vehicle Code, in lieu of a petition as provided in Article 7 of this chapter.

Disposition of traffic cases

564. Upon a hearing conducted in accordance with Section 563, 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

(1) Reprimand the minor and dismiss the matter, or

(2) Direct the probation officer to file a petition as provided for in Article 7 (commencing with Section 650) of this chapter, or

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

(a) That the driving privileges of the minor be suspended or restricted for a period not to exceed 30 days,

(b) That the minor attend traffic school over a period not to exceed 60 days,

(c) That the minor pay to the general fund of the county a sum, not to exceed twenty-five dollars ($25),

(d) That the probation officer undertake a program of supervision of the minor for a period not to exceed six months

The judge, referee, or traffic hearing officer shall retain jurisdiction of the case until all orders made under this section have been fully complied with.

Report of findings

565. A traffic hearing officer shall promptly furnish a written report of his findings and orders to the clerk of the juvenile court. The clerk of the juvenile court shall promptly transmit an abstract of such findings and orders to the Department of Motor Vehicles.

Effect of orders

566. Subject to the provisions of Section 567, all orders of a traffic hearing officer shall be immediately effective

Rehearings

567. Upon motion of the minor or his parent or guardian for good cause, or upon his own motion, a judge of the juvenile court may, set aside or modify any order of a traffic hearing officer, or may order or himself conduct a rehearing.

Transfer of case

568. At any time prior to the final disposition of a hearing pursuant to Section 563, the judge, referee, or traffic officer may, on motion of the minor, his parent, or guardian, or on its own motion, transfer the case to the county of the minor's residence for further proceedings pursuant to Sections 564, 565, 566, and 567.

Annual regional conferences

569. At the direction and under the supervision of the Judicial Council, judges of the juvenile courts and juvenile court referees shall meet, at least annually, in statewide or regional conferences, to discuss problems arising in the course of administration of this chapter, for the purpose of improving the administration of justice in the juvenile courts. Actual and necessary expenses incurred by a judge or referee in attending any such conference shall be a charge upon the county.

Rules of practice and procedure

570. The Judicial Council shall establish rules governing practice and procedure in the juvenile court not inconsistent with law.

Article 4. Probation Officers

Probation officer

575. There shall be in each county the offices of probation officer, assistant probation officer, and deputy probation officer. A probation officer shall be appointed in every county.

Probation officers in any county shall be nominated by the juvenile justice commission or regional juvenile justice commission of such county in such manner as the judge of the

juvenile court in that county shall direct, and shall then be appointed by such judge.

The probation officer may appoint as many deputies or assistant probation officers as he desires; but such deputies or assistant probation officers shall not have authority to act until their appointments have been approved by a majority vote of the members of the juvenile justice commission, and by the judge of the juvenile court. The term of office of each such deputy or assistant probation officer shall expire with the term of the probation officer who appointed him, but the probation officer, with the written approval of the majority of the members of the juvenile justice commission and of the judge of the juvenile court, may, in his discretion, revoke and terminate any such appointment at any time.

Probation officers may at any time be removed by the judge of the juvenile court for good cause shown; and the judge of the juvenile court may in his discretion at any time remove any such probation officer with the written approval of a majority of the members of the juvenile justice commission.

Effect of county charter

576. In counties having charters which provide a method of appointment and tenure of office for probation officers, assistant probation officers, deputy probation officers, and the superintendent, matron, and other employees of the juvenile hall, such charter provisions shall control as to such matters, and in counties which have established or hereafter establish merit or civil service systems governing the methods of, appointment and the tenure of office, of probation officers, assistant probation officers, deputy probation officers, and of the superintendents, matrons and other employees of the juvenile hall the provisions of such merit or civil service systems shall control as to such matters; but in all other counties, such matters shall be controlled exclusively by the provisions of this code.

Employment of experts

577. The probation officer may, within budgetary limitations established by the board of supervisors, employ such psychiatrists, psychologists, and other clinical experts as are required to assist in determining appropriate treatment of minors within the jurisdiction of the juvenile court and in the implementation of such treatment.

Bond

578. Each probation officer and each assistant and deputy probation officer receiving an official salary shall furnish a bond in the sum of not more than two thousand dollars ($2,000) and approved by the judge of the juvenile court, conditioned for the faithful discharge of the duties of his office. If such bonds, or any of them, are furnished by a surety company licensed to transact business in the State, the premium thereon shall be paid out of the county treasury. In the event the probation officer, assistants and deputies are included as covered employees in a master bond pursuant to Sections 1481 and 1481.1 of the Government Code, the individual bonds prescribed above shall not be required.

Books and accounts

579. For the purpose of handling the reimbursement and other payments provided for in this chapter, the probation officer or other county officer designated by the board of supervisors of the county shall keep suitable books and accounts and shall give and keep suitable receipts and vouchers. The auditor of the county shall audit such books and accounts annually on a fiscal year basis ending June 30 of each year and shall make a report thereon to the judge of the court and to the supervisors of the county prior to the 31st day of the next succeeding month of January.

Receipt and disbursement of money

580. In addition to the powers and duties of the probation officer elsewhere prescribed in this chapter, he is authorized to receive money, give his receipt therefor, immediately deposit such money in the county treasury, and direct the disbursement thereof in the same manner that county trust money is disbursed, in any of the following instances:

(a) Money payable to spouse or child in an action for divorce, separate maintenance, or similar action, together with court costs and attorney's fees, upon order of a court of competent jurisdiction.

(b) Money payable to or on behalf of a ward or dependent child of the juvenile court or a person concerning whom a petition has been filed in the juvenile court.

(c) Money payable to, by, or on behalf of probationers under the supervision of the probation officer.

(d) Money payable to a child, wife, or indigent parent when it has been alleged or claimed that there has been a violation of either Section 270, 270a, or 270c of the Penal Code and the matter has been referred to the probation officer by the district attorney.

(e) Gifts of money made to the county to assist in the prevention or correction of delinquency or crime when the donor requests the probation officer to disburse such funds for such purposes and the board of supervisors accepts the gift upon such conditions.

(f) Other similar cases.

In addition to the foregoing, the probation officer is authorized to receive money payable to the county when ordered so to do by a court of competent jurisdiction. Such money shall be immediately deposited in the county treasury.

Presence in court

581. The probation officer shall be present in court to represent the interests of each person who is the subject of a petition to declare such person to be a ward or dependent child upon all hearings or rehearings of his case, and shall furnish to the court such information and assistance as the court may require If so ordered, he shall take charge of such person before and after any hearing or rehearing.

It shall be the duty of the probation officer to prepare for every hearing on the disposition of a case as provided by Section 702 a social study of the minor, containing such matters as may be relevant to a proper disposition of the case.

Such social study shall include a recommendation for the disposition of the case.

Investigations for court

582. The probation officer shall upon order of any court in any matter involving the custody, status, or welfare of a minor or minors, make an investigation of appropriate facts and circumstances and prepare and file with the court written reports and written recommendations in reference to such matters. The court is authorized to receive and consider the reports and recommendations of the probation officer in determining any such matter.

Investigation of private institutions

583. At any time the judge of the juvenile court may, and upon the request of the county board of supervisors shall, require the probation officer to examine into and report to the court upon the qualifications and management of any society, association, or corporation, other than a state institution, which applies for or receives custody of any ward or dependent child of the juvenile court. No probation officer, however, shall, under authority of this section, enter any institution without its consent. If such consent is refused, commitments to that institution shall not be made.

Powers

584. Every probation officer, assistant probation officer, and deputy probation officer shall have the powers of a peace officer.

Reports to Youth Authority

585 All probation officers shall make such special and periodic reports to the Youth Authority as the authority may require and upon forms furnished by the authority.

Reports to Bureau of Criminal Statistics

586. All probation officers shall make such periodic reports to the Bureau of Criminal Statistics as the bureau may require and upon forms furnished by the bureau.

Present officers

587. Any person lawfully appointed to serve as a probation officer or assistant or deputy probation officer prior to the effective date of this section shall continue in his office or employment as if appointed in the manner prescribed by this article.

Article 5. Jurisdiction

Persons within jurisdiction of juvenile court

600 Any person under the age of 21 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.

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

Same

601. Any person under the age of 21 years who persistently or habitually refuses to obey the reasonable and proper orders

or directions of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or any person who is a habitual truant from school within the meaning of any law of this State, or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court.

Same

602. Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

Criminal proceedings Prior submission to juvenile court

603. No court shall have jurisdiction to conduct a preliminary examination or to try the case of any person upon an accusatory pleading charging such person with the commission of a public offense or crime when such person was under the age of 18 years at the time of the alleged commission thereof unless the matter has first been submitted to the juvenile court by petition as provided in Article 7 (commencing with Section 650), and said juvenile court has made an order directing that such person be prosecuted under the general law.

Same Suspension of proceedings

604. (a) Whenever a case is before any court upon an accusatory pleading and it is suggested or appears to the judge before whom such person is brought that the person charged was, at the date the offense is alleged to have been committed, under the age of 18 years, such judge shall immediately suspend all proceedings against such person on such charge; he shall examine into the age of such person, and if, from such examination, it appears to his satisfaction that such person was at the date the offense is alleged to have been committed under the age of 18 years, he shall forthwith certify to the juvenile court of his county:

Certification to juvenile court

(1) That such person (naming him) is charged with such crime (briefly stating its nature);

(2) That such person appears to have been under the age of 18 years at the date the offense is alleged to have been committed, giving date of birth when known;

(3) That proceedings have been suspended against such person on such charge by reason of his age, with the date of such suspension.

