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Juveniles

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Juveniles; boot camps for delinquent minors

Welfare and Institutions Code § 1820.47 (new).
AB 3731 (Umberg); 1994 STAT. Ch. 1256

Existing law instructs the Department of Youth Authority[1] to work with counties to develop boot camp programs.[2] Chapter 1256 authorizes counties to contract with the Military Department[3] to establish and operate boot camps for minors who are first-time offenders.[4]

INTERPRETIVE COMMENT

Chapter 1256 addresses the rising concern regarding violent crimes committed by and against minors.[5] Boot camp is seen as an effective alternative to incarceration, especially for first-time offenders.[6] Critics of boot camp programs, however, doubt their effectiveness and are concerned about the potential abuse of the offenders.[7]

Christina L. Wentworth

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1. *See* CAL. WELF. & INST. CODE §§ 1710-1715 (West 1984) (creating the California Department of Youth Authority and defining its function and authority).

2. CAL. WELF. & INST. CODE § 1820.45 (West Supp. 1994); *see id.* (allowing boot camps to be developed either separately or as part of existing juvenile ranches, camps, or forestry camps); *cf.* ARK. CODE ANN. § 12-28-703 (Michie Supp. 1993) (calling for the Arkansas Board of Correction to develop a boot camp program to divert offenders from long-term imprisonment); W. VA. CODE § 25-6-5 (Supp. 1994) (establishing a boot camp program for juveniles in West Virginia); Department of Health & Rehabilitative Servs. v. R.S., 567 So. 2d 532, 532 (Fla. 1990) (discussing the requirements for a juvenile's eligibility to attend a boot camp under Florida law).

3. *See* CAL. MIL. & VET. CODE §§ 50-54 (West 1988) (creating the California Military Department).

4. CAL. WELF. & INST. CODE § 1820.47 (enacted by Chapter 1256); *see* SENATE FLOOR, COMMITTEE ANALYSIS OF AB 3731, at 2 (Aug. 15, 1994) (noting that although boot camps have been successful, state and local officials have few resources to develop such programs; therefore a need exists for the creation of alternatives such as those provided by the Military Department).

5. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 3731, at 2 (Aug. 15, 1994); *see* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 3731, at 2 (June 2, 1994) (discussing how the rise in crime among juveniles has forced the re-examination of approaches to the juvenile justice system).

6. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 3731, at 2 (June 2, 1994); *see* Edward I. Koch, *For Anti-Drug Boot Camps*, N.Y. TIMES, May 24, 1989, at A31 (discussing the merits of using military bases that are scheduled for closing or are partially deactivated to create boot camps for first-time drug offenders); Chi Chi Sileo, *Men Forced to March to Different Drummer; Boot Camps Try to Turn Offenders Around*, WASH. TIMES, July 6, 1994, at A9 (describing the Toulson Correctional Boot Camp in Baltimore created for young adult, first-time offenders convicted of non-violent crimes). *But see* Sean McConville, *Britain's Boot Camp Detention Hasn't Worked*, N.Y. TIMES, June 5, 1989, at A16 (describing the British use of military boot camps for criminals as completely without merit).

7. Sileo, *supra* note 6, at A9; *see id.* (citing a study reporting that boot camps are ineffective and have the same rate of recidivism as felons released from traditional prisons, and discussing problems of serious abuse that have occurred in boot camps in Wisconsin and Oklahoma).

Juveniles; enforcing curfew laws—detaining violators

Welfare and Institutions Code § 625.5 (new).
AB 3797 (Umberg); 1994 STAT. Ch. 810

Existing law sets forth those conditions which bring a minor within the jurisdiction of the juvenile court and which may qualify a minor as a ward of the court.[1] These conditions include the violation of curfew laws.[2] Chapter 810 authorizes police to detain a minor who is reasonably believed to be in violation of local curfew ordinances and to return the minor to his or her residence.[3] Chapter 810 also provides that when a minor is so detained and returned, the minor and/or the minor's parents or legal guardian may be assessed a fee to reimburse the local authorities for the expense incurred in enforcing the curfew ordinance.[4]

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1. CAL. WELF. & INST. CODE § 601 (West 1984); *see id.* (providing that a minor may be made a ward of the court when the minor has committed an offense, is habitually truant, or is beyond the control of his or her parents or guardians); *see In re* G., 28 Cal. App. 3d 276, 282, 104 Cal. Rptr. 585, 596 (1972) (reporting that when a parent is responsible for a breakdown of control, the child may not be placed as a ward of the court). *See generally* Teri H. Ashby, Comment, *Effects of Recent Legislation on the California Juvenile Justice System*, 17 U.S.F. L. REV. 705, 719 (1983) (discussing the benefits of the California juvenile system); Comment, *Juvenile Law—A Potential for California Change*, 2 PAC. L.J. 737 (1971) (discussing the jurisdiction of juvenile courts over minors with delinquent tendencies).

