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# Juveniles

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# Juveniles

## Juveniles; juvenile traffic hearing officers

Welfare and Institutions Code § 256 (amended).  
AB 1445 (Baca); 1995 STAT Ch. 55

Under existing law, a traffic hearing officer<sup>1</sup> may, subject to the orders of the juvenile court, hear and dispose of specified cases in which a minor under the age of eighteen years as of the date of the alleged offense is charged with any of the following: (1) a non-felony California Vehicle Code violation; (2) specified California Penal Code violations;<sup>2</sup> (3) non-felony California Fish and Game Code violations; (4) a violation of any of the equipment and registration provisions of the California Harbors and Navigation Code; (5) a violation of any provision of state or local law relating to traffic offenses, loitering or curfew, or evasion of fares on a public transportation system;<sup>3</sup> (6) a specified California Streets and Highways Code violation;<sup>4</sup> (7) specified California Public Resources Code

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1. See CAL. WELF. & INST. CODE § 255 (West 1984) (allowing the judge of the juvenile court to appoint persons of suitable experience, including judges of the municipal court or justices of the justice court, or a probation officer, or assistant or deputy probation officer, to serve as traffic hearing officers); *id.* (noting that a hearing officer will serve at the pleasure of the appointing judge, and unless the appointing judge makes his or her order terminating the appointment of a hearing officer, such hearing officer will continue to serve as such until the appointment of his or her successor). See generally 63 Op. Cal. Att'y Gen. 232, 232 (1980) (concluding that a juvenile traffic hearing officer may not set a bail schedule and accept forfeiture of bail instead of requiring an appearance by the juvenile); 27 CAL. JUR. 3D *Delinquent and Dependent Children* § 14 (1987) (describing the role of traffic hearing officers).

2. See CAL. WELF. & INST. CODE § 256 (amended by Chapter 55) (specifying a violation of California Penal Code §§ 602(m), 640, 640a, or 647(f)); see also CAL. PENAL CODE § 602(m) (West Supp. 1995) (noting that one is guilty of a misdemeanor by driving any vehicle upon real property belonging to, or lawfully occupied by another and known not to be open to the general public, unless of the owner, the owner's agent, or the person in lawful possession consents); *id.* § 640 (West Supp. 1995) (enumerating the provisions regarding illegal acts committed on facilities or vehicles of public or subsidized transportation systems); *id.* § 640a(1) (West 1988) (providing that any person who knowingly and wilfully operates, or attempts to operate any receptacle designed to receive coins in connection with the sale, use or enjoyment of property or service, by means of a slug or any false counterfeited, mutilated, sweated or foreign coin, or by any unauthorized means is guilty of a misdemeanor); *id.* § 640a(2) (West 1988) (providing that any person who, with the intent to cheat or defraud any person entitled to the contents of any automatic vending machine, slot machine or other receptacle designed for coins in connection with the sale, use or enjoyment of property or service, or who manufactures for sale, or sells, or gives away any slug, device or substance whatsoever intended to be placed or deposited in any such automatic vending machine, slot machine or other receptacle is guilty of a misdemeanor); *id.* § 647(f) (West Supp. 1995) (listing a variety of acts upon which one would be guilty of the misdemeanor of disorderly conduct).

3. See CAL. PUB. UTIL. CODE § 99211 (West 1991) (defining "public transportation system" as any system of an operator which provides transportation services to the general public by any vehicle which operates on land or water).

4. See CAL. WELF. & INST. CODE § 256 (amended by Chapter 55) (specifying California Streets and Highways Code § 27176); see also CAL. STS. & HIGH. CODE § 27176 (West 1969) (noting that a violation of any noticed regulations provided for in California Streets and Highway Code § 27174.1, is a misdemeanor). See generally *id.* § 27174.1 (West Supp. 1995) (discussing traffic and parking rules and regulations).

violations;<sup>5</sup> (8) specified California Business and Professions Code violations;<sup>6</sup> (9) specified graffiti violations;<sup>7</sup> and any other infraction.<sup>8</sup>