To such certification, the judge shall attach a copy of the accusatory pleading.

(b) Whenever a case is pending in any court upon an accusatory pleading and it appears to the satisfaction of the judge that the person charged is under the age of 21 years, the judge may certify the case to the juvenile court of his county in the manner prescribed by subdivision (a) of this section.

(c) When a court certifies a case to the juvenile court pursuant to subdivision (a) or subdivision (b), it shall be deemed

that jeopardy has not attached by reason of the proceedings prior to certification, but the court may not resume proceedings in the case, nor may a new proceeding under the general law be commenced in any court with respect to the same matter unless the juvenile court has found that the minor is not a fit subject for consideration under the Juvenile Court Law and has ordered that proceedings under the general law resume or be commenced.

(d) The certification and accusatory pleading shall be promptly transmitted to the clerk of the juvenile court. Upon receipt thereof, the clerk of the juvenile court shall immediately notify the probation officer who shall file a petition in accordance with the requirements of Section 656, except that such petition need not be verified.

Statute of limitations suspended

605. Whenever a petition is filed in a juvenile court alleging that a minor is a person within the description of Section 602, and while the case is before the juvenile court, the statute of limitations applicable under the general law to the offense alleged to bring the minor within such description is suspended.

Criminal prosecution

606. When a petition has been filed in a juvenile court, the minor who is the subject of the petition shall not thereafter be subject to criminal prosecution based on the facts giving rise to the petition unless the juvenile court finds that the minor is not a fit and proper subject to be dealt with under this chapter and orders that criminal proceedings be resumed or instituted against him.

Retention of jurisdiction

607. The court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until such ward or dependent child attains the age of 21 years; but if a ward has attained the age of 19 years or more at the time of adjudication of wardship, the court may retain jurisdiction for two years from and after the date of such adjudication.

Article 6. Temporary Custody and Detention

Temporary custody: Without warrant

625. A peace officer may, without a warrant, take into temporary custody a minor:

(a) Who is under the age of 18 years when such officer has reasonable cause for believing that such minor is a person described in Sections 600, 601, or 602, or

(b) Who is a ward or dependent child of the juvenile court or concerning whom an order has been made under Section 636 or 702, when such officer has reasonable cause for believing that person has violated an order of the juvenile court or has escaped from any commitment ordered by the juvenile court, or

(c) Who is under the age of 21 years and who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.

Same Subsequent procedure

626. An officer who takes a minor into temporary custody under the provisions of Section 625 shall thereafter proceed as follows:

(a) He may release such minor; or

(b) He may prepare in duplicate a written notice to appear before the probation officer of the county in which such minor was taken into custody at a time and place specified in the notice. The notice shall also contain a concise statement of the reasons such minor was taken into custody. He shall deliver one copy of the notice to such minor or to a parent, guardian, or responsible relative of such minor and may require such minor or his parent, guardian, or relative, or both, to sign a written promise that either or both will appear at the time and place designated in the notice. Upon the execution of the promise to appear, he shall immediately release such minor. He shall, as soon as practicable, file one copy of the notice with the probation officer; or

(c) He may take such minor without unnecessary delay before the probation officer of the county in which such person was taken into custody and deliver the custody of such minor to the probation officer.

In determining which disposition of the minor he will make, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided such alternative is compatible with the best interests of the minor and the community.

Notice to parents, etc

627. When an officer takes a minor before a probation officer at a juvenile hall or to any other place of confinement pursuant to this article, he shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody and the place where he is being held.

Immediate investigation

628. Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release such minor to the custody of his parent, guardian, or responsible relative unless it appears that further detention of such minor is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another, or unless it appears that such minor is likely to flee the jurisdiction of the court, or unless it appears that such minor has violated an order of the juvenile court.

Written promise to appear

629. As a condition for the release of such minor, the probation officer may require such minor or his parent, guardian, or relative, or both, to sign a written promise that either or both of them will appear before the probation officer at the juvenile hall or other suitable place designated by the probation officer at a specified time.

Detention hearing

630. If the probation officer determines that the minor shall be retained in custody, he shall immediately file a petition pursuant to Section 656 with the clerk of the juvenile

court who shall set the matter for hearing on the detention hearing calendar. The probation officer shall thereupon notify a parent or guardian of the minor of the time and place of such hearing. Such notice may be given orally.

Release

631. Whenever a minor under the age of 18 years is taken into custody by a peace officer or probation officer, such minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within said period of time a petition to declare him a ward or dependent child has been filed pursuant to the provisions of this chapter or a criminal complaint against him has been filed in a court of competent jurisdiction.

Detention hearing

632. Unless sooner released, a minor taken into custody under the provisions of this article shall be brought before a judge 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 of the juvenile court within the period prescribed by this section, he shall be released from custody.

Same
Notice of rights

633. Upon his appearance before the court at the detention hearing, such minor and his parent or guardian, if present, shall first be informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of such minor and his parent or guardian to be represented at every stage of the proceedings by counsel.

Appointment of counsel

634. When it appears to the court that the minor or his parent or guardian desires counsel but is indigent and cannot for that reason employ counsel, the court may appoint counsel. In such a case the court must appoint counsel for the minor if he is charged with misconduct which would constitute a felony if committed by an adult. In any case in which it appears to the court that there is such a conflict of interest between a parent or guardian and child that one attorney could not properly represent both, the court may appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or a parent or guardian.

Examination and release of minor by court

635. The court will examine such minor, his parent, guardian, or other person having relevant knowledge, hear such relevant evidence as the minor, his parent or guardian or their counsel desires to present, and, unless it appears that such minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court, the court shall make its order releasing such minor from custody.

Detention of minor

636. If it appears upon the hearing that such minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court, the court may make its order that such minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court.

Rehearing

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

Continuance

638 Upon motion of the minor or a parent or guardian of such minor, the court shall continue any hearing or rehearing held under the provisions of this article for one day, excluding Sundays and nonjudicial days.

Reappearance

639. Upon any hearing or rehearing under the provisions of this article, the court may order such minor or any parent or guardian of such minor who is present in court to again appear before the court or the probation officer at a time and place specified in said order.

Medical, etc., care of detained persons

640. Whenever any person is detained under the provisions of this article and is in need of medical, surgical, dental, or other remedial care, the probation officer may, upon the recommendation of the attending physician, authorize the performance of such medical, surgical, dental, or other remedial care. Nothing contained herein shall limit the rights of the parent or guardian of such person to furnish such medical, surgical, dental, or other remedial care. Except in cases of extreme emergency or in cases where the probation officer cannot, with reasonable diligence, locate the parent or guardian, the probation officer shall notify the parent or guardian of the person of the care found to be needed before such care is provided, and if the parent or guardian objects, such care shall be given only upon order of the court.

Detention in another county

641. Whenever any minor is taken into temporary custody under the provisions of this article in any county other than the county in which the minor is alleged to be within or to come within the jurisdiction of the juvenile court, which county is referred to herein as the requesting county, the officer who has taken the minor into temporary custody may notify the law enforcement agency in the requesting county of the fact that the minor is in custody. When a law enforcement officer, of such requesting county files a petition pursuant

to Section 656 with the clerk of the juvenile court of his respective county and secures a warrant therefrom, he shall forward said warrant, or a telegraphic copy thereof to the officer who has the minor in temporary custody as soon as possible within 48 hours, excluding Sundays and nonjudicial days, from the time said juvenile was taken into temporary custody. Thereafter an officer from said requesting county shall take custody of the minor within five days, in the county in which the minor is in temporary custody, and shall take the minor before the juvenile court judge who issued the warrant, or before some other juvenile court of the same county without unnecessary delay. If the minor is not brought before a judge of the juvenile court within the period prescribed by this section, he must be released from custody.

Article 7. Commencement of Proceedings

Commencement of proceedings

650. A proceeding in the juvenile court to declare a minor a ward or a dependent child of the court is commenced by the filing with the court, by the probation officer, of a petition, in conformity with the requirements of this article.

Venue

651. Either the juvenile court in the county in which a minor resides or in the county where the minor is found or in the county in which the acts take place or the circumstances exist which are alleged to bring such minor within the provisions of Sections 600, 601 or 602, is the proper court to commence proceedings under this chapter.

Investigations by probation officer

652. Whenever the probation officer has cause to believe that there was or is within the county, or residing therein, a person within the provisions of Sections 600, 601 or 602, the probation officer shall immediately make such investigation as he deems necessary to determine whether proceedings in the juvenile court should be commenced.

Application to commence proceedings

653. Whenever any person applies to the probation officer to commence proceedings in the juvenile court, such application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Sections 600, 601 or 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make such investigation as he deems necessary to determine whether proceedings in the juvenile court should be commenced. If the probation officer does not take action under Section 654 and does not file a petition in the juvenile court within three weeks after such application, he shall endorse upon the affidavit of applicant his decision not to proceed further and his reasons therefor and shall immediately notify the applicant of the action taken or the decision rendered by him under this section. The probation officer shall retain the affidavit and his indorsement thereon for a period of 30 days after such notice to applicant.

