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Juvenile Law

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Juvenile Law; juvenile court law

Welfare and Institutions Code §707 (repealed); §§707, 707.1, 707.2, 707.3, 707.4 (new); §§637, 661, 727 (amended).
SB 523 (Presley); STATS 1975, Ch 1266

Revises the procedure for transferring a minor to adult criminal court by requiring juvenile court to hold a transfer hearing before jeopardy attaches; sets forth criteria which the juvenile court must consider, but allows the court to make its determination to transfer a minor on the basis of any one of the factors enumerated; specifies the place of detention, sentencing alternatives, cases which may be returned to juvenile court, and procedures for sealing records; establishes that parents of wards and dependent children of the court may be required by a juvenile court to participate in counseling; prescribes the length of time the probation officer has to produce evidence of a prima facie case against a minor being detained pending an adjudication of wardship.

Transfer of Minors to Adult Criminal Court

Section 707 of the Welfare and Institutions Code has been rewritten by Chapter 1266 to provide that the juvenile court has jurisdiction to transfer to the adult criminal court a minor 16 years of age or older at the time he or she allegedly violated a criminal law, if the court finds the minor not amenable to the care and treatment of the juvenile court. Formerly, Section 707 permitted the transfer hearing to be held any time during the jurisdictional hearing in juvenile court to adjudge the minor a ward of the court. The United States Supreme Court, in *Breed v. Jones* [— U.S. —, 95 S. Ct. 1779 (1975)] reviewed this provision of the California Welfare and Institutions Code and found it to be unconstitutional. The Court held that the prosecution in adult court after the jurisdictional hearing in juvenile court violated the double jeopardy clause of the fifth amendment as applied to the states through the fourteenth amendment [*Id.* at 1791]. Furthermore, the Court stated that jeopardy attaches in a juvenile court proceeding when the juvenile court, as the trier of fact, begins to hear evidence [*Id.* at 1787]. Accordingly,

Section 707 now requires the transfer hearing to be held prior to the attachment of jeopardy.

Prior to the enactment of Chapter 1266, Section 707 required a juvenile court to cause the probation officer to investigate and submit a report on the behavioral patterns and social history of a minor being considered as unfit for juvenile court treatment. The California Supreme Court interpreted the former statute to require the juvenile court to consider the minor's behavioral pattern as described in the probation officer's report in determining the minor's fitness for juvenile court treatment [Jimmy H. v. Super. Ct., 3 Cal. 3d 709, 714, 478 P.2d 32, 35, 91 Cal. Rptr. 600, 603 (1970)]. Section 707 continues to require the court to cause the probation officer to submit a behavioral and social history report on the minor, and now expressly requires the court to consider the probation officer's report *and* any other relevant evidence introduced by the probation officer or the minor.

In *Donald L. v. Superior Court* [7 Cal. 3d 592, 498 P.2d 1098, 102 Cal. Rptr. 850 (1972)] former Section 707 was challenged as being unconstitutionally vague on the ground that no express standards for transfer were included in the statute [*Id.* at 601, 498 P.2d at 1104, 102 Cal. Rptr. at 856]. The court rejected the contention that the statute was unconstitutionally vague and expressed the view that the proper operation of juvenile law is predicated on treating each minor as an individual, with any attempt to explicate standards with particularity appearing not merely unnecessary but undesirable as likely to set up mechanical categories which the spirit of the law forbids. [*Id.*] Nevertheless, Section 707, as rewritten by Chapter 1266, now requires the court to base its determination that the minor is unfit for juvenile treatment on an evaluation of the following express criteria: the degree of criminal sophistication exhibited by the minor; the minor's previous delinquent history; the success of previous attempts to rehabilitate the minor; the circumstances and gravity of the offense allegedly committed by the minor; and the probability that the minor can be rehabilitated prior to the expiration of juvenile court jurisdiction. The criteria set forth in new Section 707 are almost identical to the factors enumerated by the California Supreme Court as being proper for the judge to consider [Jimmy H. v. Super. Ct., 3 Cal. 3d 709, 715-16, 478 P.2d 32, 36, 91 Cal. Rptr. 600, 604 (1970)]. Furthermore, the legislature appears to have considered the warning in *Donald L. v. Superior Court* [7 Cal. 3d 592, 498 P.2d 1098, 102 Cal. Rptr. 850 (1972)] that particularized standards may create mechanical categories which the spirit of the law forbids and appears to have avoided such mechanized treatment by requiring the judge to

consider *all* relevant evidence in the individual case before ordering a minor unfit for juvenile treatment.

