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Miscellaneous Review of Selected 1970 California Legislation

University of the Pacific; McGeorge School of Law

Miscellaneous

Employment of Aliens

Labor Code §§1850-1854, 1940-1947 (repealed).
AB 1056; STATS 1970, Ch 652
AB 1057; STATS 1970, Ch 653

Chapter 652 and 653 repeal Labor Code sections which prohibited any private contractor from employing aliens or any other contract involving public works, and also prohibited the state from directly employing aliens.

The recent California Supreme Court Case of *Purdy and Fitzpatrick v. California* [79 Cal. Rptr. 77 (1969)] invalidated Labor Code Section 1850 which prevented aliens from working on any state public works contracts. There were two reasons given for the holding; one that the area in which the state was legislating has been pre-empted by the Federal Government, under Article I, Section 8 of the United States Constitution, (*8 U.S.C. Sections 1101 et seq.*); the other being that the statute violated the 14th amendment of the United States Constitution by denying equal protection of the laws to aliens.

The California Attorney General's Office has rendered an opinion (*69 Cal. Ops. Atty. Gen. 199*) which expands the holding of *Purdy* to other areas of government employment. The Attorney General's Office is of the opinion that citizenship may no longer be a requirement for State or local government employment because of the court's reasoning in *Purdy.*

Some suspect areas are Government Code Section 1031 relating to qualifications for peace officers and Education Code Section 13123 relating to teacher's certificates both of which require citizenship as a criterion.

References:

1) 48 OPS. ATTY. GEN. 129 (1966).
2) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment* §12 (7th ed. 1960); (Supp. 1969).
3) Murray, *The Right to Equal Opportunity in Employment,* 33 CAL. L. REV. 388 (1945).

Fair Employment Practices

Labor Code §§1411, 1412, 1419, 1420, 1432 (amended).
AB 22; STATS 1970, Ch 1508

Chapter 1508 was passed to guarantee equal opportunities to women who are presently discriminated against because of their sex. The declared intent of the legislation is to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, or sex.

This legislation applies to employers with five or more employees, except family, social, fraternal, charitable, educational and religious associations or corporations not organized for private profit [*Labor Code Section 1413 (d), (e)*]. This act was not passed to affect federal legislation, Civil Rights Act of 1964, Title VII, as only employers of twenty-five or more employees engaged in or affecting interstate commerce are effected by the federal legislation.

The enactment declares many practices of employment, wages, and promotional activities as based upon sex discrimination to be illegal. Should such illegal activities occur they are to be reported by involved individuals to the Labor Commission for action. The Labor Commission is also empowered to function as may be required to insure that the intent of the legislation may be accomplished.

This enactment was amended to read that nothing within its provisions would be construed to repeal any of the provisions of the Civil Rights Act and protective legislation for women which is now in existence. This was done so that such practices as a prohibition of women lifting twenty-five pounds or working more than eight hours would not be superseded. There is now a study being made on the function of such protective laws for women.

References:

1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §157 (7th ed. 1960), (Supp. 1969).
2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1968 CODE LEGISLATION, 183; CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION, 148.
3) Rosen, *The Law and Racial Discrimination in Employment*, 53 CAL. L. REV. 729 (1965).

Elections; affidavit of registration

Elections Code §§321.5, 321.7 (new); 310, 321 (amended).
AB 313; STATS 1970, Ch 148

Chapter 148 revises the procedure for allowing convicted felons to vote. The felon is now permitted to sign an affidavit stating that he has not been convicted of a felony which would disqualify him from voting.

In *Otsuka v. Hite*, (64 Cal. 2d 596) the California Supreme Court declared that not all felony convictions disqualify an individual from voting. In an effort to allow those convicted felons who were qualified to vote to exercise their right, Sections 310 and 321 were amended in 1969. Under the 1969 change, the felon was required at the time of registration to state whether he had ever been convicted of a felony. The determination of whether the specific felony was one that disqualified the felon from voting was then left to the county clerk.

Under the 1970 amendments to Sections 310 and 321 the felon must merely affirm by affidavit that he has never been convicted of a disqualifying felony. If he has any doubts about his qualifications, *i.e.*, whether his conviction is one that would disqualify him from voting, the deputy registrar must provide him with a written statement that not all felony convictions disqualify him from voting and further advise him to contact the county clerk to obtain a legal determination of his eligibility to register and vote. If the county clerk determines that his conviction disqualifies him from voting, he has a right to file in superior court for a judicial determination of his eligibility (*Section 350*).