Supervision of minor with consent of parent

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

Failure to commence proceedings Petition to court

655. When any person has applied to the probation officer, pursuant to Section 653, to commence juvenile court proceedings and the probation officer fails to file a petition and fails to take action under Section 654 within three weeks after such application, such person may, within one month after making such application, apply to the juvenile court to review the decision of the probation officer, and the court may either affirm the decision of the probation officer or order him to commence juvenile court proceedings.

Contents of petition

656. 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:

(a) The name of the court to which the same is addressed.

(b) The title of the proceeding.

(c) The code section or sections and subdivision or subdivisions under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(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.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody and, if he is detained in custody, the date on which such detention was ordered by the court.

Setting for hearing

657. 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.

Notice of filing of petition

658 Upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he shall cause the same to be served upon each of the persons described in subsection (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.

659. The notice must contain:

Contents of notice

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

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

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

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

(e) A statement that the minor, or his parent or guardian, is entitled to have his attorney present at the hearing on the petition, and that, if the parent or guardian is indigent and cannot afford an attorney, and the minor or his parent or guardian desires to be represented by an attorney, such parent or guardian shall promptly notify the clerk of the juvenile court.

Service of notice

660. If a person upon whom a notice and copy of the petition is required to be served is known to reside in the county, the clerk of the juvenile court shall cause the notice and copy of the petition to be personally served on such person as soon as possible after filing of the petition and at least 24 hours before the time set for the hearing on the petition. If such person is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition, by certified mail, to such person, as soon as possible after filing of the petition and at least five days before the time set for the hearing on the petition. Personal service of the notice and copy of the petition outside of the county at least five days before the time set for the hearing on the petition is equivalent to service by certified mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at or prior to the hearing.

Citations directing appearance

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

Warrant

662. In case such citation cannot be served, or the person served fails to obey it, or in any case in which it appears to the court that the citation will probably be ineffective, a warrant of arrest may issue on the order of the court either against the parent, or guardian, or the person having the custody of the minor, or with whom the minor is

Warrant for arrest of minor

663. Whenever a petition has been filed in the juvenile court alleging that a minor comes within the provisions of Section 601 or 602 of this code and praying for a hearing thereon, or whenever any subsequent petition has been filed praying for a hearing in the matter of said minor and it appears to the court that the conduct and behavior of the said minor may endanger the health, person, welfare, or property of himself or others, or that the circumstances of his home environment may endanger the health, person, welfare or property of said minor, a warrant of arrest may be issued immediately for the minor.

Subpoenas

664. Upon request of the probation officer, the minor or the minor's parent, guardian, or custodian, the court or the clerk of the court shall issue, and, on the court's own motion, it may issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under the provisions of this chapter.

Article 8. Hearings

Special or separate session of court

675. All cases under the provisions of this chapter shall be heard at a special or separate session of the court, and no other matter shall be heard at such session. No person on trial, awaiting trial, or under accusation of crime, other than a parent, guardian, or relative of the minor, shall be permitted to be present at any such session, except as a witness

Private hearings

676. 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.

Transcript of testimony, etc.

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

when directed by the court, file the same with the clerk of the court. Unless otherwise directed by the judge, the costs of writing out and transcribing all or any portion of the reporter's shorthand notes shall be paid in advance at the rates fixed for transcriptions in a civil action by the person requesting the same.

Variance and amendment

678. The provisions of Chapter 8 (commencing with Section 469) of Title 6 of Part 2 of the Code of Civil Procedure relating to variance and amendment of pleadings in civil actions shall apply to petitions and proceedings under this chapter, to the same extent and with the same effect as if proceedings under this chapter were civil actions.

Those entitled to be present

679. A minor who is the subject of a juvenile court hearing and any person entitled to notice of the hearing under the provisions of Section 658, is entitled to be present at such hearing. Any such minor and any such person has the right to be represented at such hearing by counsel of his own choice.

Control of proceedings

680. The judge of the juvenile court shall control all proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the petition is brought. Except where there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversary atmosphere with a view to obtaining the maximum co-operation of the minor upon whose behalf the petition is brought and all persons interested in his welfare with such provisions as the court may make for the disposition and care of such minor.

Hearing: Procedure

700. At the beginning of the hearing on a petition filed pursuant to Article 7 (commencing with Section 650), the judge or clerk shall first read the petition to those present and upon request of the minor upon whose behalf the petition has been brought or upon the request of any parent, relative or guardian, the judge shall explain any term of allegation contained therein and the nature of the hearing, its procedures, and possible consequences. The judge shall ascertain whether the minor or his parent or guardian has been informed of the right of the minor to be represented by counsel, and if not, the judge shall advise the minor and the parent or guardian, if present, of the right to have counsel present. If the parent or guardian is indigent and desires to have the minor represented by counsel, the court may appoint counsel to represent the minor, and in such case the court must appoint counsel if the minor is charged with misconduct which would constitute a felony if committed by an adult. The court may continue the hearing for not to exceed seven days, as necessary to make an appointment of counsel, or to enable counsel to acquaint himself with the case, or to determine whether the parent or guardian is indigent and unable to afford counsel at his own expense.

Evidence of jurisdiction

701. At the hearing, the court shall first consider only the question whether the minor is a person described by Sections 600, 601, or 602, 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, a preponderance of evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described by Section 602, and 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 Sections 600 or 601. When it appears that the minor has made an extrajudicial admission or confession and denies the same at the hearing, the court may continue the hearing for not to exceed seven days to enable the probation officer to subpoena witnesses to attend the hearing to prove the allegations of the petition. If the minor is not represented by counsel at the hearing, it shall be deemed that objections that could have been made to the evidence were made.

Continuance

Finding of jurisdiction

702. After hearing such evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Sections 600, 601, or 602. If it finds that the minor is not such a person, it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered. If the court finds that the minor is such a person, it shall make and enter its finding and judgment accordingly and shall then proceed to hear evidence on the question of the proper disposition to be made of the minor. Prior to doing so, it may continue the hearing, if necessary, to receive the social study of the probation officer or to receive other evidence on its own motion or the motion of a parent or guardian for not to exceed 10 judicial days if the minor is detained during such continuance, provided, however, such hearing shall not be continued for more than five judicial days if the minor has been detained for more than 10 judicial days prior to the hearing set pursuant to Section 657, or, if the minor is not detained, it may continue the hearing to a date not later than 30 days after the date of filing of the petition The court may, for good cause shown continue the hearing for an additional 15 days, if the minor is not detained. The court may make such order for detention of the minor or his release from detention, during the period of the continuance, as is appropriate.

Continuance

Mental health of minor Observation by Department of Mental Health

703 If the court, after finding that the minor is a person described by Sections 600, 601, or 602, is in doubt concerning the state of mental health or the mental condition of the person, the court may continue the hearing and commit the person to the Department of Mental Hygiene for placement in a state hospital or state home for the mentally deficient for an indeterminate period of not more than 90 days, for observation of the mental health or the mental condition of the person and recom-

mendations concerning his future care, supervision, and treatment. If the Department of Mental Hygiene has designated a particular state institution to receive minors so committed for observation, all commitments shall be made to the department for placement in the institution so designated. The superintendent of the institution to which the minor is so committed shall receive him, unless the institution is already full or the funds available for its support are exhausted, or if, in the opinion of the superintendent, the person is not a suitable subject for admission. Before such person is conveyed to the institution, it shall be ascertained from the superintendent thereof if the person may be accepted as herein set forth.

For each minor person so committed for observation, the county from which he is committed shall pay the State at the rate of forty dollars ($40) per month for the time the person so committed remains in the state institution for observation. Such expense shall be considered expense of support and maintenance within the meaning of Article 16, (commencing with Section 900) and the county shall be entitled to reimbursement therefor from the earnings, property, or estate of the minor, or from his parents, guardian, or other person liable for his support and maintenance, in accordance with the provisions of that article. Each county auditor shall include in his state settlement report rendered to the Controller in the months of January and June and the amount due under the provisions of this section, and the county treasurer, at the time of settlement with the State in such months, shall pay to the State Treasurer, upon the order of the Controller, the amounts found to be due by reason of such commitments.

The medical superintendent or other person in charge of the state hospital or state home for the mentally deficient in which a minor person is placed for observation pursuant to this section shall, as soon as possible and within 90 days, examine the person to determine the state of his mental health or his mental condition, and submit to the juvenile court a report on the state of his mental health or mental condition which shall include a diagnosis of the nature of his mental illness or disability, if any, and recommendations concerning his future care, supervision, and treatment.

If the medical superintendent or other person in charge of the state institution in which the minor has been placed for observation reports to the court that the minor is not affected with any mental illness, disorder, or other mental disability for which he might be committed to the Department of Mental Hygiene for placement in any state institution under Division 6 (commencing with Section 5000) of this code, such superintendent or other person in charge of the state institution shall return the minor to the juvenile court within seven days after the date of the report and the court shall proceed with the case in accordance with the provisions of this chapter.