Pursuant to former Section 707, the nature of the offense *alone* was insufficient to support a transfer order. The current Section 707 provides that the judge, after considering all the relevant evidence, may base his determination of unfitness on any *one* criterion or any combination of the criteria set forth in Section 707. Thus, the circumstances surrounding the commission and the gravity of the offense may now be the sole basis for a determination that the minor is unfit. Furthermore, Section 707 now requires the court to recite in the transfer order which factor or factors it relied upon in making its determination of unfitness. This provision is apparently in response to *Kent v. United States* [383 U.S. 541 (1966)] where the Court held that a juvenile court was required to set forth the basis for a transfer order with sufficient specificity to permit meaningful review [*Id.* at 561]. Section 707 also provides that no plea which may have been entered shall constitute evidence at the fitness hearing.

The Supreme Court in *Breed v. Jones, supra,* expressly declared that its opinion was not meant to foreclose the states from requiring substantial evidence or probable cause as a prerequisite to transfer [— U.S. —, 95 S. Ct. 1779 n.18, 1790 (1975)]. While former Section 707 required substantial evidence that the minor was 16 years of age or older when he or she allegedly committed a criminal offense and that the minor was not amenable to the care and treatment of the juvenile court in order to justify a transfer to adult criminal court, the present section is silent as to the weight of evidence necessary on either the issues of amenability or of whether the minor committed the alleged offense. In *People v. Joe T.* [48 Cal. App. 3d 114, 121 Cal. Rptr. 329 (1975)] the court stated that so long as the issue of amenability is fully and properly considered, a transfer order will not be set aside unless it is not based on substantial evidence or unless improper criteria are utilized [*Id.* at 119, 121 Cal. Rptr. at 331-32]. Although the United States Supreme Court has never attempted to prescribe the nature or quantum of evidence that must be present to support a decision to transfer a juvenile to adult court [Breed v. Jones, — U.S. —, 95 S. Ct. 1779, 1790 (1975)], the view has been expressed that some evidence that the juvenile committed the alleged act is probably a constitutional requisite to a transfer order despite statutes which refer merely to an allegation of delinquency [Carr, *The Effect of the Double Jeopardy Clause on Juvenile Proceedings,* 6 U. TOL. L. REV. 1, 26 (1974)]. Furthermore, it appears clear that a preliminary hearing to consider whether probable cause has been es-

tablished that the minor committed the offense would not cause jeopardy to attach [Breed v. Jones, — U.S. —, 95 S. Ct. 1779 n.18, 1790 (1975)]. Thus, apparently unresolved is the issue of whether a statute may merely require an allegation of delinquency, as the present California statute does, before subjecting a minor to a transfer hearing. Also, another seemingly unresolved issue is whether the California courts will vacate transfer orders not based on *substantial* evidence of unfitness when the judge has considered all the relevant evidence and has not utilized improper criteria.

Section 707.1 has been added by Chapter 1266 to provide that once the minor is declared unfit the case shall proceed according to the law applicable in a criminal case. However, unless the juvenile court specifically orders the individual minor delivered to the custody of the sheriff upon finding that the safety of the public or of the inmates of juvenile hall cannot be protected, the minor, if detained, shall remain in the juvenile hall pending final disposition by the criminal court.

Except as provided in Sections 1731.5 (standards for admission to the Youth Authority) and 1737.1 (authority for the committing authority to commit a minor to state prison or a county jail when such person is rejected by the Youth Authority), Section 707.2 prohibits sentencing to state prison a minor under the age of 18 years who has been declared unfit, except pursuant to Article 5 (commencing with §1780) of the Welfare and Institutions Code. Article 5 specifies that when a person's date of discharge occurs before the maximum term precribed by law for the offense, the Youth Authority shall petition the committing court if the Youth Authority believes that unrestrained freedom for the person would be dangerous to the public (§1780). Such person may be discharged, placed on probation or committed to state prison by the committing court (§1782). Section 707.2 further provides that prior to sentencing the juvenile court may remand persons eligible for commitment to the Youth Authority to its custody for the purpose of evaluation and report for a period not to exceed 90 days.