5. See CAL. WELF. & INST. CODE § 256 (amended by Chapter 55) (specifying rules and regulations established pursuant to California Public Resources Code §§ 5003, 5008, and 33211.6); see also CAL. PUB. RES. CODE § 5003 (West 1984) (noting that the Department of Parks and Recreation may establish rules and regulations for the government and administration of the property under its jurisdiction, and may expend all monies of the Department of Parks and Recreation, for the care, protection, supervision, extension, and improvement or development of the property under its jurisdiction); *id.* § 5008(d) (West Supp. 1995) (providing that any person who violates the rules and regulations established by the department is guilty of a misdemeanor); *id.* (noting that the judge may reduce the charged offense from a misdemeanor to an infraction); *id.* § 33211.6 (West 1986) (noting that the following are misdemeanors: (1) dumping any refuse matter, except by permit, on property owned or managed by the conservancy; (2) destroying, defacing, or injuring any property owned or managed by the conservancy or any of the natural features thereof; and (3) a violation of posted conditions of use on any property owned or managed by the conservancy).

6. See CAL. WELF. & INST. CODE § 256 (amended by Chapter 55) (specifying California Business and Professions Code §§ 25658, 25658.5, 25661, and 25662); see also CAL. BUS. & PROF. CODE § 25658 (West Supp. 1995) (providing that the following people are guilty of a misdemeanor: (1) one who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21; (2) one who, while under the age of 21 years, purchases any alcoholic beverage, or any person under 21 years of age who consumes any alcoholic beverage in any on-sale premises; (3) any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee knows that the person is under the age of 21 years); *id.* § 25658.5 (West Supp. 1995) (providing that any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee is guilty of an infraction, punishable by a fine and/or community service); *id.* § 25661 (West Supp. 1995) (establishing that any person under the age of 21 years who presents to any licensee any evidence of age and identity which is false, fraudulent or not actually his or her own, for the purpose of obtaining any alcoholic beverage, or who has in his or her possession any false or fraudulent written, printed, or photostatic evidence of age and identity, is guilty of a misdemeanor and shall be punished by a fine or community service); *id.* § 25662(a) (West Supp. 1995) (providing that "any person under the age of 21 years who has any alcoholic beverage in his or her possession on any street or highway, or in any public place, or in any place open to the public is guilty of a misdemeanor").

7. See CAL. WELF. & INST. CODE § 256 (amended by Chapter 55) (specifying a misdemeanor violation of California Penal Code § 594 involving defacing property with paint or other liquid, or a violation of California Penal Code § 594.1(b), (d), (e)); see also CAL. PENAL CODE § 594(a) (West Supp. 1995) (providing that one who defaces maliciously, with graffiti or other inscribed material, damages, or destroys personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism); *id.* § 594.1(b) (West Supp. 1995) (noting that it is unlawful for any person under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property); *id.* § 594.1(d) (West Supp. 1995) (making it unlawful for any person, to carry on his or her person and in plain view to the public, an aerosol container of paint while in any posted public facility, park, playground, swimming pool, beach, or other recreational area, other than a highway, street, alley, or way, unless he or she has received authorization from the governmental entity having jurisdiction over such area); *id.* § 594.1(e)(1) (West Supp. 1995) (prohibiting any person under the age of 18 years to possess a container of aerosol paint for the purpose of defacing property while on any public highway, street, alley, or way, or other public place).

8. CAL. WELF. & INST. CODE § 256 (amended by Chapter 55); see CAL. PENAL CODE § 17(a) (West Supp. 1995) (defining "felony" as a crime which is punishable by death or imprisonment in the state prison, and characterizing all other crimes or public offenses as misdemeanors except those offenses that are classified as infractions); see also *id.* § 19.6 (West Supp. 1995) (providing that an infraction is not punishable by imprisonment, and a person charged with an infraction will not be entitled to a trial by jury); *id.* (stating that a person charged with an infraction will not be entitled to have counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, on his or her own recognizance, or on a deposit of bail); *In re Kathy P.*, 25 Cal. 3d 91, 99, 599 P.2d 65, 69, 157 Cal. Rptr. 874, 878 (1979) (noting that an advantage of expediting infraction cases through flexible, innovative procedures is that defendants gain a swift and inexpensive disposition of their cases without risk of major penalties, and that the prosecution, the court system, and ultimately the public benefit because judicial and law enforcement resources are freed to concentrate on serious criminal behavior); *People v. Lucas*, 82 Cal. App.