Under Elections Code Section 389, (*not affected by Chapter 148*) the county clerk is required to examine local criminal records and cancel the registration of anyone finally convicted of "an infamous crime or of the embezzlement or misappropriation of public money." The history of Section 389 is interesting. Prior to 1880, the Section enumerated all of the disqualifying felonies. This enumeration was deleted in 1880 and the general term "infamous crime" was substituted. A subsequent attempt at definition of this term was made in a 1914 case, (*Matter of Application of Westenberg*, 167 Cal. 309). Many critics today contend that the use of a general term such as "infamous crime" may result in the violation of a felon's constitutional rights under the due process and equal protection clauses of the fourteenth amendment because it may lead to uneven application of the rule by the county clerk. Persons convicted of the same crime may be permitted to register and vote in one county and be disqualified by the clerk of

another county.

Section 389 will still apply to all applications for registration including the applications for registration by felons submitted pursuant to Sections 310 and 321.

Confidential Medical Records; mental health

Welfare and Institutions Code §5328 (amended).
AB 541; STATS 1970, Ch 593

Chapter 593 modifies the right of a physician to disclose information from a patient's medical records. Section 5328 provides that all information and records obtained in the course of providing services under Sections 5000-5767 (*Community Mental Health Services*), Sections 6000-6825 (*Admissions and Judicial Commitments to Mental Hospitals and Institutions*), and Sections 7000-7707 (*Mental Institutions*) shall be confidential. Information may be disclosed only:

(1) to qualified professional persons in the course of treatment or conservatorship proceedings;

(2) to persons designated by the physician with the approval of the patient. (Before the amendment this type of disclosure could be made only during the six month period following completion of the records).

(3) to obtain aid or insurance for the patient;

(4) to any person designated by a guardian or conservator, as long as no confidence given by a member of the patient's family is infringed upon;

(5) for research purposes under appropriate regulations designed by the Director of Mental Hygiene.

Provision (2) above modified by this amendment removes the six month limitation and now permits disclosure by the physician, with the patient's approval, anytime after completion of the records. As before, no professional person is required to reveal any confidential information given by members of the patient's family.

References:

1) CAL. WELF. & INST. CODE §5366; CAL. CODE CIV. PROC. §1892; CAL. GOV'T CODE §§6250 *et seq.*; CAL. EVID. CODE §§990 *et seq.*, 1010 *et seq.*
2) 13A MCKINNEY'S CAL. DIG. *Insane & Incompetent Persons* §22.1 (1962); 20 MCKINNEY'S CAL. DIG. *Records* §§29 *et seq.* (1955).

Hospitals; emergency care

Health and Safety Code §1407.5 (amended).

SB 1410; STATS 1970, Ch 674

Chapter 674 expands the degree of emergency services that a hospital which maintains and operates an emergency department is required by statute to provide. Prior to this amendment, any hospital licensed under Division 2 of the Health and Safety Code (*this includes any type of institution, public or private, organized for the care and treatment of human illness; see Section 1401*) was required to give emergency services or care, when requested, to any person in danger of loss of life. As amended, emergency care must also be given any person in danger of serious illness or injury even if he is not in danger of loss of life.

Section 1407.5 exempts the hospital, its employees, any physician, and under this amendment, any podiatrist or dentist from liability for refusal to render emergency services if the refusal is justified. The refusal may be justified if reasonable care has been used in determining the condition of the person or in determining the appropriateness of the facilities for treatment. Any person receiving emergency care is still responsible for the charges for service and care rendered, provided he is able to pay.

The termination date of the statute has been eliminated. Previously, this Section was to be operative only until the 61st day after the final adjournment of the 1970 Regular Session of the Legislature.

References:

1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1968 CODE LEGISLATION, 175.
2) Annot., 51 A.L.R.2d 953 (1957).

Mentally Disordered Sex Offenders; involuntary commitment

Welfare and Institutions Code §§6307, 6315, 6316, 6318, 6323 (amended).

AB 1054; STATS 1970, Ch 685

Section 6307 requires the judge to appoint not less than two nor more than three psychiatrists to examine the person in order to ascertain whether the person is a mentally disordered sex offender. Previously, at least one of the psychiatrists was required to be from the medical staff of a state hospital or a county psychiatric hospital. This amendment deletes this requirement.