When the juvenile court directs the filing in any other court of a petition for the commitment of a minor to the Department

of Mental Hygiene for placement in any state institution, the juvenile court shall transmit to the court in which the petition is filed a copy of the report of the medical superintendent or other person in charge of the state institution in which the minor was placed for observation. The court in which the petition for commitment is filed may accept the report of the medical superintendent or other person in charge of the state institution in lieu of the appointment, certificate, and testimony of medical examiners or other expert witnesses appointed by the court, if the laws applicable to such commitment proceedings provide for the appointment by court of medical examiners or other expert witnesses or may consider the report as evidence in addition to the certificates and testimony of medical examiners or other expert witnesses.

The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for commitment is filed or under commitment ordered by that court.

Treatment by the Youth Authority

704. (a) If the court, after determining that a minor is a person described by Sections 600, 601, or 602, concludes that a disposition of the case in the best interest of the minor requires such observation and diagnosis as can be made at a diagnostic and treatment center of the Youth Authority, it may continue the hearing and order that such minor be placed temporarily in such a center for a period not to exceed 90 days, with the further provision in such order that the Director of the Youth Authority report to the court its diagnosis and recommendations concerning the minor within the 90-day period.

(b) The Director of Youth Authority shall, within the 90 days, cause the minor to be observed and examined and shall forward to the court his diagnosis and recommendation concerning such minor's future care, supervision, and treatment.

(c) The Youth Authority shall accept such person if there is in effect a contract made pursuant to Section 1752.1 and if it believes that the person can be materially benefited by such diagnostic and treatment services, and if the Director of the Youth Authority certifies that staff and institutions are available. No such person shall be transported to any facility under the jurisdiction of the Youth Authority until the director has notified the referring court of the place to which said person is to be transported and the time at which he can be received.

(d) The probation officer of the county in which an order is made placing a minor in a diagnostic and treatment center pursuant to this section, or any other peace officer designated by the court, shall execute the order placing such minor in the center or returning him therefrom to the court. The expense of such probation officer or other peace officer incurred in executing such order is a charge upon the county in which the court is situated.

Observation in psychopathic ward

705. Whenever the court, during the hearing on the petition, is of the opinion that the minor is mentally ill or if the court is in doubt concerning the mental health of any such

person, the court may order that such person be held temporarily in the psychopathic ward of the county hospital for observation and recommendation concerning the future care, supervision, and treatment of such person.

Evidence as to proper disposition of minor

706. After finding that a minor is a person described in Sections 600, 601, or 602, the court shall hear evidence on the question of the proper disposition to be made of the minor. The court shall receive in evidence the social study of the minor made by the probation officer and such other relevant and material evidence as may be offered, and in any judgment and order of disposition, shall state the social study made by the probation officer has been read and considered by the court.

Felonies under the general law

707. At any time during a hearing upon a petition alleging that a minor is a person described in Section 602, when substantial evidence has been adduced to support a finding that the offense alleged is punishable as a felony under the general law, and that the minor was 16 years of age or older at the time of the alleged commission of such offense, and that the minor would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, the court may make a finding noted in the minutes of the court that the minor is not a fit and proper subject to be dealt with under this chapter, and the court shall direct the district attorney to prosecute the person under general law and thereafter dismiss the petition or, if a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are held, shall dismiss the petition and issue its order directing that the other court proceedings resume.

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

Article 9. Judgments and Orders

Judgment

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

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

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

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

Limitation of control over minor

726. 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:

Requirement of physical custody

(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.

Orders for care, supervision, etc.

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

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

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

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

(c) The probation officer, to be boarded out or placed in some suitable family home, subject to the requirements of Chapter 1 (commencing with Section 1620) of Part 3 of Division 2; provided, however, that pending action by the State Department of Social Welfare, the placement of a minor in a home certified as meeting minimum standards for boarding homes by the probation officer shall be legal for all purposes.

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

Periodic reports by probation officers, etc.

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

Periodic review of orders

729. Every order adjudging a minor a dependent child of the juvenile court pursuant to Section 600 shall be reviewed

at least annually and every such order continuing such status and all orders made in the proceeding shall terminate one year after the order adjudging the minor to be a dependent child or continuing such status, unless prior to such time the court shall have conducted a hearing and ordered a continuation of such status for an additional year.

A proceeding for continuance of such status shall be commenced by the filing of a supplemental petition by the probation officer in the same matter. Copies of the petition and notice of the hearing shall be served upon the same persons and in the same manner as in an original proceeding.

Treatment or commitment

730. When a minor is adjudged a ward of the court on the ground that he is a person described by Section 601, the court may order any of the types of treatment referred to in Section 727, and as an additional alternative, may commit the minor to a county juvenile home, ranch, camp, or forestry camp.

When such ward is placed under the supervision of the probation officer or committed to his care, custody and control, the court may make any and all reasonable orders for the conduct of such ward including the requirement that he go to work and earn money for the support of his dependents or to effect reparation and in either case that he keep an account of his earnings and report the same to the probation officer and apply such earnings as directed by the court. The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.

Such ward may be committed to the Youth Authority only upon a proceeding for the modification of an order of the court conducted pursuant to the provisions of Section 777.

Same

731. When a minor is adjudged a ward of the court on the ground that he is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730, and as an additional alternative, may commit the minor to the Youth Authority.

Ascertainment of available space

732. Before a minor is conveyed to any state or county institution pursuant to this article, it shall be ascertained from the superintendent thereof that such person can be received.

Commitment to Youth Authority: Limitation

733. No ward of the juvenile court who is under the age of eight years, and no such ward who is suffering from any contagious, infectious, or other disease which would probably endanger the lives or health of the other inmates of any state school shall be committed to the Youth Authority.

Same

734. No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority.

Summary of facts

735. Accompanying the commitment papers, the court shall send to the Director of the Youth Authority a summary of all the facts in the possession of the court, covering the history of the ward committed and a statement of the mental and physical condition of the ward.

Acceptance by Youth Authority

736 (a) The Youth Authority shall accept a person committed to it pursuant to this article if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide such care. No such person shall be transported to any facility under the jurisdiction of the Youth Authority until the director thereof has notified the committing court of the place to which said person is to be transported and the time at which he can be received.

(b) The Youth Authority shall also accept a person committed to it pursuant to this article, provided that the Director of the Youth Authority certifies that staff and institutions are available (a) if he is a borderline psychiatric or borderline mentally deficient case, (b) if he is a sex deviate unless he is of a type whose presence in the community, under parole supervision, would present a menace to the public welfare, or (c) if he suffers from a primary behavior disorder. No such person shall be transported to any facility under the jurisdiction of the Youth Authority until the director thereof has notified the committing court of the place to which such person is to be transported and the time at which he can be received. To implement the administration of this paragraph, the Director of the Youth Authority and the Director of Mental Hygiene shall, at least annually, confer and establish policy with respect to the types of cases which should be the responsibility of each department.

Detention

737. Whenever a person has been adjudged a ward or dependent child of the juvenile court and has been committed or otherwise disposed of as provided in this chapter for the care of wards or dependent children of the juvenile court, the court may order that said ward or dependent child be detained in the detention home, or in the case of a ward of the age of 18 years or more, in the county jail or otherwise as to the court seems fit until the execution of the order of commitment or of other disposition.

Nonresident minors

738. In a case where the residence of a minor placed on probation under the provisions of Section 725 or of a ward or dependent child of the juvenile court is out of the State and in another state or foreign country, or in a case where such minor is a resident of this State but his parents, relatives, guardian, or person charged with his custody is in another state, the court may order such minor sent to his parents, relatives, or guardian, or to the person charged with his custody, or, if the minor is a resident of a foreign country, to an official of a juvenile court of such foreign country or an agency of such country authorized to accept the minor, and in such case may order transportation and accommodation furnished, with

or without an attendant, as the court deems necessary. If the court deems an attendant necessary, the court may order the probation officer or other suitable person to serve as such attendant. The probation officer shall authorize the necessary expenses of such minor and of the attendant and claims therefor shall be audited, allowed and paid in the same manner as other county claims.

Medical, etc., care

739. Whenever it appears to the juvenile court that any person concerning whom a petition has been filed in said court alleging that said person comes within the jurisdiction of the juvenile court is in need of medical, surgical, or dental care, and that there is no parent, guardian, or person standing in loco parentis capable or willing to authorize remedial care or treatment for such person, the court, upon the written recommendation of a qualified physician and after due notice to the parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, or dental care for said person and authorizing the release of information concerning such care to probation officers, parole officers, and any other qualified individuals or agencies caring for or acting in the interest and welfare of said person under order, commitment, or approval of the court. Nothing in this section, however, shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis in providing any medical or other remedial treatment recognized or permitted under the laws of this State.

Same

740. Whenever a ward or dependent child of the juvenile court is placed by order of the court within the care and custody or under the supervision of the probation office of the county in which the ward or dependent child resides and it appears to the court that there is no parent, guardian, or person standing in loco parentis capable or willing to authorize remedial care or treatment for the ward or dependent child, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the probation officer may authorize such medical, surgical, or dental care for the ward or dependent child, by licensed practitioners, as may from time to time appear necessary. Nothing heretofore stated in this section shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis who has not been deprived of custody and control by order of the court in providing any medical or other remedial treatment recognized or permitted under the laws of this State. If the written report of a duly licensed physician indicates that immediate emergency medical or surgical care is required, the juvenile court may make an order authorizing the necessary medical or surgical care without notice to the parent, guardian, or person standing in loco parentis.