Section 707.3 specifies that once jeopardy has attached in the criminal proceeding, the case shall not be returned to the juvenile court. But if the alleged circumstances and gravity of the offense were relied upon to transfer the juvenile and the charge is dismissed or found untrue by the court of criminal jurisdiction, the minor *must* be returned to juvenile court to respond to any lesser charges which remain *if* the minor consents to being returned. In all other cases—as when the alleged circumstances and gravity of the offense were *not* relied upon to transfer the

juvenile to criminal court—the minor *may* be returned to juvenile court for trial or disposition of any pending charge, if he or she consents to being returned.

Section 707.4 specifies that in any case where there is no criminal conviction and the minor is not returned to juvenile court, all copies of the minor's record in criminal court must be delivered to the juvenile court and the minor's name must be obliterated from any index or minute book maintained in the criminal court. The minor's criminal record shall be maintained by the juvenile court until such time as the record is ordered sealed by the juvenile court pursuant to Section 781. Section 707.4 only applies if the person has no prior conviction in a criminal court.

Requiring Parents to Participate in Counseling

Prior to amendment by Chapter 1266, Section 727 required a parent or guardian of a neglected or physicially abused minor (§600(d)) to participate in a counseling program as a condition of continued custody when the court ordered the parent or guardian to retain custody of the minor subject to the supervision of a probation officer [CAL. STATS. 1971, c. 1729, §4, at 3679]. As amended by Chapter 1266, Section 727 continues to require mandatory counseling for a parent or guardian of a neglected or physically abused minor when the court orders the parent or guardian to retain custody subject to the supervision of a probation officer; however, Chapter 1266 has removed the provision making the parent's participation in the counseling program a condition of the parent's *continued* custody of the minor. Furthermore, Section 727 now gives the court discretion to order counseling for parents or guardians of other dependent children if such parents or guardians are permitted to retain custody. Finally, the court now has the discretion to order parents of wards of the court (§§601 (beyond control), §602 (violation of a criminal law)) to participate in a counseling program with the minor if the court has ordered that they retain custody of the minor and if the court finds that they have received notice pursuant to Section 661 that counseling may be required.

Detention Pending Jurisdictional Hearing

Welfare and Institutions Code Section 636 provides that a minor shall not be detained pending an adjudication of wardship unless such detention is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another. Additionally, case law

requires that there be evidence of a *prima facie* case or probable cause to detain a minor alleged to have violated a criminal law [In re William M., 3 Cal. 3d 16, 28, 473 P.2d 737, 746, 89 Cal. Rptr. 33, 42 (1970)]. However, prior to Chapter 1266 neither statutory nor case law indicated how much time would be allowed a probation officer to produce evidence of a *prima facie* case [CONTINUING EDUCATION OF THE BAR, CALIFORNIA JUVENILE COURT PRACTICE §48 (Supp. 1974)]. Chapter 1266 has amended Section 637 to allow *three* judicial days for the production of evidence when the minor or minor's attorney requests evidence of a *prima facie* case be produced. When the court determines that a hearing cannot be held in three judicial days due to the unavailability of a witness, however, the court may grant a continuance not to exceed *five* judicial days.

See Generally:

1) Rudstein, *Double Jeopardy in Juvenile Proceedings*, 14 WM. & MARY L. REV. 266 (1972).
2) Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985 (1975) (critique of state programs interfering with parental autonomy).
3) Note, *Double Jeopardy and the Waiver of Jurisdiction in California's Juvenile Courts*, 24 STAN. L. REV. 874 (1972).

Juvenile Law; contraceptives for minors

Civil Code §34.5 (amended).
SB 395 (Beilenson); STATS 1975, Ch 820
Support: California Chapter of the National Organization of Women; County Health Care Administrators Association of California; Zero Population Growth

Prior to its amendment by Chapter 820, Civil Code Section 34.5 provided that unmarried, pregnant minors could receive care related to pregnancy without parental consent, and that any contract to receive such care was not subject to disaffirmance by the minor. As amended by Chapter 820, Section 34.5 now allows unmarried minors to receive care related to the *prevention* of pregnancy (*i.e.* contraception), as well as care related to pregnancy, with the express provision that a minor shall not be *sterilized* without parental consent.