Prior to commitment, a hearing must be held in the superior court to determine whether the person is a mentally disordered sex offender (*Section 6305 et seq.*). Previously, Section 6315 provided that if the person was determined to be a mentally disordered sex offender, or if he was determined to be a mentally disordered sex offender, but would not benefit by treatment, the person was to be returned to the court in which the case originated for such disposition as the court deemed necessary and proper. As amended, Section 6315 now provides that a person shall be returned to the court in which the case originated *only* when he is found not to be a mentally disordered sex offender.

Section 6316 previously required a 90 day observation period after the hearing to determine whether treatment in a hospital would be beneficial. A decision would be made after the 90 days as to whether commitment was required. This 90 day observation period has been deleted by this amendment and now the determination is made after the psychiatrists examine the person. If the person is found to be disordered, and would benefit from treatment, the court may return the person to the criminal court for further disposition or in the alternative may commit the person to a state hospital for an indeterminate period.

If he is disordered but will not benefit from treatment, the person is returned to the court in which the criminal charge was tried to await further action on the criminal charge, however, the trial court has the option of recertifying the person to the superior court for commitment in a state institution for care and treaatment if, as required under Section 5325, he is found to be dangerous to society.

Section 6318 provides that if the person to be committed for treatment as a mentally disordered sex offender, or any friend in his behalf, is dissatisfied with the commitment order, he may within 15 days (previously 10 days) demand the question of his mental disorder be tried by a judge or by a jury in the superior court of the county in which he was committed.

Section 6323 as amended merely revises the method of apprising the hospital of the commitment and the pending proceedings.

Reference:

1) WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Judgment and Attack in Trial Court* §§583-599 (1963), (Supp. 1969).

Unprofessional Conduct; unnecessary medical services or treatment

Business and Professions Code §§2361.5, 3108, 3600-5 (new); 1680, 2660, 2960 (amended).
AB 1192; STATS 1970, Ch 1318

The clearly excessive prescribing or administering of drugs or treatment, the use of diagnostic procedures, or the use of diagnostic or treatment facilities which are detrimental to the patient as determined by the customary practice and standards of the local community of licenses (persons authorized to practice one of the medical occupations effected) is now defined as unprofessional conduct for various practitioners of the healing arts in California.

This definition applies to dentists (*Section 1680*), medical practitioners (*Section 2361.5*), psychologists (*Section 2960*), optometrists (*Section 3108*) and osteopaths (*Section 3600-5*).

Section 2660, (*pertaining to physical therapists*) as amended, makes no reference to diagnostic procedures or treatment facilities. It adds to the list of prohibited procedures the clearly excessive administering of treatment or use of treatment or use of treatment facilities to the detriment of the patient as determined by the customary practice and standards of the local community of licenses.

Physicians' Assistants

Business and Professions Code §§2377.5, 2510-2522 (new).
AB 2109; STATS 1970, Ch 1327

Chapter 1327 adds Article 18 (commencing with Section 2510) to Chapter 5, Division 2 of the Business and Professions Code relating to "Physicians' Assistants." Article 18 creates a new classification of medical employee labeled "Physicians' Assistant." The purpose of this article is to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified "physicians' assistants" where such delegation is consistent with the patient's health and welfare. Sections 2510-2522 set out the guidelines for the establishment and regulation of programs to train persons to perform medical services under the supervision of a physician or physicians. The article also enumerates areas wherein such medical services may not be performed. The physician(s) desiring to supervise a "physicians' as-

sistant" are required to gain approval of the Board of Medical Examiners of the State of California. Section 2518 provides that any person other than one who has been approved by the board who holds himself out as a "physicians' assistant," or who uses any other term indicating or implying that he is a physicians' assistant, is guilty of a misdemeanor. Section 2520 sets out requirements for the board to report to the legislature no later than January 1, 1972, on the implementation and disposition of programs to train physicians' assistants. Section 2520.5 provides a fee schedule for applications required from persons setting up such programs, those desiring to supervise physicians' assistants, applicants seeking program approval by the board, and renewal applications.

Chapter 1327 also adds Section 2377.5 to the Business and Professions Code, stating that the use, supervision, or employment by a physician of a "physicians' assistant," as defined in Section 2511, without the approval of the Board of Medical Examiners of the State of California, constitutes "unprofessional conduct." The addition of this section strengthens the control over utilization of "physicians' assistants" by requiring physicians to comply with the requirements of the Board of Medical Examiners or face charges of "unprofessional conduct."

Education; busing of students

Education Code §1009.5 (new).

