Expanding Juveniles’ Rights

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I. INTRODUCTION

Children are probably the most vulnerable group in our society when it comes to voicing their opinions and taking a stand for their beliefs. Because of their younger age, they are not given much credit for their opinions. Part of the reason for this is that their status as minors places them under the legal care and custody of their parents. This creates the inference that the parents best represent what the child is or should be feeling. In addition, minors have limited legal rights, such as the right to vote, drink, and drive. These factors may lead to the view that minors are somehow not as deserving of the full protection of our laws as adults are. This has an adverse effect on children as a whole, one consequence of which is the increase in crimes committed by minors in general. Therefore, it is up to parents, teachers, judges, and legislators, among others, to ensure that minors are adequately represented by our laws, and are provided the fullest protection by them as well. There are three important areas where minors’ interests tend to be overlooked. The first is in child custody proceedings, where the children usually do not have much input into the determination of their own future. The second area involves dating violence among teens and the lack of legal protection provided to them. Finally, the third

1. See CAL. PROB. CODE § 3901(k)(1) (West 1991) (defining “minor” as an individual who has not attained the age of 18 years).
2. See CAL. CIV. CODE § 1714.1 (West Supp. 1997) (stating that a parent and/or guardian having custody of a minor is responsible for any willful misconduct of the minor which results in injury to person or property, or death).
3. See CAL. BUS. & PROF. CODE § 25658(b) (West Supp. 1997) (making the purchase of alcoholic beverages or consumption of such in any on-sale premises by a person under 21 years old a misdemeanor); CAL. ELEC. CODE § 2000(b) (West 1996) (stating that any person at least 18 years old at the time of the next election is eligible to vote at that election); CAL. VEH. CODE § 12507 (West Supp. 1997) (providing that anyone over sixteen years of age may apply for a driver’s license).
4. See Kevin M. Burke, Preventing Youth Violence: District Attorney’s Call for a Community Response, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 433, 433 (1995) (setting forth statistics on the increase in the number of juvenile crimes and the adverse effect it has on children).
5. See id. (discussing the need for the development of a comprehensive social response to crime prevention, which includes parents and student leaders).
6. See infra notes 7-10 and accompanying text.
7. See infra Part II.
8. For purposes of this Legislative Note, “teens” or “teenager” is defined as an individual between the ages of 13 and 17, and an 18-year-old is considered to be an adult.
9. See infra Part III.
area is the tragic reality of child abuse in which minors are not provided with the fullest protection of our laws.10

In 1996, three bills were introduced in California that amended existing laws to provide minors with more legal protection and rights in these areas.11 This Legislative Note focuses on these amendments and their positive affect on minors.

II. CHILD CUSTODY PROCEEDINGS

California law, before the passage of the amendments, allowed a juvenile court12 to issue restraining orders during the pendency of any proceeding to declare a minor child a dependent of that court, against any parent, guardian, or member of the child's household.13 In addition, it provided that the juvenile court could issue protective orders against either parent once a child had been declared a dependent of the juvenile court.14 Existing California laws also provided that once a child had been declared a dependent of the juvenile court, no other division of the superior court could issue orders regarding that minor while the juvenile court had jurisdiction.15 Existing laws in California also provided that a juvenile court, at the time it terminated its jurisdiction over the minor, could issue protective orders directed at either parent and issue custody and visitation orders.16

Chapter 1138 clarifies these proceedings by specifying when a juvenile court has the authority to issue restraining orders and against whom these orders may be issued.17 First, Chapter 1138 extends the time in which a juvenile court may issue protective orders from the moment a petition to declare a child under the jurisdiction of the court has been filed, until the time the juvenile court terminates its jurisdiction.18 Second, Chapter 1138 allows the juvenile court to issue restraining orders