COMMENT

Chapter 820 has supplemented previous legislation which expanded the circumstances under which minors may receive medical care without parental consent. Married minors (§25.6), minors on active duty with the armed services (§25.7), and emancipated minors 15 years of age or older who are living separate and apart from their parents or legal

guardian and who are managing their own financial affairs (§34.6) have the ability to contract for medical services without parental consent. Section 34.7 allows minors 12 years of age or older to give consent for treatment of communicable, contagious, or infectious diseases (e.g., venereal disease). Finally, Section 10053.2 of the Welfare and Institutions Code has been construed as authorizing family planning services, including medical treatment, for any minor female, with or without parental consent, provided that such minor is of childbearing age and either was or is eligible for welfare assistance or is a member of a family that is likely to become a recipient of state or federal financial assistance within five years [57 OPS. ATT'Y GEN. 551, 552 (1974)].

The legislative purpose in amending Section 34.5 was apparently to avoid the anomalous situation of requiring parental consent for minors to receive contraceptives, but not requiring parental consent to provide the same minor with an abortion. While one commentator hopes that such legislation will allow teenagers to prevent unwanted pregnancies, physicians may be understandably reluctant to prescribe contraceptives for minors if they are not protected from tort liability and if they are not assured of payment under the contract [Comment, *A Minor's Right to Contraceptives*, 7 U.C.D. L. REV. 270, 282 (1974) (hereinafter referred to as *A Minor's Right to Contraceptives*)]. While it would appear that legislation freeing minors from the necessity of obtaining parental consent for medical services is designed to relieve the medical profession from tort liability for not obtaining parental consent [1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §275 (8th ed. 1973)], it could be argued that the enactments only relate to *contractual* capacity and do not necessarily resolve the question of whether an unauthorized battery has occurred [57 OPS. ATT'Y GEN. 551, 555 (1974)]. The power to give contractual consent and the power to give consent to otherwise tortious acts are not synonymous, nor are they necessarily coexistent in the same person [Comment, *Medical Care and the Independent Minor*, 10 SANTA CLARA LAWYER 334, 340 (1970)]. Whether the phrase "and such consent shall not be subject to disaffirmance because of minority" refers to consent in the contract or tort sense, or both, is uncertain. The use of the word disaffirmance is traditionally associated with contracts, and Section 34.5 is positioned in the Civil Code among other statutes definitely related to contractual capacity [*Id.* at 340-41]. A physician might commit a battery merely by prescribing a drug for a minor without the consent of the minor's parent. Even if the physi-

cian performed skillfully, such a battery would render him liable for all harm proximately resulting from the treatment [Comment, *Minors and Contraceptives: The Physician's Right to Assist Unmarried Minors in California*, 23 HASTINGS L.J. 1486, 1499 (1972)]. While one commentator expresses the view that the physician is protected from tort liability for battery so long as the minor's consent is informed [*Id.* at 1504], another commentator states that the medical profession would receive financial protection for contraceptive services provided to minors under a disaffirmance statute, but the physician might still be liable under a tort theory [*A Minor's Right to Contraceptives, supra*, at 283 n.57].

Juvenile Law; petitions for guardianship

Probate Code §§1440.1, 1440.2, 1440.3 (new); §1440 (amended).
SB 438 (Petris); STATS 1975, Ch 1181
Support: California Association of Adoption Agencies; Children's Home Society of California
Opposition: State Bar of California

Section 1440 of the Probate Code provides that proceedings for appointment of a guardian for the person or estate of a minor are initiated by the filing of a petition for guardianship by a relative, non-relative, or the minor if he or she is 14 years of age. Chapter 1181 has amended Section 1440 to require that if the petitioner is not a relative of the minor, nor named in a will as guardian, and the petition involves the guardianship of the person of the minor, the State Department of Health must also be served with the petition. The petition must contain: (1) an allegation that the petitioner will submit all information necessary to the agency investigating his or her suitability for guardianship; (2) a disclosure of any petition for adoption of the minor by the petitioner; and (3) an allegation as to whether or not the petitioner's home is licensed as a foster home.

Sections 1440.1 and 1440.2 have been added by Chapter 1181 to provide that if an adoption petition has been filed, the agency investigating the adoption must provide the court considering the guardianship with a report concerning the suitability of the petitioner for guardianship. If no adoption petition has been filed, the local agency which licenses foster homes must submit the report to the court considering the guardianship. Copies of such reports must also be furnished to the petitioner. Chapter 1181 has also added Section 1440.3 to the Probate Code to provide that if the Director of Health is the petitioner, none of the procedures delineated by this chapter are applicable.