Chapter 55 adds to existing law and authorizes juvenile traffic hearing officers to hear misdemeanor cases involving the possession of not more than 28.5 grams of marijuana.<sup>9</sup>

#### COMMENT

As stated by the author of Chapter 55, the purpose of Chapter 55 is to expand the jurisdictional authority of juvenile traffic hearing officers.<sup>10</sup> Currently, juvenile courts are severely impacted with violent crime cases; thus Chapter 55 allows cases involving the possession of marijuana to be heard, where previously most have been set aside or dismissed due to the lack of juvenile court

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3d 47, 54, 147 Cal. Rptr. 235, 239 (1978) (describing how the Legislature had valid reasons to conclude that the unique and specialized function of trying infraction cases was something which constituted a separate class of judicial service, and which could be ranked as "subordinate" in relation to the diversity and complexity of the other duties of a municipal court judge); cf. 1995 Ariz. Sess. Laws 8-232(B) (allowing a juvenile hearing officer to hear and determine juvenile pretrial detention hearings and to process, adjudicate, and dispose of all cases in which a child under the age of 18 years on the date of the alleged offense is charged with violating a non-felony provision of Title 28 or any city, town, or political subdivision ordinance, or any law relating to the following: (1) the purchase, possession or consumption of spirituous liquor by a juvenile; (2) boating, or game and fish; (3) curfew; (4) truancy; (5) the possession of firearms by a juvenile; (6) the damage or disfigurement of property by graffiti or the purchase or possession of materials used for graffiti; and (7) the purchase or possession of tobacco); FLA. STAT. ANN. § 318.32(1) (West Supp. 1995) (empowering a hearing officer to accept pleas from, and decide the guilt or innocence of, any person, adult or juvenile, charged with any civil traffic infraction, and to adjudicate or withhold adjudication of guilt in the same manner as a county court judge under the statutes, rules, and procedures presently existing or as subsequently amended); *id.* (providing that a hearing officer will not have the following powers: (1) to hold a defendant in contempt of court, but will be permitted to file a motion for order of contempt; (2) hear a case involving an accident resulting in injury or death; (3) hear a criminal traffic offense case or a case involving a civil traffic infraction issued in conjunction with a criminal traffic offense). See generally 1 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW, *Introduction to Crimes* § 80 (2d ed. 1988) (providing information regarding the distinction between a misdemeanor and an infraction); Chad Roberts, *Review of Florida Legislation; Comment: Florida's New Magistrate Corps: Jurists, Administrators, or Neither?*, 17 FLA. ST. U. L. REV. 675, 681 (1990) (discussing how the abolition of more than 200 municipal courts caused concern that the anticipated traffic adjudication case load would overwhelm some county court dockets).

9. CAL. WELF. & INST. CODE § 256 (amended by Chapter 55); see *id.* (specifying that a juvenile traffic hearing officer has authority to hear a violation of California Health and Safety Code § 11357(b)); see also CAL. HEALTH & SAFETY CODE § 11357(b) (West 1991) (making it a misdemeanor except as authorized by law, for any person to possess not more than 28.5 grams of marijuana, other than concentrated cannabis, and assessing a fine of not more than \$100); *id.* (providing that if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions must also be charged in the accusatory pleading and, if found to be true by the jury or by the court, or if admitted by the person, the provisions of California Penal Code §§ 1000.1 and 1000.2 will be applicable, and the court shall divert and refer the individual for education, treatment, or rehabilitation); *id.* (establishing that if the person is diverted and referred, he or she shall not be subject to the fine in this subdivision; however, if no community program will accept him, the person will be subject to the fine). See generally CAL. PENAL CODE § 1000.1 (West Supp. 1995) (discussing the provisions regarding the determination of application to the defendant, notification, investigation by the probation department, and final determination by the court regarding education, treatment, or rehabilitation); *id.* § 1000.2 (West Supp. 1995) (providing that the court will hold a hearing and, after considering any relevant information, the court will determine if the defendant consents to further proceedings and waives his or her right to a speedy trial, and if the defendant should be diverted and referred for rehabilitation, education, or treatment).

10. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1445, at 2 (June 19, 1995).

resources.<sup>11</sup>

Currently, use of marijuana among juveniles is on the rise.<sup>12</sup> During the past fifteen years, minors committing infractions and misdemeanors have generally been ignored by the juvenile justice system.<sup>13</sup> Not surprisingly, the same juveniles who have been ignored by the system for committing misdemeanors and infractions are those committing more serious crimes later on.<sup>14</sup>

Drug abuse has been shown to be linked with juvenile misbehavior.<sup>15</sup> Thus, by holding young and first-time offenders liable in a non-adversarial court setting, society will have a greater chance of preventing juveniles from entering a lifestyle of criminal behavior.<sup>16</sup>

Laura J. Roopenian

### Juveniles; juvenile hearings and public emergencies

Government Code § 68115 (amended).  
AB 361 (Napolitano); 1995 STAT. Ch. 112

11. *Id.*; see *Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission*, 19 FLA. ST. U. L. REV. 591, 651 (1992) (noting that youths who have committed serious crimes or have extensive records of juvenile offense are increasingly transferred to adult criminal court for the processing of their cases). See generally Eric L. Jensen, *The Waiver of Juveniles to Criminal Court*, 31 IDAHO L. REV. 173, 175 (1994) (citing THOMAS J. BERNARD, *THE CYCLE OF JUVENILE JUSTICE* (1992)) (discussing how the American system of juvenile justice has experienced a number of revisions since its origin a century ago); *id.* (noting that the perceptions about delinquency and the juvenile justice system give rise to the following three ideas that are the driving force behind juvenile justice policy: (1) juvenile crime is at an exceptionally high level, (2) the present juvenile justice policies make the problem worse, and (3) changing those policies will reduce juvenile crime).

12. *Testimony before the Senate Judiciary Committee Subcommittee on Youth Violence* (June 7, 1995) (testimony of Robert L. Maginnis, Policy Analyst Family Research Council); see *id.* (noting how in 1994 the annual marijuana use among 8th graders rose from 6.2% in 1991 to 13% in 1994, with a similar trend found among 10th and 12th graders).

13. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1445, at 2 (May 2, 1995).

14. *Id.*; see Jensen *supra* note 11, at 174 (explaining how the juvenile court has in the past experienced difficulty dealing with serious, repetitive offenders within the rehabilitative framework of the juvenile justice system).

15. *Testimony before the Senate Judiciary Committee, supra* note 12; see *id.* (discussing a study performed in 1990 which found a strong association between the severity of the crime and the type of substance used; the more intoxicating the substance, the more serious the incident).

16. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1445, at 2 (May 2, 1995); see Teresa Owen-Cooper, *Court Lets Teens Peer into World of Crime, Justice Youth Try Cases, Help Ease Docket*, DENVER POST, July 9, 1995, at C7 (explaining that teen courts are a new kind of crime prevention and intervention program which is aimed at reducing juvenile crime while teaching responsibility and providing an understanding of the nation's judicial system); *id.* (noting that teen courts also help clear some minor cases out of the overwhelmed juvenile court system); see also Anne Belli Gesalman, *Teen Court Ready to Come to Order; Trial by Peers Can Cut Recidivism*, DALLAS MORNING NEWS, Jan. 19, 1994, at 25A (discussing how teen courts have successfully seen recidivism drop substantially after offenders serve their sentences).

Existing law provides that if a minor has been taken into custody and is not released to a parent or guardian, the juvenile court must hold a detention hearing to determine whether the minor will be detained further.<sup>1</sup>

Existing law also specifies the time within which a rehearing must be held when a juvenile court hearing is held without the presence of a parent or guardian and without actual notice to the parent or guardian.<sup>2</sup>

With respect to adults, existing law authorizes specified extraordinary measures which may be taken by the courts under certain circumstances where the orderly operation of a court is threatened.<sup>3</sup> During such circumstances, the presiding judge may request the Chair of the Judicial Council to authorize a variety of measures within a specified county or judicial district.<sup>4</sup>

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1. CAL. WELF. & INST. CODE § 315 (West Supp. 1995); *see id.* (specifying that the detention hearing must be held as soon as possible, and before the end of the next judicial day after a petition to declare the minor a dependent child has been filed); *see also id.* (noting that if a hearing is not held within the specified time, the minor must be released from custody).