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10. See infra Part IV.
12. See CAL. WELF. & INST. CODE § 245 (West 1984) (defining "juvenile court" as the name given to a superior court sitting in the exercise of jurisdiction over juvenile court proceedings).
13. Id. § 213.5(a) (amended by Chapter 1138).
14. Id.
15. Id. § 304 (amended by Chapter 1138); see id. (adding that the juvenile court can issue protective orders against the parents also once the child has been declared a dependent of the court).
16. Id. § 362.4 (amended by Chapter 1138).
17. SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS of AB 2154, at 1-2 (June 18, 1996); see id. (explaining that the intent of this bill is to clarify the time when a juvenile court may issue restraining orders, and to make the three provisions of juvenile dependency law consistent as to against whom these orders may be issued). For additional analysis of bills impacting this area, see Julie Momjian, Review of Selected 1996 California Legislation, 28 PAC. L.J. 631, 854 n.52 (1997).
18. CAL. WELF. & INST. CODE § 213.5(a) (amended by Chapter 1138); see id. (providing that after a petition has been filed and until the time that the petition is dismissed or dependency is terminated, the juvenile court may issue ex parte orders); id. § 304 (amended by Chapter 1138) (providing that after a petition has been filed and until the time that it is dismissed or dependency is terminated, all issues regarding custody of the child shall be heard by the juvenile court); id. § 362.4 (amended by Chapter 1138) (providing that when a juvenile court terminates its
against current or former members of the child’s household as well as any parent or guardian. Finally, Chapter 1138 reduces the time period between status reviews for children under certain circumstances from eighteen months to twelve months.

Chapter 1138 was designed to grant juvenile courts more power to hear certain proceedings and issue protective orders against a wider range of people that might be affecting the child at issue. To provide this greater authority would create more consistency and less confusion in the law. Moreover, it is good policy to allow the juvenile court to have more power over minors and their issues than other divisions of superior court since the juvenile court is geared specifically to deal with such cases. This is exemplified in the case of In re Roger S. In this case, after the juvenile court terminated its jurisdiction over a minor, the court refused to consider the father’s evidence on visitation and instead ordered the previously existing visitation arrangement to be filed in superior court. The Court of Appeal reversed, holding that when making an order to be transferred to family court, a juvenile court has the power to hear evidence relevant to that order. The court reasoned that because the juvenile court has been empowered by the legislature to issue custody and restraining orders, that fact expresses the belief that “the juvenile court is the appropriate place for these matters to be determined and that the juvenile court’s orders must be honored in later superior court proceedings.” This demonstrates that courts are willing to give greater authority to juvenile courts to determine their own issues.

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19. Id. § 213.5(a) (amended by Chapter 1138); see id. (stating that the juvenile court may issue restraining orders against a parent, guardian, or current or former member of the child’s household); id. § 304 (amended by Chapter 1138) (stating that the juvenile court may issue an order directed to any parent, guardian, or current or former member of the child’s household); id. § 362.4 (amended by Chapter 1138) (stating that the juvenile court may issue a protective order directed to any parent, guardian, or current or former member of the child’s household).

20. Id. § 366.25(a) (amended by Chapter 1138); see id. (stating that in the case of minors who are placed in foster care because they cannot be returned home, a hearing shall be held every twelve months to determine the minor’s future status); id. § 366.3(f) (amended by Chapter 1138) (stating that for minors who are dependents of the juvenile court, a hearing shall be held every 12 months to find permanent homes for them); id. § 11404.1 (amended by Chapter 1138) (stating that to be eligible for AFDC-FC, a child shall receive a permanency planning hearing every 12 months).

21. See Senate Committee on Judiciary, Committee Analysis of AB 2154, at 3 (June 18, 1996) (stating that the authority of the juvenile court to issue restraining orders is expanded to include “any current or former member” of the child’s household).

22. See id. at 4 (stating that Chapter 1138 is needed to clarify discrepancies relating to the court’s authority to issue restraining orders).

23. See Assembly Committee on Judiciary, Committee Analysis of AB 2154, at 2 (May 8, 1996) (setting forth arguments in support of Chapter 1138, namely, that it clarifies the law with respect to exactly when the juvenile court has the authority to issue restraining orders).


25. In re Roger S., at 28, 5 Cal. Rptr. at 209.

26. Id. at 30, 5 Cal. Rptr. 2d at 210.

27. Id. at 31, 5 Cal. Rptr. 2d at 211.
Another area affected by Chapter 1138 is the group of persons against whom protective orders can be issued.28 Encompassing "current or former members" of the child's household expands the group of persons affected by the order because it takes into consideration persons other than the biological parents.29 This seems appropriate in light of the fact that the definition of modern day households has changed from the times of the traditional two-parent family comprising the household.30 The traditional definition of "family," which we are all accustomed to, is seen in the case of Village of Belle Terre v. Boraas.31 Today, the definition has expanded to include children who are not related by blood to both parents.32 For example, many gay couples are having or adopting children.33 There are also many more cohabitating couples having children without ever getting married, as well as other alternative lifestyles comprising modern day "families."34 Consequently, the chances that a member of a child's family belongs to one of these "families" has increased accordingly. Thus, to exclude from the meaning of "family" one of these persons would be to ignore a segment of the population that should be subject to these statutes as well as "traditional" family members.