The apparent purpose of this legislation is to remedy the situation which arises when potential adopting parents or foster parents with a minor temporarily placed in their home fear a negative recommendation on the adoption petition or removal of the foster child from the home and therefore apply for guardianship, preventing the removal of the child. Chapter 1181 will involve either the adoption agency or foster home investigating agency in procedures for appointment of a guardian for a minor.

See Generally:
1) 7 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§539-557 (8th ed. 1974) (appointment of a guardian).

Juvenile Law; notice of detention hearing

Welfare and Institutions Code §630 (amended).
SB 338 (Dunlap); STATS 1975, Ch 82
Support: California District Attorneys' Association; California Peace Officers' Association; California State Sheriffs' Association

If a minor is to be retained in custody pending the jurisdictional hearing which determines whether the minor should be adjudged a ward or dependent child of the court, a probation officer must petition the juvenile court for a detention hearing [CAL. WELF. & INST. CODE §§630, 632]. Prior to the enactment of Chapter 82, Section 630 of the Welfare and Institutions Code required the probation officer to notify a parent or guardian of the time and place of the detention hearing if the petition alleged the minor to be a ward of the court as described in Section 601 (beyond the control of parents) or Section 602 (violation of a criminal law). As amended by Chapter 82, Section 630 now requires the probation officer to notify *each* parent or each guardian of the time and place of the detention hearing if the whereabouts of such parents or guardians can be ascertained by due diligence. The purpose of this amendment is to assure that parents, without custody of the minor but liable for the expenses of detention pursuant to Section 903 of the Welfare and Institutions Code, will have notice of the detention hearing [Senator John F. Dunlap, Press Release, (May 20, 1975)].

See Generally:
1) Comment, *Parental Responsibility for the Costs of Juvenile Detention*, 3 CAL. WES. L. REV. 134 (1967).
2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 541 (1973) (Welfare and Institutions Code §630, as amended in 1972).

Juvenile Law; assault on school employees

Welfare and Institutions Code §653.5 (new).

AB 693 (Montoya); STATS 1975, Ch 931
Support: California Teachers' Association; Los Angeles County District Attorney
Opposition: California Youth Authority; California Probation, Parole and Correctional Association

Chapter 931 has added Section 653.5 to the Welfare and Institutions Code to *require* a probation officer to file a petition to have a minor adjudged a ward or dependent child of the court when such officer has probable cause to believe that the minor has committed an aggravated assault or battery upon a public school employee during the course of such employee's school-related duties. In all other cases the county probation officer has the discretion to file or refuse to file a petition with juvenile court to have a minor adjudged a ward or dependent child of the court [CAL. WELF. & INST. CODE §§650, 652]. This new legistion requiring mandatory filing was drafted at the request of the United Teachers of Los Angeles because they felt stronger measures were necessary to prevent violence in the schools [Interview, Ray Kniss, Legislative Advocate, California Teachers' Association, August 28, 1975].

COMMENT

Chapter 931 appears to represent a departure from current juvenile statutory and case law. Section 626 of the Welfare and Institutions Code gives a police officer the *discretion* to release a minor taken into custody under provisions of Section 625 without taking any further action. Section 630 gives the probation officer *discretion* as to whether to file a petition with the juvenile court to retain custody of a minor who has been brought before such officer after having been taken into temporary custody pursuant to Sections 625 or 625.1. Section 652 gives the probation officer the *discretion* whether to commence juvenile court proceedings against a minor who such officer has cause to believe is a person within Sections 600, 601 or 602, even where such person has not been taken into custody. Additionally, Section 654 gives the probation officer the *discretion* to undertake a program of supervision for a minor who the officer concludes is or probably soon will be within the jurisdiction of the juvenile court in lieu of filing a petition. Section 502 states that the purpose of juvenile court law is to provide such care and guidance as will best serve the welfare of the child, and that wherever possible the minor should not be removed from the custody of his or her parents unless the welfare of the child or the public cannot be safeguarded without such removal.

The California Supreme Court in In re William M. [3 Cal. 3d 16, 473 P.2d 737, 89 Cal. Rptr. 33 (1970)] held that the *juvenile court* could not establish a rule that all juveniles accused of a specific type of offense should automatically be detained. The court stated that the nature of the charged offense cannot of itself constitute the basis for detention [*Id.* at 30, 473 P.2d at 747, 89 Cal. Rptr. at 43]. The court based its holding upon Section 635 of the Welfare and Institutions Code which provides that the court at a detention hearing must order the release of a minor unless the minor has violated a prior order of the court, is likely to flee the jurisdiction of the court, or it appears that it is a matter of urgent necessity for the protection of such minor or of the person or property of another that such minor be detained.