2. CAL. WELF. & INST. CODE § 601(a) (West 1984); *see id.* (providing that any person under 18 years of age who violates a curfew based on age may be made a ward of the juvenile court); *In re* Gerald B., 105 Cal. App. 3d 119, 123, 164 Cal. Rptr. 193, 197 (1980) (disallowing a judgment imposing mandatory school attendance as a condition of probation, as it authorized confinement strictly for absences); *In re* Ronald S., 69 Cal. App. 3d 866, 867, 138 Cal. Rptr. 387, 388 (1977) (discussing the Legislature's role in deciding how to deal with juvenile truancy problems); *see also New Bills*, THE RECORDER, Mar. 3, 1994, at 14 (describing the effect of AB 3797 as authorizing local law enforcement officers to temporarily detain any minor reasonably believed to be in violation of a local curfew ordinance and to transport that minor to his or her residence, and also authorizing the local government to collect a fee for the cost of such detention and transportation of the minor). *See generally* Ginsberg v. New York, 390 U.S. 629, 638 (1968) (holding that the state's power to control the conduct of children reaches beyond the scope of its authority over adults); Note, *Assessing the Scope of Minors' Fundamental Rights: Juvenile Curfews and the Constitution*, 97 HARV. L. REV. 1163 (1984) (discussing the constitutionality of curfew laws against minors and how many courts have approached the issue); Note, *Curfew Ordinances and the Control of Nocturnal Juvenile Crime*, 107 U. PA. L. REV. 66 (1959) (describing how most large cities have enacted juvenile curfew ordinances).

3. CAL. WELF. & INST. CODE § 625.5(c) (enacted by Chapter 810); *see* Terry v. Ohio, 392 U.S. 1, 27 (1967) (authorizing the police to detain a person if the police have reasonable suspicion supported by articulable facts of criminal activity, even if the police lack probable cause); *see also* United States v. Cortez, 449 U.S. 411, 418 (1981) (stating that a police officer may conduct a protective frisk if the officer reasonably believes that the person may be armed and dangerous); Brown v. Texas, 443 U.S. 47, 48 (1979); Michigan v. deFellippo, 443 U.S. 31, 34 (1979) (suggesting that failure to identify oneself when asked for identification by a police officer is not probable cause for arrest).

4. CAL. WELF. & INST. CODE § 625.5(e) (enacted by Chapter 810); *see id.* § 625.5(d) (mandating that upon the first violation, the minor and his or her parents be mailed a warning which states that, upon a second violation, the parents or legal guardian may be held liable for actual administrative and transportation costs); *id.* § 625.5(e) (enacted by Chapter 810) (instructing that a fee for the actual costs of administrative and transportation services for the return of the minor to his or her place of residence may be charged jointly or severally to the minor, his or her parents, or legal guardian); *id.* § 625.5(f) (enacted by Chapter 810) (providing that a court may waive payment of the fee upon a finding of good cause).

INTERPRETIVE COMMENT

Of great concern to lawmakers has been the increasing criminal activity of minors.[5] In response to these concerns, many jurisdictions have enacted curfew ordinances to enable law enforcement agencies to take into custody and to detain minors in an effort to keep minors off the streets and out of trouble.[6] These curfew laws, however, may not be strictly enforced in some jurisdictions due to the cost associated with detaining and returning the minors.[7] Chapter 810 allows local law enforcement agencies to recoup the expense of these efforts from parents and, therefore, enables the agencies to enforce curfew laws more strictly than before.[8]

Christina L. Wentworth

Juveniles; remand to Department of Youth Authority—court discretion

Welfare and Institutions Code § 707.2 (amended).
AB 3565 (Seastrand); 1994 STAT. Ch. 449