AB 551; STATS 1970, Ch 1039

Chapter 1039 adds Section 1009.5 to the Education Code to prohibit the governing board of a school district from requiring any student or pupil to be transported for any purpose or for any reason without written permission of the parent or guardian. Presently, there is no statutory law in California regulating or prescribing any transportation policy for school districts. This matter has been left to the discretion of local school boards.

The broad application of this statute will require parental consent for transporting students to participate in athletic events, field trips, other extracurricular activities, or for emergency medical care, etc. In addition parental consent will be required for any school directed program for achieving racial balance in schools.

While Section 1009.5 does not on its face relate to busing for the purpose of achieving racial or ethnic balance within a school district, its

effect in this regard could be significant and subject an otherwise valid statute to attack on grounds that it violates the equal protection clause of the 14th amendment.

If busing to achieve a racial balance requires parental consent, school districts will almost certainly be rendered powerless to use a system of inter-school busing to achieve balanced integration.

With the overruling of the "separate but equal" doctrine of *Plessy v. Ferguson* by *Brown v. Board of Education*, it has been recognized that the maintenance of racially segregated schools by the states violates the equal protection clause of the fourteenth amendment. Since the holding of the second *Brown* case and the enunciation of the "with all deliberate speed" doctrine, the problem has been one of deciding whether the school board has fulfilled its responsibility "to achieve a system for determining admission to the public schools on a non racial basis . . . ." [349 U.S. 294, 300-301 (1955)]. The lower courts have reviewed many local plans for integration and have stricken several attempts to circumvent the decisions in the two *Brown* cases through affirmative state actions. [*See With All Deliberate Speed: Legislative Reaction and Judicial Development 1956-1957*, 43 VA. L. REV. 1205 (1957)].

The question presented by busing is one of whether the state has an affirmative duty to take all steps necessary to achieve racial balance in public schools where mere inaction has resulted in racial imbalance. The only federal case which seems to directly reject busing as a requirement of the *Brown* II mandate is *Deal v. Cincinnati Board of Education*, (369 F. 2d 55 1966)) where the court stated, "We read *Brown* as prohibiting only enforced segregation."

The *Deal* case seems to carve out a special limitation of *Brown II* in light of the application of the "with all deliberate speed" doctrine to direct state government resistance, where facts indicated that segregation was fostered by state action: e.g., *Cooper v. Aaron* [358 U.S. 1 (1958)] action by Governor Faubus at Central High School to prevent integration; *Allen v. County School Board* [207 F. Supp. 349 (1962)] prohibiting the closure of public schools to void the law; *Griffin v. County School Board* [377 U.S. 218 (1964)] prohibiting state aid to private schools to foster segregation; and in application to *indirect* government resistance or inaction: *Rogers v. Paul* [382 U.S. 198 (1965)] in holding that an Arkansas system that integrated schools at a rate of one grade a year was not in conformity with the requirements of the Constitution; *Green v. County School Board* [391 U.S. 430 (1968)] holding that a "freedom-of-choice" student transfer plan was

ineffective as a tool of desegregation for the school district and not consistent with ". . . the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." (at 437-38); *Monroe v. Commissioners* [391 U.S. 450 (1968)] holding that the Jackson, Tennessee, "free transfer" plan of pupil allocation patently operated as a device to allow "resegregation" of the races and hence violated the equal protection clause.

It seems reasonable to conclude that one of the most expedient methods of achieving a racial balance in public schools would be through busing of negro and white students. If Section 1009.5 prevents the school districts from utilizing this procedure, the statute's constitutionality under *Brown* and its progeny would seem questionable.

In addition, perhaps the analysis of the Court in *Reitman v. Mulkey* [387 U.S. 369 (1967)] may be analogously applied to Section 1009.5. In *Reitman* the Court affirmed the California court in striking down article I, section 26 of the California Constitution which was passed by a statewide ballot in 1964 (Proposition 14). The effect of that constitutional provision was to prohibit any state action to interfere with the "right of any person" to refuse to lease, rent, or sell his real property to any other person as he chooses, nullifying the Rumford Fair Housing Act. The Court reviewed and accepted the California court's analysis that the provision had the effect of establishing as a state policy, the right to discriminate based on race and involved the state in private discrimination.

As with Proposition 14, Section 1009.5 would impose a serious limitation upon state and local government agencies desiring to take affirmative action to eliminate pockets of racial segregation in public schools brought about by custom of the neighborhood schools. In addition, as with *Reitman*, the state court by examining the record for legislative intent, would find that the original bill, A.B. 551 as introduced in the 1970 Regular Session, included the words, "No governing board of a school district shall bus any student for the purpose of integration without the written permission of the parent or guardian." The court might well construe in Section 1009.5, a legislative intent to prevent the state from eliminating racial discrimination, "root and branch" in public schools by a mandatory student transfer program of busing. The enactment of this Section may establish the state policy of rejecting the affirmative duty of the state, required by the equal protection clause, to remove racial imbalance from its public schools.