2. *Id.* § 321 (West Supp. 1995); *see id.* (establishing that if a parent or guardian of the minor had no actual notice and was not present at the hearing, the parent or guardian may file an affidavit setting forth the facts with the clerk of the juvenile court, and the clerk must immediately set the matter for rehearing within 24 hours, excluding Sundays and nonjudicial days, from the filing of the affidavit); *id.* (noting that upon rehearing, the court must proceed in the same manner as upon the original hearing); *see also id.* (providing that instead of a requested rehearing, the court may set the matter for trial within 10 days); *id.* (noting that when the court decides that the rehearing cannot be held within three judicial days due to the unavailability of a witness, a reasonable continuance may be granted for a period not to exceed five judicial days); *In re Patterson*, 58 Cal. 2d 848, 850, 377 P.2d 74, 76, 27 Cal. Rptr. 10, 12 (1962) (holding that notice by telephone satisfies due process), *cert. denied*, 374 U.S. 838 (1963). *See generally In re William M.*, 3 Cal. 3d 16, 31, 473 P.2d 737, 748, 89 Cal. Rptr. 33, 44 (1970) (declaring that “the basic predicate of the Juvenile Court Law is that each juvenile be treated as an individual”); *id.* (noting that the concept of juvenile court procedure is each offender’s special diagnosis and treatment for psychological and emotional problems be accorded so that the offender achieves satisfactory adjustment); *id.* (noting that a set, mechanized, mass treatment of offenders violates the idea that each individual should receive due process of law, and thwarts the legislative goal of providing troubled youth with particularized treatment directed toward rehabilitation).

3. CAL. GOV’T CODE § 68115 (amended by Chapter 112); *see id.* (providing that “extraordinary situations” include the danger or occurrence of war, insurrection, pestilence, or other public calamity, or the destruction of or danger to the building appointed for holding the court, or when a large influx of criminal arrests result from a large number of cases within a short period of time, thus threatening the orderly operation of a court within a specified county or judicial district); *cf. ALASKA CT. R. 22* (1994-1995) (specifying that when it appears necessary because of actual or threatened destruction of, or danger to the building, of war, insurrection, pestilence, or other public calamity, the presiding judge of the district may by order direct that the court be held or continued at another place or facility in the judicial district); MONT. CODE ANN. § 3-5-405(1) (1993) (permitting the district court judge authorized to hold or preside at a court to direct that the court be held or continued at any place in the county when war, insurrection, pestilence, or other public calamity renders it necessary); UTAH CODE ANN. § 78-7-12 (1992) (allowing the judge authorized to hold or preside at a court to direct—by an order filed with the clerk and published as the judge or clerk may prescribe—that the court be held or continued at any place in the city, town, or county other than that appointed when war, insurrection, pestilence, or other public calamity renders it necessary).

4. CAL. GOV’T CODE § 68115 (amended by Chapter 112); *see id.* (permitting the presiding judge or the sole judge and the Chair of the Judicial Council, notwithstanding any other provision of law, to authorize the court to do one or more of the following: (1) hold sessions anywhere within the county; (2) transfer civil cases pending in the court to another court in the county with subject matter jurisdiction; (3) transfer civil cases pending trial in the court to a court having subject matter jurisdiction in an adjacent county, subject to the consent of all parties or upon a showing that extreme or undue hardship would result unless the case is transferred; (4) suspend California Code of Civil Procedure § 199(d)-(f) relating to juror competency provisions when necessary to obtain a sufficient number of jurors; (5) after exhausting its own jury panel, draw jurors

Chapter 112 adds to existing law by extending the period in which a juvenile may be given a felony detention hearing during a state of emergency.<sup>5</sup> Chapter 112 additionally provides that during a state of emergency, the adjudication of a felony juvenile court petition may be held within no more than fifteen days from the date of the petition.<sup>6</sup>

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residing within the judicial district from the county superior court jury panel and after exhausting that source, draw jurors from the remainder of the jury panel of the county superior court or from jury panels of any other municipal or justice court in the county; (6) within the affected county during a state of emergency as proclaimed by the President of the United States or by the Governor pursuant to California Government Code § 8625, extend the time period provided in California Penal Code § 825 within which a defendant charged with a felony offense must be taken before a magistrate from two days to not more than seven days, with the number of days to be designated by the Chair of the Judicial Council; (7) extend the time period provided in California Penal Code § 859b for the holding of a preliminary examination from 10 days to not more than 15 days; and (8) extend the time period provided in California Penal Code § 1382 within which the trial must be held by not more than 30 days, but the trial of a defendant in custody whose time is so extended must be given precedence over all other cases); *see also* Telephone Interview with Jim Provenza, Special Assistant District Attorney (Sept. 28, 1995) (notes on file with the *Pacific Law Journal*) (explaining that the cross reference to California Code of Civil Procedure § 199(d), (e), found in California Government Code § 68115(d), is incorrect and will be addressed by the legislative counsel at a maintenance meeting). *See generally* CAL. GOV'T CODE § 8625 (West 1992) (specifying when a Governor is empowered to proclaim a state of emergency); CAL. PENAL CODE § 825(a)(1) (West Supp. 1995) (requiring that the defendant in all cases be taken before the magistrate without unnecessary delay within 2 days after arrest excluding Sundays, holidays, and days when the court is not in session); *id.* § 859b (West Supp. 1995) (noting that upon a plea of guilty or nolo contendere the magistrate will immediately appoint a time for pronouncing judgment in the superior court, municipal court, or justice court and refer the case to the probation officer if eligible for probation); *id.* § 1382 (West Supp. 1995) (setting forth the instance where the court must order an action to be dismissed unless good cause to the contrary is shown).