Existing law allows certain minors who commit crimes when they are sixteen

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5. *See* CAL. WELF. & INST. CODE § 625.5(a)(1) (explaining that the intent of the Legislature in enacting this section was to safeguard the fiscal integrity of cities and counties by enabling them to recoup the costs incurred from detaining and transporting minors who violate curfew ordinances); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 3797, at 2 (June 1, 1994) (stating that California's juveniles are committing more homicides and violent crime than ever, and that 75% of gang-related homicides in 1993 took place after dark). *See generally* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 3797 (May 10, 1994) (discussing the concern of lawmakers in the increasing violence among minors); Hal Dardick, *Panel Approves Spray-Paint Laws*, CHI. TRIB., Dec. 14, 1993, at 3 (discussing an ordinance under consideration in Illinois which would outlaw the sale of spray paint to minors in an attempt to prevent gangs and taggers from scrawling graffiti); Bill Hoge, *Measures for Making Life Tough for Taggers; The Mounting Human and Monetary Toll Is Hurting Everyone. Culprits Must Be Taught the Crime Is No Joke. They Should Be Forced to Pay the Price in Time and Money*, L.A. TIMES, Aug. 1, 1993, at B13 (outlining the increasing problem of graffiti caused by tagging battles between gangs); Dan Walters, *Paddling Bill Draws Media*, SACRAMENTO BEE, July 5, 1994, at A3 (discussing caning as a punishment for youngsters caught spraying graffiti).

6. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 3797, at 2 (June 1, 1994); *see id.* (discussing that many California communities are looking to curfew laws to curtail criminal activity and victimization of young people). *See generally* Becky Hsiao and Laurel Gorman, *O.C. High/Student News and Views; Curfew: Minor Inconvenience?; Laws: Many Communities Are Trying to Keep Unsupervised Teens Off the Streets at Night, but Inconsistencies Confuse Some Youths*, L.A. TIMES, May 20, 1994, at E3 (explaining the many different approaches taken by the communities in Orange County to enforce curfew laws).

7. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 3797, at 2 (May 10, 1994); *see id.* (stating that local authorities cannot strictly enforce curfew laws because of the administrative and transportation costs associated with enforcement).

8. *Id.* at 2.

years of age or older to be tried as adults.[1] A minor who has been tried as an adult may be sent to state prison.[2] Under prior law, the minor first had to be remanded to the Department of the Youth Authority to determine the minor's amenability to the training and treatment provided by the Youth Authority.[3]

Chapter 449 removes the requirement that the minor be remanded to the custody of the Youth Authority, and instead provides that a minor convicted of a felony may, at the court's discretion, be remanded to the Youth Authority, pursuant to a recommendation by the probation department.[4] If the court decides not to remand the minor to the Youth Authority, the court must make a finding on the record that remand for evaluation is not necessary.[5] Minors who were under sixteen years of age at the time any offense was committed must still be remanded to the Youth Authority prior to being sentenced to state prison.[6]

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1. CAL. WELF. & INST. CODE § 707 (West Supp. 1994); *see id.* (providing for a fitness hearing to determine whether a minor who committed an offense at the age of 16 years or older is a fit and proper subject for juvenile court); *see also* CAL. PENAL CODE § 190.5 (West Supp. 1994) (providing that persons who were under the age of 18 years at the time the crime was committed are not subject to the death penalty); *cf.* ALA. CODE § 12-15-34(a) (Supp. 1994) (providing that a child may be prosecuted as an adult if the child was 14 years of age or older at the time he or she committed the crime); *id.* § 12-15-34(b) (Supp. 1994) (requiring the juvenile court to conduct a hearing to determine whether it is in the best interest of the child or public to allow the child to be prosecuted as an adult); *id.* § 12-15-34(d) (Supp. 1994) (listing the factors to be considered in determining whether to prosecute the child as an adult as: (1) The nature of the present alleged offense; (2) the child's prior delinquency record; (3) the effectiveness of past treatment efforts; (4) demeanor; (5) the child's physical and mental maturity; and (6) the interests of the community and of the child); OHIO REV. CODE ANN. § 2151.26(A)(1) (Anderson 1994) (providing that a child may be prosecuted as an adult in a criminal proceeding if, among other things, the child was over 15 years of age when he or she committed the crime, the child is determined not to be amenable to rehabilitation, and the safety of the community requires that the child be placed under legal restraint beyond his or her majority); *id.* § 2151.26(A)(2) (Anderson 1994) (requiring that a child be prosecuted as an adult if the child is alleged to have committed aggravated murder or murder); S.C. CODE ANN. § 20-7-430(1) (Law. Co-op. 1976) (providing that jurisdiction over a criminal charge against a minor may be transferred to a family court if the minor was under 17 years of age when he or she committed the offense); *id.* § 20-7-430(2) (Law. Co-op. 1976) (providing that a child 16 years or older who is charged with an offense which would be a misdemeanor or a felony if committed by an adult may be prosecuted as an adult upon a determination by the family court that it is in the best interest of the child or public to do so).