There is evidence that some courts are willing to extend the definition of "family" member to include these members not within the traditional definition.35

28. See CAL. WELF. & INST. CODE §§ 213.5(a), 304, 362.4 (amended by Chapter 1138).
29. Id.
30. See infra notes 31-36 and accompanying text.
31. 416 U.S. 1 (1974); see id. at 2 (defining "family" as "[o]ne or more persons related by blood, adoption or marriage, or not more than two unrelated persons, living and cooking together as single housekeeping unit").
32. See infra notes 33-36 and accompanying text.
33. See Jane Gross, Gays, Singles Also Targets of Adoption Rules, L.A. TIMES, Sept. 8, 1996, at A3 (reporting that limited consent adoptions, in which one member of a gay couple adopts the other's child, are common in big cities like San Francisco and Los Angeles); April Martin, Prohibiting Same-Sex Marriage Puts Children in Peril, CHI. TRIB., Sept. 15, 1996, at 2 (discussing how adoption agencies are increasingly turning to same-sex couples to provide homes for children).
34. Such "alternative lifestyles" refer not only to same-sex households, but also include homes comprised of a single parent, relatives other than the biological parents, and other combinations of persons that do not come within the traditional definition of "family." See Eva Ahlberg, Live-In Lovers in Sweden, Including Gays, Given Same Rights as Married Couples, L.A. TIMES, Mar. 27, 1988, at 15 (reporting that a new Swedish law gives live-in lovers, whether heterosexual or homosexual, the same rights as couples married by church or state, and that cohabitation is widely accepted in Sweden); Mae Chun, Traditional Families on the Way Out, NEW STRAITS TIMES (Malaysia), June 26, 1996, at 12 (commenting that in the era of the 1990s, the definition of "family" encompasses a "whole slew of diverse images," including single parent families and common-law families); Eric Hanson, Many More Single with Children, HOUSTON CHRON., July 20, 1994, at A1 (providing statistics showing that the number of unmarried-couple households is 3.5 million, as compared to 523,000 in 1970); Betsy White, Education Advisory Panel Urges Ga. Schools to Broaden Definition of "a Family," ATLANTA J. & CONST., Oct. 16, 1992, at D2 (reporting that a state advisory panel voted to teach children a more expansive view of families to include unmarried, cohabitating couples and lesbians who have children through artificial insemination).
35. See In re Hirenia C., 18 Cal. App. 4th 504, 513, 22 Cal. Rptr. 2d 443, 448 (1993) (holding that a "de facto parent" of a minor has the right to participate as a party in juvenile court proceedings to decide how the care, custody, and control of the child will be made); see also In re B.G., 11 Cal. 3d 679, 692 n.18, 523 P.2d 244, 253 n.18, 114 Cal. Rptr. 444, 453 n.18 (1974) (defining "de facto parent" as one who, on a daily basis, assumes the role of parent, seeking to fulfill both the child's physical and psychological needs for affection and care).
Indeed, even within the definition of "de facto parent," there has been a trend toward extending the definition from one with a blood relation, to a person with no officially recognized legal status, such as a guardian or foster parent. This trend ensures that persons who might have slipped through the loopholes under the traditional definition would not be able to do so now when protective orders are concerned.

The final area covered by Chapter 1138 involves status hearings. Before the amendments, hearings were held once every eighteen months to determine the status of minors in order to place them in permanent homes. Chapter 1138 provides such hearings once every twelve months. This shortened time period between hearings should help keep juvenile authorities more aware of the child's condition, thus possibly avoiding certain instances of abuse and death because the authorities were unaware that such abuse was being committed. Subsequently, the overall well-being of the child should increase accordingly.

### III. Teenage Dating Violence

Today, there is a frighteningly sharp increase in both the number of and the level of violence in abusive teenage dating relationships. This fact is reflected in several statistics. Up to thirty-three percent of high school students have experienced physical or sexual violence in their dating relationships. Between twenty-two percent and sixty-four percent of dating couples in high school and college have experienced some form of physical violence in their dating relationships. Approximately twenty-eight percent of persons dating will be involved in intimate violence at some point during their dating lives.

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36. See *In re Rachael C.*, 235 Cal. App. 3d 1445, 1452-53, 1 Cal. Rptr. 2d 473, 477-78 (1991) (explaining that in granting de facto status, the court must consider the de facto parents' personal interest in the companionship, care, custody and management of the child, and not just the closeness of relation to the child).