It would thus appear that juvenile statutory and case law generally provides for *discretionary* handling of juveniles, with detention to be determined on an individual basis considering the circumstances of each case. Therefore, Chapter 931, which provides for *mandatory* filing of a petition to have a minor declared a dependent child or ward of the court whenever a probation officer has probable cause to believe that a minor has committed an aggravated assault or battery upon a public school employee during the course of such employee's school-related duties appears to be a departure from the orientation of the Juvenile Court Law in this respect. Additionally, since the holding in In re William M. specifies that the juvenile court, in its hearing on the petition for detention, cannot order such detention solely upon the nature of the offense charged, the *mandatory* filing of a petition in circumstances which would not justify detention might be a meaningless process.

Finally, it is possible that Chapter 931, in singling out minors who assault school employees for a mandatory detention hearing, may be violative of equal protection, since minors who are alleged to have committed aggravated assault or battery upon other persons would still be within the discretionary provisions of the juvenile court law. It is at least arguable that there is no more compelling state interest in protecting school employees than in protecting other members of the public, and that, therefore, such discriminatory classification as results from the enactment of Chapter 931 is violative of equal protection.

Juvenile Law; school-related problems

Education Code §10751 (amended); Welfare and Institutions Code §§601, 601.1 (amended).
SB 524 (Rodda); STATS 1975, Ch 1183

(Effective September 30, 1975)

Section 10751 of the Education Code prohibits access to a minor's school records without judicial process, although certain persons are excepted from the judicial process requirement. Chapter 1183 has amended Section 10751 to include within those excepted from the judicial process requirement a designated member of a school attendance review board seeking access to the records of pupils referred to the board. The information acquired by the board is to be kept in strict confidence and used only for purposes of the board.

Prior to the enactment of Chapter 1183, Section 601.1(b) of the Welfare and Institutions Code provided that a minor could be adjudged a ward of the court for school-related insubordination, habitual truancy, or failure to respond to the directives of a school attendance review board. Chapter 1183 has eliminated this subdivision from Section 601.1 and has added a similar provision to Section 601 (§601(b)). However, Section 601(b) does not retain insubordination as a basis of juvenile court jurisdiction. Instead, Section 601(b) now provides as a basis for juvenile court jurisdiction the persistent or habitual refusal to obey the reasonable and proper orders of school authorities. Finally, Section 601(b) provides that a minor adjudged a ward solely pursuant to the provisions of Subdivision (b) shall not be removed from the custody of a parent or guardian *except* during school hours.

Chapter 1183 has also incorporated the changes in Section 601 of the Welfare and Institutions Code which were made by Chapter 192 of the Statutes of 1975. Chapter 192 amended Section 601 to remove from the jurisdiction of the juvenile court those minors "in danger of leading an idle, dissolute, lewd or immoral life." Therefore, Section 601(a) now grants juvenile courts jurisdiction over only those persons under the age of 18 years who persistently or habitually refuse to obey the reasonable and proper directions or orders of their parents, guardians, or custodians, or who are beyond the control of such persons. The net effect of Chapters 192 and 1183 therefore is to now grant juvenile courts jurisdiction over those minors who come within Section 601(a), above, and over those minors who, having been referred to a school attendance review board as being beyond the control of school authorities or as being habitual truants (§601.1), fail to respond to the directives of the review board or to the services provided by such board, or for whom the board determines that the available public or private services would be insufficient or inappropriate (§601(b)).