2. CAL. WELF. & INST. CODE § 707.2 (amended by Chapter 449).

3. 1982 Cal. Stat. ch. 1105, sec. 1, at 4009 (amending CAL. WELF. & INST. CODE § 707.2). *See generally* 3 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW, *PUNISHMENT FOR CRIME*, §§ 1306, 1308-1310 (2d ed. 1989 & Supp. 1994) (discussing case law interpreting former California Welfare and Institutions Code § 707.2); 27 CAL. JUR. 3D, *Delinquent and Dependent Children* §§ 122-124 (Bancroft-Whitney 3d ed. 1987) (discussing the determination of a minor's fitness for treatment under juvenile court law); *id.* §§ 125-133 (providing an overview of the fitness hearing); *id.* §§ 134-136 (discussing proceedings on the determination of a minor's unfitness for treatment as a juvenile).

4. CAL. WELF. & INST. CODE § 707.2 (amended by Chapter 449).

5. *Id.*

6. *Id.*

INTERPRETIVE COMMENT

Chapter 449 removes the pre-sentencing requirement that minors be remanded to the Youth Authority for evaluation of their amenability to treatment there, and instead leaves the decision to remand to the discretion of the judge.[7] Prior to enactment of Chapter 449, few minors were committed to the Youth Authority after an evaluation, even when the results showed that the minors were amenable to treatment by Youth Authority programs.[8] Although the estimated value of each evaluation was $3500,[9] state savings due to a reduction in amenability studies is not significant because the cost of evaluation is mostly due to incarceration in the Youth Authority, a cost that will now be borne by the Department of Corrections.[10]

An amenability evaluation can provide some indication of a minor's potential for resocialization.[11] However, Chapter 449 is reflective of a changing trend in the law to make it easier to prosecute minors as adults.[12]

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7. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 3565, at 1 (Apr. 5, 1994).

8. *Id.* at 2 (Apr. 5, 1994) (examining the need for AB 3565, and noting the results of a study conducted by the California Youth Authority where 38 of 84 youths evaluated were found amenable to Youth Authority treatment, but only six of the 38 were actually committed to the Youth Authority, and the rest were sent to state prison); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 3565, at 2 (May 12, 1994) (stating that the sentencing outcome for many cases suggested that the judges had already made their sentencing decision and were simply complying with the remand requirement).

9. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 3565, at 1 (Apr. 5, 1994) (noting that an amenability study requires a stay of 45 days at a California Youth Authority clinic and $35,000 in bed costs, which could amount to a savings of $250,000 to $900,000 per year if they are no longer mandatory).

10. ASSEMBLY COMMITTEE ON WAYS AND MEANS, COMMITTEE ANALYSIS OF AB 3565, at 1 (May 4, 1994).

11. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 3565, at 2 (Apr. 5, 1994).

12. *See* Hon. Gordon A. Martin, Jr., *The Delinquent and the Juvenile Court: Is There Still a Place for Rehabilitation?*, 25 CONN. L. REV. 57, 64 (1992) (analyzing a statutory response to society's fear of violent juvenile crime, and proposing alternatives that do not compromise the possibility of rehabilitation); *see also* Bill Callahan, *Park Slaying Suspect Will be Tried as Adult*, SAN DIEGO UNION-TRIB., Sept. 24, 1994, at A1 (reporting on a case where a 17-year-old girl will be tried as an adult because the judge did not feel she could be rehabilitated); Diana Griego Erwin, *Voices in Anger Say Jail for Kids is Justice for All*, SACRAMENTO BEE, Sept. 20, 1994, at A2 (commenting on the growing sense of fear and hopelessness that society feels for young criminal offenders); Greg Lucas, *Youths Can Now Be Tried As Adults at Age 14; Wilson Signs Bills on Juvenile Crime*, S.F. CHRON., Sept. 10, 1994, at A19 (reporting on recent legislation that focused on people under the age of 21 who commit violent crimes); Dan Walters, *Juvenile Crime May Defy Simple Fix*, S.F. EXAMINER, Oct. 8, 1994, at A-15 (reporting on the Little Hoover Commission's advocacy of a tougher attitude towards young criminal offenders and noting that violent juvenile crime stems from social trends such as teenage pregnancy and single-mother births).