Services of experts

741. The juvenile court may, in any case before it in which a petition has been filed as provided in Article 7 (commencing with Section 650), order that the probation officer obtain the

services of such psychiatrists, psychologists, or other clinical experts as may be required to assist in determining the appropriate treatment of the minor and as may be required in the conduct or implementation of such treatment. Payment for such services shall be a charge against the county.

Article 10. Transfer of Cases Between Counties

Transfer of cases

750. Whenever a petition is filed in the juvenile court of a county other than the residence of the person named in the petition, or whenever, subsequent to the filing of a petition in the juvenile court of the county where such person resides, the residence of such person is changed to another county, the entire case may be transferred to the juvenile court of the county wherein such person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over such person, and the juvenile court of the county wherein such person then resides shall take jurisdiction of the case upon the filing with it of such finding of the facts and an order transferring the case.

Expenses

751. The expense of the transfer and all expenses in connection with the transfer and for the support and maintenance of such person shall be paid from the county treasury of the court ordering the transfer until the acceptance of the transfer by the juvenile court of the transferee county.

The judge shall inquire into the financial condition of such person and of the parent, parents, guardian, or other person charged with his support and maintenance, and if he finds such person, parent, parents, guardian, or other person able, in whole or in part, to pay the expense of such transfer, he shall make a further order requiring such person, parent, parents, guardian, or other person to repay to the county such part, or all, of such expense of transfer as, in the opinion of the court, is proper. Such repayment shall be made to the probation officer who shall keep suitable accounts of such expenses and repayments and shall deposit all such collections in the county treasury.

Contents of transfer order

752. Whenever a case is transferred as provided in Section 750, the order of transfer shall recite (a) each and all of the findings, orders, or modification of orders that have been made in the case, and (b) that the person transferred resides in the county to which the matter has been transferred. A certified copy of the original petition in the matter shall be attached to the order of transfer. Such transfer shall be accompanied by a summary of all the facts in the possession of the court or juvenile probation officer covering the history of the person.

Precedence of actions

753. Whenever an order of transfer from another county is filed with the clerk of any juvenile court, the clerk shall place the transfer order on the calendar of the court, and it shall have precedence over all actions and civil proceedings not specifically given precedence by other provisions of law and shall be heard by the court at the earliest possible moment following the filing of the order.

Parties to proceeding Right to appeal

754. In any action under the provisions of this article in which the residence of a minor person is determined, both the county in which the court is situated and any other county which, as a result of the determination of residence, might be determined to be the county of residence of the minor person, shall be considered to be parties in the action and shall have the right to appeal any order by which residence of the minor person is determined.

Residence of person on probation

755. Any person placed on probation by the juvenile court or adjudged to be a ward or dependent child of the juvenile court may be permitted by order of the court to reside in a county other than the county of his legal residence, and the court shall retain jurisdiction over such person.

Whenever a ward or dependent child of the juvenile court is permitted to reside in a county other than the county of his legal residence, he may be placed under the supervision of the probation officer of the county of actual residence, with the consent of such probation officer. The ward or dependent child shall comply with the instructions of such probation officer and upon failure to do so shall be returned to the county of his legal residence for further hearing and order of the court.

Article 11. Modification of Juvenile Court Judgments and Orders

Modification of orders

775. Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article.

Notice of modification, etc

776. No order changing, modifying, or setting aside a previous order of the juvenile court shall be made either in chambers, or otherwise, unless prior notice of the application therefor has been given by the judge or the clerk of the court to the probation officer and to the minor's counsel of record, or, if there is no counsel of record, to the minor and his parent or guardian.

Hearing on supplemental petition

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

(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 of the minor.

(b) Upon the filing of such supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the probation officer shall cause notice

thereof to be served upon the persons and in the manner prescribed by Sections 658 and 660.

Petition for modification

778. Any parent or other person having an interest in a child who is a ward or dependent child of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a ward or dependent child of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction.

If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall prescribe how and to whom notice of said hearing shall be given.

Notice to Youth Authority

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

However, before any inmate of a correctional school may be transferred to a state hospital, he shall first be returned to a court of competent jurisdiction and, after hearing, may be committed to a state hospital for the insane in accordance with law

Return of person by Youth Authority

780. If any person who has been committed to the Youth Authority appears to be an improper person to be received by or retained in any institution or facility under the jurisdiction of the Youth Authority or to be so incorrigible or so incapable of reformation under the discipline of any institution or facility under the jurisdiction of the Youth Authority as to render his retention detrimental to the interests of the Youth Authority, the Youth Authority may return such person to the com-

mitting court. However, the return of any person to the committing court does not relieve the Youth Authority of any of its duties or responsibilities under the original commitment, and such commitment continues in full force and effect until it is vacated, modified, or set aside by order of the court.

When any such person is so returned to the committing court, his transportation shall be made, and the compensation therefor paid, as provided for the execution of an order of commitment.

Expungement of record

781. In any case in which a person has been adjudged a ward or dependent child of the juvenile court, such person, or the county probation officer, may, five years or more after the jurisdiction of the juvenile court has terminated as to such person, petition the court for expungement of the records, including records of arrest, relating to such person's case in the custody of the juvenile court and probation officer and such other agencies, including law enforcement agencies, and public officials, as petitioner alleges, in his petition, to have custody of such records. The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since such termination of jurisdiction he has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order expunged all records, papers, and exhibits in such person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the order. Thereafter the proceedings in such case shall be deemed never to have occurred. The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall expunge records in its custody as directed by the order.

Article 12. Appeals

Appeal

800. A judgment or decree of a juvenile court assuming jurisdiction and declaring any person to be a person described in Section 600, 601, or 602, or on denying a motion made pursuant to Section 567, may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment; but no such order or judgment shall be stayed by such appeal, unless suitable provision is made for the maintenance, care, and custody of such person pending the appeal, and unless such provision is approved by an order of the juvenile court. Such appeal shall have precedence over all other cases in the court to which the appeal is taken.

Article 13. Records

Record

825. The order and findings of the superior court in each case under the provisions of this chapter shall be entered in a suitable book or other form of written record which shall be kept for that purpose and known as the "juvenile court record."

Destruction of records

826. After five years from the date on which the jurisdiction of the juvenile court over a minor is terminated, the judge or clerk of the juvenile court, or the probation officer, may destroy all records, papers, and exhibits in the proceedings concerning the minor. For the purposes of this section, "destroy" means destroy or dispose of for the purpose of destruction.

The juvenile court record, any minute book entries, dockets, and judgment dockets shall not be destroyed and shall constitute for all purposes the record in lieu of the records, papers, and exhibits destroyed.

Secrecy of reports

827. A petition filed in any juvenile court proceeding and any reports of the probation officer filed in any such case may be inspected only by court personnel, the minor who is the subject of the proceeding, his parents or guardian, and the attorneys for such parties, and such other persons as may be designated by the judge of the juvenile court.

Article 14. Juvenile Halls

Juvenile halls

850. The board of supervisors in every county shall provide and maintain, at the expense of the county, in a location approved by the judge of the juvenile court or in counties having more than one judge of the juvenile court, by the presiding judge of the juvenile court, a suitable house or place for the detention of wards and dependent children of the juvenile court and of persons alleged to come within the jurisdiction of the juvenile court. Such house or place shall be known as the "juvenile hall" of the county. Wherever, in any provision of law, reference is made to detention homes for juveniles, such reference shall be deemed and construed to refer to the juvenile halls provided for in this article.

Connection with jail

851. The juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be nor be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible.

Management and control

852. The juvenile hall shall be under the management and control of the probation officer.

Superintendent and employees

853. The board of supervisors shall provide for a suitable superintendent to have charge of the juvenile hall, and for such other employees as may be needed for its efficient management, and shall provide for payment, out of the general fund of the county, of suitable salaries for such superintendent and other employees.

854. The superintendent and other employees of the juvenile hall shall be appointed by the probation officer, pursuant to a civil service or merit system, and may be removed, for cause, pursuant to such system. Same Civil service

855. The probation officer shall keep a classified list of expenses for the operation of the juvenile hall and shall file a duplicate copy with the county board of supervisors. Expenses

856. The board of supervisors may provide for the establishment and maintenance of an elementary public school and of a secondary public school in connection with the juvenile hall for the education of the children in the juvenile hall. The board, by ordinance, may provide for the establishment and maintenance of school facilities in the juvenile hall, and such schools shall be maintained by the respective governing boards of the elementary school district and of the high school district in which the juvenile hall is situated. School system in connection with juvenile halls

857. The board of supervisors may, by ordinance, provide that schools established and maintained pursuant to Section 856 shall be maintained by the county superintendent of schools in which case the county board of education shall have the same powers and duties with respect to such schools as the governing board of a school district would have were said schools maintained by the school district under the provisions of this article. The board of supervisors shall have the power to review and approve any budget proposing expenditures for the operation of such schools and may revise it to the extent deemed necessary. Same

858. Such schools shall be conducted in the same manner and under the same conditions, as nearly as possible, as are other elementary and secondary schools of the school districts, except that they shall not be closed on Monday, Tuesday, Wednesday, Thursday and Friday of any week during the calendar year, except on school holidays, the day or days in which the teachers' institute is in session, and the week in which Christmas Day occurs. Each school board, however, may close its school when it deems such closing necessary. Same

859. Whenever such schools have been established in accordance with the provisions of Section 856, the board of supervisors shall provide suitable grounds, buildings, furnishings, supplies and equipment for the school, and shall lease the same on or before July 1 at a nominal rental to the school districts in which such juvenile hall is situated. The board shall make an agreement with the governing bodies of such school districts to transfer from the general fund of the county to the current expense fund of each district one thousand six hundred dollars ($1,600) for each teacher employed in such juvenile hall school for the first school year. The transfer of funds shall be made on or before the first Monday in January. Same: Rental Teachers

860. The governing bodies of the school district shall provide all supplies for their respective schools and shall furnish such teachers as are needed to conduct accredited schools. The Supplies and teachers

teachers shall be under the jurisdiction of the regular school officials and shall make such reports as are required by law.