COMMENT

While the provision of Section 601(a) which has been repealed by this chapter has been held constitutional by the California appellate courts [*See, e.g.*, In re Daniel R., 274 Cal. App. 2d 749, 79 Cal. Rptr. 247 (1969); People v. Deibert, 117 Cal. App. 2d 410, 256 P.2d 355 (1953)], it was declared unconstitutional by a three-judge federal court and by a court in Alameda County [*See* Gonzales v. Mailliard No. 50424 (N.D. Cal., Feb. 9, 1971); Valery v. Municipal Ct. No. 434560 (Alameda County Super. Ct., May 7, 1973)]. The federal decision was vacated and remanded by the United States Supreme Court for reconsideration of the remedy, but the Court apparently agreed that the language was unconstitutionally vague [Mailliard v. Gonzales, 416 U.S. 918 (1974)]. Hence, Chapter 192 would seem to have been enacted in response to this decision. The remaining provisions of Section 601(a) which permit a minor who persistently or habitually refuses to obey the reasonable and proper orders of his or her parents, guardian, or custodian, or who is beyond the control of such persons, to be adjudged a ward of the court, are, however, also of questionable constitutional validity. The court in *Gonzales v. Mailliard* [No. 50424 (N.D. Cal. Feb. 9, 1971)] observed that the "reasonable and proper" language of Section 601(a) *might* be void for vagueness, and that the "beyond control" provision may be an unconstitutional deprivation of liberty because it does not specify a *persistent* lack of control [*Id.*, reprinted at 1 PEPPERDINE L. REV. 12, 19, n.13 (1973)]. Additionally, a statute subjecting minors to juvenile court jurisdiction and institutionalization for being habitually disobedient of the reasonable and lawful commands of their parents was held unconstitutional in *In re E.M.B.* [No. J 1365-73, (D.C. Super. Ct.), 42 U.S.L.W. 2032 (July 17, (1973)]. The rationale of the *In re E.M.B.* court was that a child who has committed no crime should not be subject to institutionalization for an occasional breach of vague standards of behavior under a statute which fails to give fair warning of proscribed behavior. This reasoning could be applied to Section 601, since pursuant to Section 730, a Section 601 minor may be committed to a juvenile home, ranch, or camp.

The constitutionality of the entire Section 601 was challenged in *In re Henry G.* [28 Cal. App. 3d 276, 104 Cal. Rptr. 585 (1972)], and while the appellate court reversed the lower court on grounds of insufficient evidence to find the minor beyond the control of his parents, the appellate decision observed that Section 601 could become a means of systematically discriminating against certain juveniles and thereby deny

them equal protection of the law [*Id.*, at 282, 104 Cal. Rptr. at 587]. In a similar vein the *Gonzales* court was concerned with the possible abuse of Section 601 because authorities could use it when they did not have sufficient evidence to charge a minor with a crime under Section 602 [Gonzales v. Mailliard No. 50424 (N.D. Calif., Feb. 9, 1971), reprinted at 1 PEPPERDINE L. REV. 12, 19 (1973)]. (Under Section 602 minors may be adjudged wards of the court for violating a criminal law or for violating a court order after having been found to be a Section 601 minor).

Both the *Gonzales* and *In re E.M.B.* courts denied any implication that the legislature was powerless to bring non-delinquent children within juvenile court jurisdiction [*Id.* at 19-20; 42 U.S.L.W. at 2032-33]. However, such a statute must be precisely and narrowly drawn, setting forth with particularity the circumstances under which a child's past behavior over a significant period of time is so potentially harmful to the child that a temporary deprivation of liberty, where no other alternative is available, is necessary to protect the child. Further, the statute cannot permit a child to be institutionalized for unruly behavior that disrupts family peace but presents no threat of actual harm to the child [42 U.S.L.W. at 2032-33].

In 1970, the California Assembly Interim Committee on Criminal Procedure recommended the repeal of Section 601, and as an alternative, suggested that most minors who fall within Section 601 could come under the jurisdiction of juvenile court pursuant to Section 600(a). Section 600(a) gives the court jurisdiction to declare a minor a *dependent* child of the court if the minor is in need of proper and effective parental control. The alternative suggested by the Interim Committee avoids the possibility of subjecting a minor who has committed no crime to the strong coercive controls available for *wards* of the court [THE CALIFORNIA ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE, JUVENILE COURT PROCESSES 33-34 (1970)]. Thus, there seems to be no practical need for Subdivision (a) of Section 601, and there is a strong possibility that Subdivision (a) is unconstitutional.

See Generally:

1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA JUVENILE COURT PRACTICE §24 (Supp. 1974).
2) STATE BAR OF CALIFORNIA, 1970 CONFERENCE RESOLUTION 2-3 (proposed change to §432).
3) Gonion, *Section 601 of California Welfare and Institutions Code: A Need for Change*, 9 SAN DIEGO L. REV. 294 (1972).
4) Roybal, *Void for Vagueness: State Statutes Proscribing Conduct Only for a Juvenile*, 1 PEPPERDINE L. REV. 1 (1973).
5) Comment, *Juvenile Law: A Potential California Change*, 2 PAC. L.J. 737 (1971).
6) Comment, *Parens Patriae and Statutory Vagueness*, 82 YALE L.J. 745 (1973).