37. See CAL. WELF. & INST. CODE §§ 366.25(a), 366.3(f), 11404.1 (amended by Chapter 1138).

38. Id. §§ 366.25(a), 366.3(f), 11404.1 (amended by Chapter 1138).

39. Id. §§ 366.25(a), 366.3(f), 11404.1 (amended by Chapter 1138).


41. See infra notes 42-44 and accompanying text.

42. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2155, at 2 (May 8, 1996).

43. Id.; see Nickie McWhirter, *Male Battery of Women Becomes a Growing Trend*, DETROIT NEWS, Sept. 26, 1995 (reporting that up to 33% of high school and college age women report experiencing violence in their dating relationships); *Painful Memories Beyond Her Years*, SACRAMENTO BEE, Nov. 3, 1995, at SC1 (according to statistics compiled by Sacramento's Women Escaping a Violent Environment, up to 35% of teen dating relationships included violence).

44. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 426 (1994); see Pat Bender, *When Teen-Age Romance Turns Violent*, SAN DIEGO UNION-TRIB., Nov. 23, 1995, at B-13 (citing Barry Levy, a Santa Monica therapist, as saying that at least 25% of dating teenagers have experienced some form of physical violence); Mark Mueller, *State Grant to Schools Targets Violence in Teen Relationships*, BOSTON HERALD, Nov. 21, 1995, at O10 (citing one study as finding that 35% of teens questioned said they were the victims of violence in a dating relationship or knew of someone battered by a boyfriend or girlfriend).
This type of violence crosses all socioeconomic boundaries, affecting teens from every walk of life. These teens would normally look to domestic violence statutes for protection. However, most states exclude minors from the ambit of their domestic violence statutes. California is one of only ten states that does not exclude teens from its domestic violence statutes. Although it does not specifically exclude teens from its definition, it does not specifically include them, either, causing occasional confusion as to its intent.

Until 1996, however, a minor had to have a guardian ad litem or other representative when appearing in any proceeding, including one for obtaining a protective order. This presented a problem because teens may avoid seeking help as they might not trust adults with such intimate problems. Some teens also may be afraid that if an adult were to become involved, others would find out about the problem, including the abuser, who might subsequently do further harm to the victim.

See Robin Abcarian, Jenny's Story: Parents Were the Last to Know, L.A. TIMES, Oct. 13, 1991, at E14 (discussing the story of a middle-class girl from a suburban, midwestern town who was murdered by her boyfriend); Marianne Jacobbi, The Silent Epidemic of Teenage Dating Violence, STAR TRIB. (Minn.), May 19, 1996, at 1E (discussing the story of a typical honor roll student from a small town high school who was abused by her boyfriend).

See CAL. FAM. CODE § 6211 (West 1994) (setting forth the definition of "domestic violence").

Suarez, supra note 44, at 435-38; see id. at 435-38 (citing various states' codes that exclude teens from coverage by defining domestic violence victims as a spouse, former spouse, cohabitant, former cohabitant, parent or adult, among other terms that do not include teens); see, e.g., OR. REV. STAT. § 108.610(3) (1995) (defining a victim of family violence as a person who has been subjected to "physical injury, sexual abuse or forced imprisonment... by another who is related by blood, marriage or intimate cohabitation"); TEX. HUM. RES. CODE ANN. § 51.002(2) (West 1990 & Supp. 1997) (defining a victim of family violence as an "adult who is subjected to physical force... by another who is related... to that adult, who is a former spouse of that adult, or who resides in the same household with that adult").

Suarez, supra note 44, at 439; see id. (citing codes from California, Colorado, Illinois, Massachusetts, New Hampshire, New Mexico, North Dakota, Pennsylvania, Washington, and West Virginia, as those which have structured their domestic violence laws in such a manner as to allow abused teens to take advantage of them); see, e.g., CAL. FAM. CODE § 6211 (West 1994) (including in its definition of "domestic violence," abuse against "a person with whom the respondent is having or has had a dating or engagement relationship"); COLO. REV. STAT. ANN. § 18-6-800.3(1), (2) (West Supp. 1997) (same); 750 ILL. COMP. STAT. ANN. 60/103(6) (West Supp. 1996) (same); MASS. GEN. LAWS ANN. ch. 209A, §§ 1(e), 3(a) (West Supp. 1996) (same); N.H. REV. STAT. ANN. § 173-B:1(6), (IV) (1994) (same); N.M. STAT. ANN. § 40-13-2(D) (Michie Supp. 1996) (same); N.D. CENT. CODE § 14-07.1-01(2), (4) (Supp. 1995) (same); 23 PA. CONS. STAT. ANN. § 6102(a) (West Supp. 1996) (same); WASH. REV. CODE ANN. § 26.50.010(2), (3) (West Supp. 1997) (same); W. VA. CODE § 48-2A-2(b) (1996) (same). Suarez actually notes 11 states, but Alaska has repealed its statute.