Uniform Gifts to Minors

Civil Code §§1155, 1156, 1158, 1160 (amended).
SB 752; STATS 1970, Ch 584

In 1959, California adopted the Uniform Gifts to Minors Act. This Chapter incorporates into the California act various changes made by the 1965 revision of the Uniform Act, and brings the California law more closely in line with the Uniform Law.

Section 1155 establishes the definitions of terms as used in the Uniform Gifts to Minors Act. Several definitions are added or changed as follows:

(a) A custodian now includes a successor custodian and is defined as a person so designated in a manner prescribed in this article.

(b) The term financial institution is added to the code and is defined as a bank, savings and loan association or credit union regulated by law.

(c) A guardian of a minor means the general guardian, guardian, tutor, or curator of his property or estate appointed or qualified by a court of this state or another state. The words "appointed or qualified by a court of this state or another state" are added. The word "person" is deleted from the subject matter of the guardian's control (*control is now over property or estate*).

Section 1156 (*manner of making gift*) is merely technically amended to substitute the term "financial institution" for "bank".

Section 1158 (*powers and duties of custodian*) also makes technical amendments similar to Section 1156. Further, Section 1158(j) is amended to read: if the subject of the gift is a life or endowment insurance policy or annuity contract, the custodian (1) in his capacity as custodian, has all the incidents of ownership in the policy or contract to the extent as if he were the owner except that the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and (2) may pay premiums on the policy or contract out of the custodial property. Previously, the Section made no distinction between any policy or contract on the minor's life, and any policy or contract of another person.

Section 1160 (*exemption of third persons from liability*) also is technically amended. Further, it is additionally amended to add that no person representing an insurance company or financial institution

acting on any instrument of designation of a successor custodian is responsible for investigating the validity of the instrument of designation.

Reference:
1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Personal Property* §§53, 54, 55 (7th ed. 1960), (Supp. 1969).

Control of Explosives

Health and Safety Code §§12007, 12102.1, 12105.1, 12105.2 (new); 12000, 12005, 12020, 12081, 12086, 12087, 12101, 12102, 12105-12108, 12111, 12112, 12121-12124, 12303, 12351 (amended); 12302, 12304, 12306 (repealed); Penal Code §§12303.1-12303.5, 12312 (new); 12303 (amended); Vehicle Code §31600 (amended).

AB 970; STATS 1970, Ch 741

AB 1003; STATS 1970, Ch 771

SB 1350; STATS 1970, Ch 1421

AB 2057; STATS 1970, Ch 1425

(*Effective September 18, 1970*)

Former legislation on explosives has been directed primarily toward safety rather than control. The Attorney General's office initiated this legislation to provide better control over explosives. This purpose is accomplished by expanding the definition of explosives; providing that theft or loss of explosives be reported to the State Bureau of Criminal Identification and Investigation; requiring the State Fire Marshall to adopt regulations stressing the security of explosive storage facilities; requiring field records by legitimate users; providing that no permit be issued for storage of explosives without an inspection of the storage facility; requiring that a permit for explosives not be issued until one week after application (except in emergencies) and that a copy of each permit be valid only until the acts authorized by the permit are performed, but never longer than one year from date of issuance.

The Act makes it a felony to possess the substance or material with the intent to make a destructive device without obtaining a valid permit. It is also a felony to willfully or recklessly possess or place a destructive device in or near a place frequented by human beings.

Reference:
1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Public Peace and Welfare* §774 (1963), (Supp. 1969).

Vehicle; accident reports
Motor Vehicles; duty to report accidents

Vehicle Code §20008 (amended).

SB 180; STATS 1970, Ch 224

This amendment to Section 20008 changes accident reporting procedures for persons involved in automobile accidents which result in death or bodily injury. Prior to this amendment, persons involved in such an accident were required to report it within 24 hours to the California Highway Patrol, or, if the accident occurred in a city, to the city police department. Under this change, if the accident occurs outside a city a report is still required to be made to the California Highway Patrol. However, if the accident occurs within a city, the report may be made to either the Highway Patrol or to the city police. If the agency which receives the report is not responsible for investigating the accident, it shall immediately forward the report to the law enforcement agency which is responsible for investigating the accident.