Transfers to general fund of school districts

861. The board of supervisors of the county shall agree with the governing board of each of the respective districts in which the juvenile hall is located to transfer from the general fund of the county to the general fund of such districts such sums in excess of the amount of money received from the State by each district as are necessary to maintain its school in the juvenile hall.

Joint juvenile halls

870. Two or more counties may, pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, establish and operate a joint juvenile hall. A joint juvenile hall shall be under the management and control of the probation officers of the participating counties, acting jointly, or of one of such probation officers, as provided by the agreement among the counties, and shall be in the charge of a superintendent selected pursuant to a civil service or merit system. A joint juvenile hall shall be operated in the manner prescribed by this chapter for juvenile halls.

A county participating in the maintenance of a joint juvenile hall pursuant to this section need not maintain a separate juvenile hall.

Article 15. Juvenile Homes, Ranches and Camps

Juvenile homes, ranches or camps

880. In order to provide appropriate facilities for the housing of wards of the juvenile court in the counties of their residence or in adjacent counties so that such wards may be kept under direct supervision of said court, and in order to more advantageously apply the salutary effect of home and family environment upon them, and also in order to secure a better classification and segregation of such wards according to their capacities, interests, and responsiveness to control and responsibility, and to give better opportunity for reform and encouragement of self-discipline in such wards, juvenile homes, ranches, or camps may be established, as provided in this article.

Same

881. The board of supervisors of any county may, by ordinance, establish juvenile homes, ranches, camps, or forestry camps, within or without the county, to which persons made wards of the court on the ground of fitting the description in Section 601 or Section 602 may be committed. As far as possible, the provisions of this chapter relating to commitments to the probation officer shall apply to commitments to such juvenile homes, except that where any ward proves to be unfit to remain in any such home, in the opinion of the superintendent or director thereof, said superintendent or director shall make recommendation to the probation department for consideration for other commitment. Complete operation and authority for the administration shall be vested in the county.

Same Superintendent and employees

882. Such juvenile homes, ranches, camps or forestry camps shall be in charge of a superintendent or director and

may be established in conjunction with the probation department, or in any manner determined by the county board of supervisors. Such superintendent or director and other persons employed at such homes or camps shall be appointed by the probation officer, subject to confirmation by the board of supervisors, of the county establishing such homes or camps.

Required labor

883. The wards committed to such homes, ranches, camps, or forestry camps may be required to labor on the buildings and grounds thereof, on the making of forest roads for fire prevention or firefighting, on forestation or reforestation of public lands, or on the making of firetrails or firebreaks, or in fire suppression, or to perform any other work or engage in any studies or activities on or off of the grounds of such homes, ranches, camps, or forestry camps prescribed by the probation department, subject to such approval as the county board of supervisors by ordinance requires. Whenever any boy committed to such camp is engaged in fire prevention work or the suppression of existing fires, he shall be subject to workmen's compensation benefits to the same extent as a county employee, and the board of supervisors shall provide and cover any such boy committed to such camp while performing such service, with accident, death and compensation insurance as is otherwise regularly provided for employees of the county.

Same: Wages

884. The board of supervisors may provide for the payment of wages and pay such wages from the treasury of such county to the wards for the work they do, the sums earned to be paid in reparation, or to the parents or dependents of the ward, or to the ward himself, in such manner and in such proportions as the court directs.

Minimum standards

885 The Youth Authority shall adopt and prescribe the minimum standards of, construction, operation, programs of education, and training and qualifications of personnel for such juvenile homes or camps. No county establishing or conducting such juvenile homes or camps shall be entitled to receive any state funds provided for in this article unless and until the minimum standards and qualifications referred to in this section are complied with by such county. Type and standards of construction shall be approved by the county architect's office, county department of public works, or such county department having jurisdiction over public construction.

Maximum number per camp

886. No juvenile home or camp established pursuant to the provisions of this article shall receive or contain more than 100 children at any one time.

State assistance

887. Where any such juvenile home or camp is established or is to be established, and where the minimum standards and qualifications provided for in Section 885 have been complied with by the county, the State of California, through the Youth Authority, out of any money herein appropriated, shall reimburse the county to the amount of one-half the cost of maintaining each child in such home or camp, but in no event shall

such county receive more than ninety-five dollars ($95) per month per child.

Whenever a claim made by a county pursuant to this section covering a prior fiscal year is found to have been in error, adjustment may be made on a current claim without necessity of applying the adjustment to the appropriation for the prior fiscal year.

Children from other counties

888. Any county establishing such juvenile home, ranch, or camp under the provisions of this article may, by mutual agreement, accept children committed to such home, ranch, or camp by the juvenile court of another county in the State and the State shall reimburse the county maintaining the home, ranch, or camp to the amount of one-half of the administrative cost of maintaining each child so committed. Payments received for the care of children from another county by a county operating a facility shall not be considered as a subvention to the county operating the facility for the purposes of determining the amount of state reimbursement. Two or more counties may, by mutual agreement, establish such juvenile homes or camps, and the rights granted and duties imposed by this article shall devolve upon such counties acting jointly. The provisions of this article shall not apply to any juvenile hall.

Schools

889. The board of supervisors may, by ordinance, direct the county superintendent of schools to establish and maintain public schools in any juvenile home or camp established in the county under this article of such grade or grades as may be, in the judgment of the county superintendent of schools, necessary. The board of supervisors shall provide suitable buildings and equipment for such schools.

Such school or schools when established shall be maintained, subject to and in accordance with all laws relating to schools maintained by a county superintendent of schools, in a juvenile hall under Article 14 (commencing with Section 850).

Same

890. The board of supervisors, in lieu of proceeding under Section 889, may provide for the establishment of an elementary public school and of a secondary public school in connection with a juvenile home, ranch or camp, for the education of children in the juvenile home, ranch or camp. The board, by ordinance, may provide for the establishment and maintenance of school facilities in the juvenile home, ranch, or camp, and such schools shall be maintained by the respective governing boards of the elementary school district and of the high school district in which the juvenile home, ranch, or camp is located.

Such school when established shall be maintained, subject to and in accordance with all laws relating to schools maintained by a school district, in a juvenile hall under Article 14 (commencing with Section 850).

Construction cost sharing

891. (a) From any state moneys made available to it for that purpose, the Youth Authority shall share in the cost pursuant to this article of the construction of juvenile homes,

juvenile ranch camps, or forestry camps established after July 1, 1957, and for construction at existing juvenile homes, ranches, camps, or forestry camps, by counties which apply therefor.

"Construction" (b) "Construction," as used in this section, includes construction of new buildings and acquisition of existing buildings and initial equipment of any such buildings. It does not include architects' fees or the cost of land acquisition.

Maximum state assistance (c) The amount of state assistance which shall be provided to any county shall not exceed 50 percent of the project cost approved by the Youth Authority, and, in no event shall it exceed three thousand dollars ($3,000) per bed unit of the new juvenile home, juvenile ranch, camp, or forestry camp or per bed unit added to an existing juvenile home, juvenile ranch camp, or forestry camp, as the case may be. The construction project shall be deemed to have as many bed units as the number of persons it is designed to accommodate, not exceeding 100-bed units for any one project.

(d) Application for state assistance for construction funds under this article shall be made to the Youth Authority in the manner and form prescribed by the Youth Authority. The Youth Authority shall prescribe the time and manner of payment of state assistance, if granted.

Article 16. Support of Wards and Dependent Children

County payments for support 900. If it is necessary that provision be made for the expense of support and maintenance of a ward or dependent child of the juvenile court or of a minor person concerning whom a petition has been filed in accordance with the provisions of this chapter, the order providing for the care and custody of such ward, dependent child or other minor person shall direct that the whole expense of support and maintenance of such ward, dependent child or other minor person, up to the amount of twenty dollars ($20) per month be paid from the county treasury and may direct that an amount up to any maximum amount per month established by the board of supervisors of the county be so paid. The board of supervisors of each county is hereby authorized to establish, either generally or for individual wards or dependent children or according to classes or groups of wards or dependent children, a maximum amount which the court may order the county to pay for such support and maintenance. All orders made pursuant to the provisions of this section shall state the amounts to be so paid from the county treasury, and such amounts shall constitute legal charges against the county.