See Suarez, supra note 44, at 440 (explaining how the lack of specificity of these codes makes the extent to which teens are included within the coverage of the statutes ambiguous).

See BLACK'S LAW DICTIONARY 706 (6th ed. 1990) (defining "guardian ad litem" as a special guardian appointed by the court to represent an infant, ward, or unborn person in a particular litigation).

See CAL. CIV. PROC. CODE § 372 (amended by Chapter 727) (providing that when a minor is a party to an action or proceeding, the minor shall appear through a guardian or conservator of the estate, or through a guardian ad litem appointed by the court).

52. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2155, at 2 (May 8, 1996).

53. See Shen, supra note 40, at A1 (describing how the victim was afraid to tell her parents the truth about her abusive boyfriend for fear of defying him); see also Jacobbi, supra note 45, at 1E (stating how teenage girls tolerate the abuse due to fear from their boyfriends' threats of severe harm or even death if the girls tell someone).
Chapter 727 creates an exception to this law by allowing a minor who is twelve years of age or older to appear in court without a guardian, counsel, or guardian ad litem, for the purpose of obtaining a protective order against a person with whom the minor is having or has had a dating or engagement relationship. Furthermore, Chapter 727 requires a copy of the order to be sent, at the court's discretion, to at least one parent or guardian under certain circumstances, unless it would be contrary to the best interest of the minor.55

Chapter 727 appears to provide a proper balance among all the parties having an interest in the matter. The minor has the opportunity to appear and voice concerns without adult interference, while the court still retains the right to appoint a guardian if it feels necessary. In addition, parents and guardians may still be notified under certain circumstances.56

This approach seems to make more sense, as juveniles between the ages of twelve and seventeen tend to be underestimated in their ability to make mature decisions.57 In looking at the history of statutes regarding the appointment of guardians ad litem, it is readily ascertainable that such statutes were enacted to protect minor, mentally disabled,58 and incompetent59 persons. To categorize minors with mentally disabled and incompetent persons seems to insult the intelligence of many of them. Indeed, it appears that this notion was more prevalent in times past, as seen in older cases such as Robelet v. Robelet.60 In that case, the court held, in a custody proceeding, that when children are under the age of fourteen, it is not an abuse of discretion to determine which parent is awarded custody of the children without allowing the children to express an opinion as to their preference.62

54. CAL. CTIV. PROC. CODE § 372(b) (1) (amended by Chapter 727).
55. Id. § 372.2(b)(2) (enacted by Chapter 727); see id. (describing such circumstances as those in which the minor initially appeared in court seeking a protective order without a guardian ad litem or if the minor is residing with a parent or guardian).
56. See id. (providing that unless contrary to the best interest of the minor, a copy of the order shall be sent to at least one parent if the minor initially appeared in court seeking a protective order without a guardian and the minor is residing with a parent or guardian).
57. But see Assent, Dissent on Parental Consent Law, L.A. TIMES, Apr. 28, 1996, at E5 (quoting a reader's opinion that a minor is unable to make informed and mature decisions with respect to abortions); 'Shotgun Weddings' Way off Target, CHI. TRIB., Sept. 5, 1996, at 16 (stating that in statutory rape cases, consent of the minor is not an issue because it is understood that the minor lacks judgment mature enough to make such a decision).
58. See CAL. VAM. CODE § 7827 (West Supp. 1997) (defining a "mentally disabled" parent as one who suffers mental incapacity or disorder that renders him or her unable to care for the child adequately).
59. See CAL. PROB. CODE § 3603 (West 1991) (defining an "incompetent person" as one for whom a conservator may be appointed).
60. Briggs v. Briggs, 160 Cal. App. 2d 312, 319, 325 P.2d 219, 223 (1958); see id. (holding that statutes regarding appointment of guardians ad litem were enacted to protect minors, insane and incompetent persons, and not to preclude them from their legal rights).
However, it appears that today, minors have more of a say in such proceedings. The trend is exemplified in the case of In re Marriage of Rosson. The court held that the two children, ages ten and thirteen, should be given the opportunity to express their preference in a custody proceeding. Moreover, the court added that "maturity is not measured by chronological age." This line of thinking is perhaps an actual trend in the way courts view the ability of minors to make intelligent decisions. If so, it parallels the changes in our society which have increasingly come to recognize the abilities of minors, as well as place greater responsibilities onto their shoulders.