Before the amendment, every police department was required to forward copies of all the accident reports it had received the previous month to Highway Patrol in Sacramento. Now the only reports required to be forwarded by a police department are those it is responsible for investigating.

As the bill was originally introduced, it gave jurisdiction over all freeways, whether within a city or not, to the Highway Patrol. This change of jurisdiction over freeways in a city from the city police to the Highway Patrol was amended out of the bill, leaving only the changes in administrative procedures.

Legislature; statutory construction

Government Code §9605 (amended).

AB 1996; STATS 1970, Ch 757

This amendment provides that the statute which is enacted last (the chapter with the highest number) will be examined to determine which of two or more chapters enacted upon the same code sections during the same legislative session shall be the law.

Section 9605 states that when the same section or part of a statute is amended by two or more acts enacted at the same session, any portion of an earlier one which is omitted from a subsequent act shall be deemed to have been omitted deliberately. As provided by this amendment, if

such statute does not have an express provision to the contrary a conclusive presumption arises that the last statute is to be the law. If there is a statement of legislative intent in the last statute, that statement shall be determinative of which statute is to become the law.

Prior to this amendment of Section 9605 there was some confusion as to which statute was to be declared law if a prior enacted statute—one with a lower chapter number—contained a declaration of legislative intent and the subsequent enacted statute contained no such declaration. This amendment clears the previous ambiguity.

Professions and Vocations; attorneys

Business and Professions Code §§6060, 6062 (amended).
SB 292; STATS 1970, Ch 251

This Chapter deletes the residence requirement for admission to the California Bar for both in-state and out-of-state applicants. The old requirement was two months.

It was felt that the residence requirement had little relevance to qualifications, and due to the greatly increased mobility and the difficulties in defining a resident, the *requirement was only marginally enforceable.*

Youth Authority; powers over persons committed

Welfare and Institutions Code §1766 (amended).
AB 509; STATS 1970, Ch 477

This amendment to Section 1766 adds a new alternative available to the Department of the Youth Authority in dealing with persons committed to its custody. The Authority may now modify an order of discharge if conditions indicate such is desirable and will be to the benefit of the person committed.

Generally, Section 1766 sets out alternative provisions for the State Department of the Youth Authority when dealing with a person committed to its custody. The Department has descretion to do any of the following with a person who had been committed: 1) Permit his liberty under supervision, and upon such conditions as the Authority believes conducive to law abiding conduct; 2) Order his confinement under such conditions as the Authority believes best designated

for the protection of the public; 3) Order reconfinement or renewed release under supervision as often as conditions indicate to be desirable; 4) Revoke or modify any order except an order of discharge as often as conditions indicate to be desirable; or 5) Discharge the person when the Authority is satisfied such discharge is consistent with the protection of the public.

References:

1) CAL. WELF. & INST. CODE §§1711.3, 1738, 1760, 1780-1783, 1802.
2) 1 OPS. ATTY. GEN. 173 (1943).
3) 9A MCKINNEY'S CAL. DIG. *Delinquent, Dependent, and Neglected Children* §§7 *et seq.*, 31 (1963).

Youth Authority; discharge of persons

Welfare & Institutions Code §§1770.1 (new); 1800 (amended).
AB 452; STATS 1970, Ch 371

New Section 1770.1 provides that every person committed to the California Youth Authority who escapes or attempts to escape from the institution or facility to which he is confined (*a misdemeanor; see Section 1768.7*) may be committed to the Authority. Following such commitment the Authority may discharge the person either upon the expiration of a two year period of control, or, when the person reaches his 23rd birthday, or, six months after his discharge from the commitment he was serving at the time of his escape. This Section will not apply, however, if the committing court orders further detention pursuant to Section 1800 et seq.

Section 1800 provides that whenever the Youth Authority Board determines that discharge of a person from control of the Authority would be physically dangerous to the public because of the person's mental or physical deficiency, disorder, or abnormality, that the Board may make application to the committing court for an order directing that the person remain subject to the control of the Authority.

Chapter 371 makes a mere technical amendment to Section 1800 by adding the reference to new Section 1770.1 relating to terms of commitment. Prior to the addition of Section 1770.1, a person who escaped or attempted to escape could be found guilty of a misdemeanor (*Section 1768.7*). If convicted, the person could be committed to the Youth Authority until his 23rd birthday or until the expiration of a two year period of control (*Section 1770*). This resulted in the situation where an escapee who was almost 23 and had already served two years

would not be penalized for an escape absent a court order as prescribed under Section 1800.