Limitation Actual cost of maintenance 901. No order for payment shall be made in a sum in excess of the actual cost of supporting and maintaining the ward, dependent child or other minor person.

Additional amounts over county maximum 902. If it is found that the maximum amount established by the board of supervisors of the county is insufficient to pay the whole expense of support and maintenance of a ward,

dependent child or other minor person, the court may order and direct that such additional amount as is necessary shall be paid out of the earnings, property, or estate of such ward, dependent child or other minor person, or by the parents or guardian of such ward, dependent child or other minor person, or by any other person liable for his support and maintenance, to the probation officer who shall in turn pay it to the person, association, or institution that under court order is caring for and maintaining such ward, dependent child or other minor person.

Liability of parents

903. The father, mother, spouse, or other person liable for the support of a minor person, the estates of such persons, and the estate of such minor person, shall be liable for the cost of his care, support, and maintenance in any county institution in which he is placed, detained, or committed pursuant to the order of the juvenile court, or for the cost to the county in which the juvenile court making the order is located, of his care, support, and maintenance in any other place in which he is placed, detained, or committed pursuant to the order of the juvenile court. The liability of such persons (in this article called relatives) and estates shall be a joint and several liability.

Determination of cost

904 The monthly or daily cost for care, support, and maintenance of minor persons placed or detained in or committed to a county institution by order of a juvenile court shall be determined by the county auditor of the county in which the institution is located.

Reduction of liability

905. Except as otherwise ordered by the juvenile court, the probation officer or other county officer designated by the board of supervisors of the county may reduce, cancel, or remit the amount to be paid by the estate or the relatives, as the case may be, liable for the care, support, and maintenance of a minor person placed or detained in or committed to any county institution or other place pursuant to an order of the juvenile court of that county on satisfactory proof that the estate or relative, as the case may be, is unable to pay the cost of such care, support, and maintenance.

If the representative of the estate or the relative liable for the care, support, and maintenance of the minor claims that the minor's estate or relative is financially unable to pay the amounts established under this article for the care, support, and maintenance of the minor, he may make such claim in writing to the probation officer of the county in which the juvenile court making the order of placement, detention, or commitment is located. The probation officer shall, upon receipt of such a claim, make an investigation to determine whether the minor's estate or responsible relative is financially able to pay the said amounts established under this article, or any part thereof, and report the results of his investigation to the juvenile court. On receipt of the probation officer's report, the juvenile court shall hear and determine the claim, and may order that the representative of the estate or the relative pay

all of the said amounts established under this article or any part thereof which the juvenile court finds that the estate or relative is financially able to pay.

Collection of costs

906. The probation officer or other county officer designated by the board of supervisors of the county shall collect all costs and charges mentioned in Section 903 or established by order of the juvenile court and may take such action in the name of the county as is necessary to effect their collection within or without the State.

Money, property, of minor

907. The probation officer or other county officer designated by the board of supervisors of the county shall, following entry of an order by the juvenile court in that county that a minor person be placed, or detained in, or committed to a county institution or other place, make investigation to determine the moneys, the property, or interest in property, if any, the minor person has, and whether he has a duly appointed and acting guardian to protect his property interests. The probation officer or other county officer shall also make an investigation to determine whether the minor person has any relative or relatives responsible under the provisions of Section 903 for the payment of the cost of care, support, and maintenance of such minor person, and shall ascertain the financial condition of such relative or relatives to determine whether in each case such relative or relatives are in fact financially able to pay such charges.

Execution

908. Where the juvenile court has ordered payment of money to be made for the cost of care, support or maintenance in any county institution or as reimbursement to the county for the expense of support and maintenance of any ward, dependent child or other minor person as provided in this article or as additional payment for the expense of support and maintenance of such ward, dependent child or other minor person to the person, association, or institution that under court order is caring for and maintaining such ward, dependent child or other minor person, either from the earnings, property, or estate of such ward, dependent child or other minor person, or by his parents or guardian, or by any other person liable for his support, upon affidavit of the probation officer that any payment is due and has not been made, execution may issue for such payment upon the order and at the discretion of the court.

Discharge from accountability of probation officer

909. In any case in which the probation officer is charged with the duty of collecting amounts payable to the county under this article, upon the verified application of the probation officer, the board of supervisors may make an order discharging the probation officer from further accountability for the collection of any such amount in any case as to which the board determines that the amount is too small to justify the cost of collection or that the collection of such amount is improbable for any reason. Such order is authorization for the probation officer to close his books in regard to such item, but such discharge of accountability of the probation officer does

not constitute a release of any person from liability for payment of any such amount which is due and owing to the county. The board may request a written opinion from the district attorney or county counsel as to whether any particular amount owed to the county is too small to justify the cost of collection or whether collection of any particular item is improbable.

Claim of county for property subsequently acquired

910. In any case where a county has expended money for the support and maintenance of any ward, dependent child or other minor person, or has furnished support and maintenance, and the court has not made an order of reimbursement to the county, in whole or in part, as provided in this article, or the court has made and subsequently revoked such an order if the ward, dependent child or other minor person or parent, guardian, or other person liable for the support of the ward, dependent child or other minor person acquires property, money, or estate subsequent to the date the juvenile court assumed jurisdiction over the ward, dependent child or minor person or subsequent to the date of the order of reimbursement was revoked, the county shall have a claim against the ward, dependent child or other minor person or parent, guardian, or other person liable for the support of the ward, dependent child or other minor person to the amount of a reasonable charge for money so expended, or other expense of support and maintenance. Such claim shall be enforced by action of the district attorney on request of the board of supervisors

Term of effectiveness of order

911. No order for payment from the county treasury of the expense of support and maintenance of a ward or dependent child of the juvenile court shall be effective for more than 12 months, and no order for payment from the county treasury of the expense of support and maintenance of a minor person concerning whom a verified petition has been filed in accordance with the provision of this chapter, other than a ward or dependent child of the court, shall be effective for more than one month. Upon all hearings of the case of any ward or dependent child of the juvenile court, the case shall be continued on the calendar, but in no instance to exceed 12 months.

When any ward of the juvenile court is, with the consent of the juvenile court of the county committing him and the officer in charge of the state school to which he was committed or in which he is confined, placed in a boarding home, foster home, or work home, but continues to be under the supervision of such state school, the county may reimburse the boarding home, foster home, or work home in an amount adequate for the maintenance of the ward, but not to exceed twenty-five dollars ($25) per month

Payment for Youth Authority commitment

912 For each person hitherto committed to the Youth Authority, the county from which he is committed shall pay the State at the rate of twenty-five dollars ($25) per month for the time such person so committed remains in such state school or in any camp or farm 587 y, custodial institution, or other institution under the direct supervision of the Youth Author-

ity to which such person may be transferred, in the California vocational institution, or in any boarding home, foster home, or other private or public institution in which he is placed by the Youth Authority, on parole or otherwise, and cared for and supported at the expense of the Youth Authority.

Each county auditor shall include in his state settlement report rendered to the Controller in the months of January and June the amount due under this section, and the county treasurer, at the time of settlement with the State in such months, shall pay to the State Treasurer, upon the order of the Controller, the amounts found to be due by reason of such commitments.

Payment to private custodian

913. When any person has been adjudged to be a ward or dependent child of the juvenile court, and the court has made an order committing such person to the care of any association, society, or corporation, embracing within its objects the purpose of caring for or obtaining homes for such persons, the county in which such person has been committed may contract with such custodian, for the supervision, investigation, and rehabilitation of such person by such custodian, and may, pursuant to such contract, pay to it an amount determined by mutual agreement, not to exceed the cost to such custodian of such service.

"Expense for support and maintenance"

914. As used in this article, "expense for support and maintenance" includes the reasonable value of any medical services furnished to the ward or dependent child at the county hospital or at any other county institution, or at any private hospital or by any private physician with the approval of the juvenile court of the county concerned, and the reasonable value of the support of the ward or dependent child at any juvenile hall established pursuant to the provisions of Article 14 (commencing with Section 850) of this chapter or the reasonable value of the ward's support at any forestry camp, juvenile home, ranch, or camp established within or without the county pursuant to the provisions of Article 15 (commencing with Section 880) of this chapter.

SEC. 3. Section 272 is added to the Penal Code, to read.

Violations Penalties

272. Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 21 years to come within the provisions of Sections 600, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 21 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person within the provisions of Sections 600, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall

be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years. The district attorney shall prosecute all violations charged under this section.

SEC. 4. Chapter 4 (commencing with Section 232) is added to Title 2 of Part 3 of Division 1 of the Civil Code, to read:

CHAPTER 4. FREEDOM FROM PARENTAL CUSTODY AND CONTROL

Freedom from control and custody of parents

232. An action may be brought for the purpose of having any person under the age of 21 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:

(a) Who has been left by either or both of his parents in the care and custody of another without any provision for his support, or without communication from either or both of his parents, for the period of one year with the intent on the part of such parent or parents to abandon such person. Such failure to provide, or such failure to communicate for the period of one year, shall be presumptive evidence of the intent to abandon. Such person shall be deemed and called a person abandoned by the parent or parents abandoning him. If in the opinion of the court the evidence indicates that either or both parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by such parent or parents.