5. CAL. GOV'T CODE § 68115(i) (amended by Chapter 112); *see id.* (providing that within the affected area of a county during a state of emergency as proclaimed by the President or by the Governor, pursuant to California Government Code § 8625, the presiding judge may extend the time period provided in California Welfare and Institutions Code §§ 632 and 637 within which a minor must be given a detention hearing with the number of days to be designated by the Chair of the Judicial Council); *see also id.* (noting that the extension of time must be for the shortest period of time necessary under the circumstances of the emergency, but no more than seven days); *id.* (stating that this authorization will be effective for 30 days unless it is extended by a new request and a new order); *id.* (providing that the extension of time will apply only where the minor has been charged with a felony); CAL. WELF. & INST. CODE § 632(a) (West Supp. 1995) (establishing that a minor taken into custody will as soon as possible, but before the end of the next judicial day after a petition to declare the minor a ward or dependent child has been filed, be brought before a judge or referee of the juvenile court for a hearing to determine whether the minor will be further retained); *id.* § 632(b) (West Supp. 1995) (stating that when a minor is taken into custody without a warrant on the belief that he or she has committed a misdemeanor not involving violence, a threat of violence, or possession or use of weapons, if the minor is not currently on probation or parole, he or she will be brought before a judge or referee for a detention hearing within no more than 48 hours); *id.* § 637 (West 1988) (providing that when no parent or guardian is notified of or present at the hearing, the parent or guardian may file an affidavit setting forth such facts and the clerk of the juvenile court will immediately set the matter for rehearing at a time within 24 hours, excluding Sundays and nonjudicial days); *id.* (stating that when the minor is represented by an attorney who requests evidence of the prima facie case, a rehearing will be held within three judicial days, and that a reasonable continuance of up to five judicial days may be granted if the hearing cannot be held due to witness unavailability).

6. CAL. WELF. & INST. CODE § 68115(j) (amended by Chapter 112); *see id.* (stating that within the affected county during a state of emergency as proclaimed by the President of the United States or by the Governor pursuant to California Government Code § 8625, the presiding judge may extend the time period provided in California Welfare and Institutions Code § 657 within which an adjudication on a juvenile court petition must be held by not more than 15 days, with the number of days to be designated by the Chair of the Judicial Council); *id.* (noting that the authorization will be effective for 30 days unless it is extended by a new request and a new order); *see also id.* (making California Welfare and Institutions Code § 68115(j) applicable only when the minor has been charged with a felony).

## COMMENT

The purpose of a detention hearing in juvenile courts is to determine whether the minor must be detained in custody, pending his jurisdictional hearing.<sup>7</sup> According to the author of Chapter 112, prior law did not provide for a continuance for juvenile detention hearings or trials during a “declared state of emergency.”<sup>8</sup> Chapter 112 was enacted in order to establish a procedure to provide courts with limited emergency authority to continue juvenile proceedings.<sup>9</sup>

Following both the Los Angeles riots in 1992, and the Northridge earthquake of 1994, urgency legislation<sup>10</sup> was enacted extending the deadline for arraignments.<sup>11</sup> In both instances in which emergency legislation was enacted to extend the courts’ powers, there are no published opinions indicating that the emergency powers were used in an illegal manner.<sup>12</sup>

7. *In re Robin M.*, 21 Cal. 3d 337, 340 n.2, 579 P.2d 1, 2 n.2, 146 Cal. Rptr. 352, 353 n.2 (1978); *see id.* (noting that the Legislature has indicated that detention is to be the exception, not the rule); *see also In re William M.*, 3 Cal. 3d at 25 n.16, 473 P.2d at 743 n.16, 89 Cal. Rptr. at 39 n.16 (noting that unnecessary detention is both costly and unwarranted); *id.* (suggesting that a more conscientious, discriminating exercise of the detention screening process by probation departments and early detention hearings is advisable in order to reduce the large volume of juvenile detention in California); Bob Banta, *Judges Make Room in Juvenile Center by Freeing Children*, AUSTIN AM.-STATESMAN, Feb. 4, 1995, at B2 (describing how two judges worked overtime on a Friday conducting detention hearings in order to make room for any weekend arrests).

8. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 361, at 2 (Apr. 4, 1995); *see* 1994 Cal. Legis. Serv. ch. 981, sec. 1, at 4815-16 (amending CAL. GOV’T CODE § 68115) (omitting any provisions regarding extension of detention hearings for juveniles); *Robinson v. Shock*, 667 S.W.2d 956, 958 (Ark. 1984) (specifying that juvenile offenders are not to be treated as adult offenders; thus, although some overlapping occurs, the entire process and purpose of the juvenile code sets it apart from the criminal code, and the considerations involved in dealing with juvenile offenders are significantly different).

9. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 361, at 2 (Apr. 4, 1995); *see id.* (noting that AB 361 makes it possible to keep dangerous juvenile offenders detained while awaiting further judicial proceedings); *see also id.* (specifying that AB 361 brings juvenile procedures in line with the adult system in California Government Code § 68115, which allows for the extension of time during specified state of emergency in adult cases).

10. 1994 Cal. Legis. Serv. ch. 4X, sec. 1-4, at 33-35 (first extraordinary session) (amending, repealing, and adding CAL. GOV’T CODE § 68115).

11. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1346, at 2 (July 5, 1994); *id.* (noting that following the Northridge earthquake, the San Fernando courthouse was inaccessible for an extended period, and case files could not be obtained by the District Attorney, the Public Defender, or the court); *see id.* (reporting that in both cases, the California Legislature was fortunately in session and able to act promptly); *see also* SENATE FLOOR, COMMITTEE ANALYSIS OF AB 361, at 2 (June 22, 1995) (referring to the Northridge earthquake and how the judge of the juvenile court in the area ordered all cases on the calendar for the affected courts to be transferred); *id.* (stating that the judge based his decision on California Government Code § 68115, which did not specify juvenile proceedings prior to AB 361); *id.* (noting that AB 361 makes the necessary technical changes to the law to ensure that courts have the authority to take such actions with respect to juvenile proceedings during an emergency).

12. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1346, at 2 (July 5, 1994); *see* SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1346, at 3 (Aug. 26, 1994) (quoting the California Judges Association as stating that, “[w]henver a natural disaster or civil insurrection prevents California courts from holding the hearings to which defendants and suspects held in custody would otherwise be entitled, emergency legislation amending the Government Code section controlling court closings must be enacted in order to authorize additional in-custody days for those defendants and suspects. Immediately after each disaster, the Legislature races to write, introduce, and enact urgency legislation before suspects must be released back in



The United States Constitution requires arraignment promptly after arrest.<sup>13</sup> However, the Fourth Amendment does permit reasonable postponement of a probable cause determination while the police cope with the everyday problems of processing suspects through an overly burdened criminal justice system.<sup>14</sup>

In the instances where an arrested individual does not receive a probable cause determination within forty-eight hours, the arrested individual does not bear the burden of proving an unreasonable delay.<sup>15</sup> At this point, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance.<sup>16</sup> Under Chapter 112, prosecutors will continue to have the burden of proving that defendants are arraigned "without unnecessary delay."<sup>17</sup>

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to the community.").

13. U.S. CONST. amend. VI; *see* *County of Riverside v. McLaughlin*, 500 U.S. 44, 53 (1991) (noting that the Fourth Amendment generally requires prompt determinations of probable cause; however, individual states may choose to comply in different ways because the Constitution does not impose a rigid procedural framework on the states).

14. *McLaughlin*, 500 U.S. at 55; *see id.* at 56 (noting that examples of unreasonable delay include delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake); *cf.* Susan E. Kinsman, *Judge Says Oversight Should Not Free Offender*, HARTFORD COURANT, Oct. 21, 1994, at B9 (reporting that a juvenile offender, charged with sexual assault and other serious crimes, was entitled to immediate release because the state failed to renew his detention order in time).

15. *McLaughlin*, 500 U.S. at 57.

16. *Id.*

17. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 361, at 2 (Apr. 4, 1995).