The effect of the new Section 1770.1 is to require that a person who is convicted for an escape or attempted escape from an Authority facility must be held for a minimum of an additional six months because of his escape.

Narcotics Addiction; involuntary commitment and treatment

Welfare and Institutions Code §§3050, 3051, 3100 (amended).

AB 1590; STATS 1970, Ch 749

Chapter 749 provides for involuntary commitment of a narcotics addict whose probation has been revoked. Originally, involuntary commitment was permitted only upon conviction of an offense (misdemeanor or felony).

Section 3050 allows a municipal or justice court to certify to the superior court a defendant convicted of *any* crime if it appears that the defendant is addicted to or in imminent danger of becoming addicted to narcotics. Along with the certificate the lower court must order the district attorney to file a petition with the superior court for commitment of the defendant to the State Department of Corrections facility for narcotics treatment.

The superior court must have the defendant examined by two physicians. If their report indicates no addiction, or danger of addiction, the defendant must be returned to the justice or municipal court for such proceedings as that court deems necessary. If addiction or danger of addiction is indicated, the defendant will receive a hearing before the superior court in compliance with Sections 3104, 3105, 3106, 3107. These sections define the defendant's rights to counsel, cross-examination of witnesses, and issuance of subpoenas. This hearing may result in his involuntary commitment as a narcotics addict.

This amendment to Section 3050 allows a justice or municipal court to utilize this procedure following revocation of probation for conviction of any crime previously granted whether or not sentence has been imposed. Previously the procedure was allowed only upon the original conviction.

Section 3051 permits a similar procedure for a defendant convicted of any crime in a superior court (rather than in a justice or municipal court); and a corresponding change is made in that section.

Eeferences:

1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1967 CODE LEGISLATION 247.
2) Belton, *Civil Commitment of Narcotics Addicts in California; A Case History of Statutory Constitution*, 19 HAST. L.J. 632 (1968). Note, *California Narcotic Rehabilitation: De Facto Prison for Addicts* 1 SAN DIEGO L. REV. 58 (1964); Wood, *Preventive Law: The California Rehabilitation Center* 2 SAN DIEGO L. REV. 54 (1965).
3) 13A MCKINNEY'S CAL. DIG. *Insane and Incompetent Persons* §12.5 (1962); 18C MCKINNEY'S CAL. DIG. *Poisons* §8.5 (1955).

Involuntary Detention Proceedings

Welfare and Institutions Code §§708, 5619 (new); 654, 5225, 5227, 5230, 5654.5 (amended).

SB 843; STATS 1970, Ch 1129

The purpose of this 1970 act was to put special provisions in the Welfare and Institutions Code allowing juvenile courts, probation officers working with juveniles who had not yet been brought before the court, and adult courts to make increased use of the Short-Doyle plan for Community Mental Health Clinics.

Under this act, a juvenile court judge may continue a hearing involving a minor who may be a danger to himself or others as a result of the use of narcotics or dangerous drugs, ordering the minor to an approved community facility for a 72-hour evaluation.

At the end of this time, upon written report of the professional person in charge, or upon completion of a 14-day intensive treatment if the minor has been certified for such treatment, the minor 1) shall be released if the court proceedings have been dismissed; 2) may be referred for further care on a voluntary basis; 3) or may be subject to the juvenile court proceedings. The cost of the evaluation or treatment shall be reimbursed by the state according to Part 2 of Division 5 of the Welfare and Institutions Code (*Sections 5600 et seq.*).

The prior power of a probation officer to work with a juvenile for 6 months prior to petition to the court or during impending involvement with the juvenile court, was extended by an addition to Section 654 to the effect that the probation officer may now refer the juvenile for treatment for the misuse of certain dangerous drugs to a county mental health service or other appropriate community agency. Expenditures for these services are also to be covered under the Short-Doyle Plan (*See Welfare and Institutions Code Sections 5225 et seq.*).

The prior procedures for court-ordered evaluation for persons impaired by chronic alcoholism were extended by the 1970 act to include

also those criminal defendants who appear, as a result of the use of narcotics or restricted dangerous drugs, to be a danger to others, themselves, or to be gravely disabled.

In essence, this allows the Short-Doyle Plan to be used for the evaluation and treatment of adult drug offenders as well as chronic alcoholics, whether an adult or minor.

Reference:

1) Comment, *Civil Commitment of the Mentally Ill in California: 1969 Style*, 10 SANTA CLARA LAW. 74 (1969).