When any person under the age of 21 years has been left by either or both of his parents in the care and custody of another without any provision for his support, or without communication from either or both of his parents for the period of six months, the petition provided for in Section 233 may be filed with respect to such person. The jurisdiction of the court extends to such person as fully as if such conditions had existed for a period of one year but no order or judgment freeing such person from the custody and control of either or both of his parents shall be made until such conditions of nonsupport or noncommunication shall have existed for a period of at least one year.

(b) 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 because of such cruel treatment or neglect, for the period of one year continuously immediately 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.

(c) Whose parent or parents are habitually intemperate, or morally depraved, if such person has been a dependent child

of the juvenile court, and the parent or parents deprived of his custody because of such intemperance, or moral depravity, for the period of one year continuously immediately prior to the filing of the petition praying that he be declared free from the custody and control of such habitually intemperate or morally depraved parent or parents.

(d) Whose parent or parents are deprived of their civil rights due to the conviction of a felony, if the felony of which such parent or parents were convicted is of such nature as to prove the unfitness of such parent or parents to have the future custody and control of the child, or if any term of sentence of such parent or parents is of such length that the child will be deprived of a normal home for a period of years.

(e) Whose parent or parents have, in a divorce action, been found to have committed adultery and been divorced on that ground, if the court finds that the future welfare of the child will be promoted by an order depriving such parent or parents of the control and custody of the child.

(f) Whose parent or parents have been declared by a court of competent jurisdiction to be feebleminded or insane, if the State Director of Mental Hygiene and the superintendent of the state hospital of which, if any, such parent or parents are inmates or patients certify that such parent or parents so declared to be feebleminded or insane will not be capable of supporting or controlling the child in a proper manner.

Petition by interested person

233. Any interested person may petition the superior court of the county in which a minor person described in Section 232 resides or in which such minor person is found or in which any of the acts constituting abandonment, neglect, cruelty or habitual intemperance occurred, for an order or judgment declaring such minor person free from the custody and control of either or both of his parents Upon the filing of such petition, the clerk of the court shall immediately notify the juvenile probation officer who shall immediately investigate the circumstances of said minor person and the circumstances which are alleged to bring said minor person within any of the provisions of Section 232. The juvenile probation officer shall render to the court a written report of his investigation with a recommendation to the court of the proper disposition to be made in the action in the best interests of said minor person. The court shall receive such report in evidence and shall read and consider the contents thereof in rendering its judgment.

Setting for hearing, service, etc

234. Upon the filing of such petition, the clerk of the court shall set the same for hearing at a time within 90 days, and a citation shall issue requiring any person having the custody or control of such minor person or the person with whom such minor person is, to appear with such minor person at a time and place stated in the citation. Service of such citation shall be made at least 10 days before the time stated therein for such appearance.

Service and appearance of parents

235. (a) The father or mother of such minor person, if residing within the State, and if his or her place of residence is known to the petitioner, or, if there is no parent so residing, or if the place of residence of such father or mother is not known to the petitioner, then some relative of such minor person, if there is any residing within the State, and if his residence and relationship to such person are known to the petitioner, shall be notified of the proceedings by service of a citation requiring such person or persons to appear at the time and place stated in such citation. In all cases where one parent has relinquished his child for the purpose of adoption, or has signed a consent for adoption as provided in Sections 224m and 226, no notice as herein provided need be given to the parent who has signed such relinquishment or consent. Service of such citations shall be made at least 10 days before the time stated therein for such appearance.

(b) If the father or mother of such minor person or any person alleged to be or claiming to be the father or mother resides outside the State, or if his or her place of residence is not known to the petitioner, the petitioner or his agent or attorney shall make and file an affidavit, and shall state therein the name of the father or mother or alleged father or mother who resides outside the State and his or her place of residence, if known to the petitioner, and the name of the father or mother or alleged father or mother residing in or out of the State whose place of residence is unknown to the petitioner Thereupon the court shall make an order that the service be made by the publication of a citation requiring such father or mother or alleged father or mother to appear at the time and place stated therein, and that said citation be published in a newspaper to be named and designated as most likely to give notice to the father or mother or alleged father or mother to be served once a week for four successive weeks. In case of publication where the residence of a nonresident or absent parent or alleged parent is known, the court shall also direct a copy of the citation to be forthwith served upon such parent or alleged parent by mail by deposit in the post office properly addressed and with the postage thereon fully prepaid, directed to such parent or alleged parent at his or her place of residence. When publication is ordered, personal service of a copy of the citation out of the State is equivalent to publication and deposit in the post office. Service is complete upon the making of such personal service or at the expiration of the time prescribed by the order for publication, whichever event shall first occur.

If one or both of the parents of such minor person be unknown or if the name of either or both of his parents be uncertain, then said fact shall be set forth in said affidavit and the court shall order the citation to be directed to either the father or the mother, or both, of said minor person, naming and otherwise describing said minor person, and to all persons claiming to be the father or mother of said minor person.

Failure to appear

236. If any person personally served with a citation within the State as provided in this chapter fails without reasonable cause to appear and abide by the order of the court, or to bring such minor person before the court if so required in the citation, such failure constitutes a contempt of court.

Guardian ad litem

237. In any proceeding to declare a minor person free from the custody and control of his parents, the court may appoint some suitable party to act in behalf of such minor person and may order such further notice of the proceedings to be given as the court deems proper.

Effect of order

238. Any order and judgment of the court declaring a minor person free from the custody and control of any parent or parents under the provisions of this chapter shall be conclusive and binding upon such minor person, upon such parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such order and judgment, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal from such order and judgment.

SEC. 5. Section 27706 of the Government Code is amended to read:

Duties of public defender

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, he shall defend, without expense to the defendant, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior court at all stages of the proceedings, including the preliminary examination The public defender shall, upon request, give counsel and advice to such person about any charge against him upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in his opinion, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, he shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, he shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon order of the court, he shall represent any person who is not financially able to employ counsel in proceedings under Chapter 4 (commencing with Section 5400) of Part 1 of Division 6 and under Chapter 1 (commencing with Section

5000) of Part 1 of Division 6 of the Welfare and Institutions Code.

(e) Upon order of the court, he shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code when such proceedings are concerned with a person alleged to be or who has been found to be within the description of Sections 601 or 602 of the Welfare and Institutions Code.

SEC. 6. Section 40502 of the Vehicle Code is amended to read:

Place specified for appearance

40502. The place specified in the notice to appear shall be either:

(a) Before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made.

(b) Upon demand of the person arrested, before a municipal court judge or other magistrate having jurisdiction of the offense at the county seat of the county in which the offense is alleged to have been committed or before a magistrate in the judicial district in which the offense is alleged to have been committed.

(c) Before a person authorized to receive a deposit of bail. The clerk and deputy clerks of the municipal and justice courts are persons authorized to receive bail in accordance with a schedule of bail approved by the judges of said courts.

(d) Before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom such appearance is to be made.

SEC. 7. Section 131 of the Code of Civil Procedure is repealed.

Repeal

SEC. 8. Section 131.1 of said code is repealed.

SEC. 9. Section 131.2 of said code is amended to read:

Offices of probation officer and deputy probation officer

131.2. The offices of probation officer and deputy probation officers are hereby created. The term of office of probation officers and deputy probation officers shall be two years from the date of said approval of their several appointments. Such probation officers and deputy probation officers may at any time be removed by the judge approving their appointments in his discretion.

In counties of the first class there shall be one probation officer and not more than five deputy probation officers; in counties of the second class, one probation officer and not more than one deputy probation officer; in all other counties there shall be one probation officer. In any county or city and county additional deputy probation officers may be appointed and their appointment approved or disapproved as hereinbefore

provided, from time to time when in the opinion of the court it may be necessary, provided that they serve without salary.

SEC. 10. Section 131.5 of said code is amended to read:

131 5. It is the intention of Sections 131.2, 131.3, 131.4 and 131.6 that the same probation officers and deputy probation officers shall be appointed and serve under those sections as under Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, and if the provisions of that chapter relating to the manner of appointment, removal or expenses of probation officers and deputy probation officers are in conflict with the provisions of Sections 131, 131.2 and 131.6 of this code, the provisions of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code shall govern as to such matters. Intent and construction

SEC. 11. Section 1407 of the Probate Code is amended to read:

1407. Of persons equally entitled in other respects to the guardianship of a minor, preference is to be given as follows: Preference in appointment as guardian

(1) To a parent;

(2) To one who was indicated by the wishes of a deceased parent;

(3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) To a relative;

(5) If the child has already been declared to be a ward or dependent child of the juvenile court, to the probation officer of said court.

SEC 12. If any provision of this act or the application thereof to any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. Severability clause

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CHAPTER 1617

An act to amend Sections 172a, 172b, and 172d of, and to add Section 172f to, the Penal Code, and to repeal Section 24052 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor July 14, 1961. Filed with Secretary of State July 14, 1961.]

In effect September 15, 1961

The people of the State of California do enact as follows:

SECTION 1. Section 172a of the Penal Code is amended to read:

172a. Every person who, upon or within one and one-half miles of the university grounds or campus, upon which are located the principal administrative offices of any university having an enrollment of more than 1,000 students, more than 500 of whom reside or lodge upon such university grounds or campus, Sale of liquor. Proximity to university campus