Methadone Maintenance Programs

Health and Safety Code §§11655.7-11655.9 (new); 11391, 11393, 11394, 11395 (amended); Welfare and Institutions Code §§5617, 5618 (new).

AB 232; STATS 1970, Ch 1405

SB 1271; STATS 1970, Ch 1422

(*Effective September* 18, 1970)

Chapter 1422 establishes use of methadone in the continuing treatment of narcotic addiction. However, methadone may be used only in those programs either for inpatient or outpatient treatment, that are approved by the newly created Research Advisory Panel on either an inpatient or outpatient basis, or both.

The Chapter limits the types of institutions in which methadone may be used to treat patients. Further, the panel may not approve the establishment of a methadone maintenance program without a written application by the treatment facility which meets evaluative criteria required by the panel. Also, the Department of Mental Hygiene is given certain responsibilities. These include program approval, evaluations, guidelines, and reports to the legislature.

Section 11655.7 as added by Chapter 1422 provides that in addition to the duties authorized by other provisions, the panel shall be responsible for approving maintenance programs established by the county mental health program.

Drug Education; persons under court supervision

Health and Safety Code §§11715.9, 11901.1 (new).

AB 1782; STATS 1970, Ch 1130

Chapter 1130 provides for education and treatment of all those

placed on probationary release after a conviction for possession of any narcotic (*Section 11715.9*) or possession of any restricted dangerous drug (*Section 11901.1*). The program will be provided by local community agencies and it is left to the discretion of the court whether the individual will receive the benefits of the program.

The measure also allows a court, in the case of a minor, to order the parents or guardians to participate in the drug education program to the extent that it will aid the education or treatment of the minor.

Reference:

1) Comment, *Control and Treatment of Narcotic Addicts: Civil Commitment in California*, 6 SAN DIEGO L. REV. 35 (1969); Comment, *Narcotic Addiction: A Continuing Problem*, 19 SYRACUSE L. REV. 768 (1968).

Discharge of Narcotic Addicts

Welfare and Institutions Code §§3151, 3200 (amended).

AB 472; STATS 1970, Ch 167

AB 473; STATS 1970, Ch 168

Chapter 167 and 168 change the procedures for release of a narcotics addict from the California Rehabilitation Center. Chapter 167 amends Section 3151 to delete the mandatory six-month period of observation and treatment prior to release. Chapter 168 amends Section 3200 to authorize discharge of an addict after a minimum of two years commitment rather than the previous minimum of three years.

The California Rehabilitation Center and its branch facilities treat persons who are addicted to or are in imminent danger of addiction to narcotics.

Any peace officer or health officer who has reasonable cause to believe that a person is addicted to or in imminent danger of being addicted to narcotics may take that person, if it is in his best interests, to a medical institution designated by the county board of supervisors for a medical examination. If, after examination, the examining physician believes the patient is addicted, or is in imminent danger of addiction, the physician or superintendent in charge of the designated county hospital may petition the superior court for commitment of the person to the Department of Corrections for confinement in a rehabilitation facility.

Also, any person other than a peace or health officer, who believes a person is addicted to narcotics, or is in imminent danger of becoming addicted, may report his belief to the district attorney, who, upon a show-

ing of probable cause, may petition the superior court for commitment of the person to the Department of Corrections for confinement in a rehabilitation center facility.

The purposes of commitment are treatment of the patient and protection of the general public. (*See generally*; *Welfare and Institutions Code Sections 3000, 3100, 3100.6 and 3300*). Formerly, under Section 3151, an addict was required to be held for a minimum of six months. Under this amendment it is within the discretion of the Director of Corrections whether or not a patient is sufficiently recovered to warrant outpatient status.

The reasons for the deletion of the six months requirement are threefold. The center, due to its increased knowledge believes that it can make a determination as to suitability for release in less than six months. Further, it is hoped that the realization that the patient does not have to stay for six months will encourage voluntary commitment to the center. Also, the earlier discharges will save unnecessary expenditures.

Previously, under Section 3200, the patient had to remain in outpatient status for a minimum of three years before he could be removed from outpatient status.

The reason the three year requirement was changed to two years was that it has been found that most addicts will return to their drug habit within one year after discharge, if at all.

The deletion of the third year will save the center time and money.

References:

1) 2 WITKIN, CALIFORNIA CRIMES, *Crimes Against Public Peace and Welfare* §682 (1963), (Supp. 1969).
2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1969 CODE LEGISLATION 228; CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1967 CODE LEGISLATION.