IV. CHILD ABUSE

Unfortunately, along with teenage dating violence, there is an increase in the number of child abuse cases reported today. Studies show that there is a correlation between spousal abuse and child abuse. Statistics reveal that there is a forty-five to seventy-five percent correlation between the two. Eighty-five percent of batterers either witnessed or experienced physical abuse as a child.

Existing California law provides that in making a determination of the best interest of the child in a custody proceeding, the court shall consider specific factors, including any history of abuse by one parent against the child or against the other parent.
Chapter 835 extends the scope of the persons covered under the present statute to include more victims of abuse.\textsuperscript{72} This way, persons other than those falling under the traditional definition of family/household member will be considered when it comes to abuse. This is important because many households today consist of persons other than biological parents or guardians.\textsuperscript{73} Those persons should not be excluded from these statutes protecting children from abuse, either directly or indirectly (as a witness). Expanding this definition will provide greater protection for children belonging to such households.

V. CONCLUSION

These bills seek to expand the breadth of the traditional definition of family. Today, there are families comprised of various people other than the biological or adopted parents.\textsuperscript{74} This should be seen as a very positive step forward. With these changes, however, comes the increased chance that abuse will come from these “other” family members. Our laws in California should reflect these changes accordingly. Passing Chapters 1138, 727, and 835 covers the typical circle of violence—abused children are much more likely to become abusers in the future with their own children. Enacting these laws provides a greater measure of protection for children from various forms of abuse.

APPENDIX

\textit{Code Sections Affected}

\begin{itemize}
  \item AB 2154 (Kuehl); 1996 STAT. Ch. 1138
  \item Code of Civil Procedure § 372 (amended); Family Code § 6301 (amended).
  \item AB 2155 (Kuehl); 1996 STAT. Ch. 727
  \item Family Code § 3011 (amended).
  \item AB 2474 (Kuehl); 1996 STAT. Ch. 835
\end{itemize}

\textsuperscript{72.} See id. § 3011(b) (amended by Chapter 835) (stating that the court shall, among other factors, consider any history of abuse by one parent (or any other person seeking custody), against: (1) Any child to whom there is a relation by blood or with whom one has had a caretaking relationship, no matter how temporary; (2) the other parent; or (3) a parent, current spouse, or cohabitant of the person seeking custody, or a person with whom the person seeking custody has a dating or engagement relationship).

\textsuperscript{73.} See supra notes 30-36 and accompanying text.

\textsuperscript{74.} See supra notes 30-36 and accompanying text.
The Parents' Right to Obtain Drug and Alcohol Abuse Treatment for Minor Children

Julie Momjian

I. INTRODUCTION

Society has traditionally viewed minors as immature and incapable of making decisions affecting their own well-being, and the laws of our society reflect that belief. An example of an area of the law where minors have limited rights and which has engendered much debate in recent years involves the medical treatment of minors. When courts deal with the medical treatment of a minor, consent by a parent or guardian is necessary to authorize the treatment, or the resulting treatment will be considered a battery for which the physician will be liable.

California, however, in 1992, enacted § 6929 of the Family Code, which expanded the rights afforded to minors by granting a minor who is twelve years or older the ability to submit to drug or alcohol abuse treatment absent parental consent. Accordingly, by recognizing the right of a minor to legally consent to treat-

1. See CAL. FAM. CODE § 6500 (West 1994) (defining a “minor” as a person under 18 years of age).
2. See, e.g., id. § 6701 (West 1994) (stating that a minor does not have the authority to make a contract relating to real property or personal property not in the immediate possession of the minor); id. § 6710 (West 1994) (declaring that a contract by a minor may be disaffirmed by the minor before majority or within a reasonable time afterwards); see also Burnand v. Irigoyen, 30 Cal. 2d 861, 866, 186 P.2d 417, 420 (1947) (declaring that the general theory behind a minor’s ability to disaffirm a contract is to protect infants, not only from others, but also from themselves); Pollock v. Industrial Accident Comm’n, 5 Cal. 2d 205, 210-11, 54 P.2d 695, 698 (1936) (declaring that because minors have the right to take away their consent, persons normally contracting with a minor do so at their own peril). But see CAL. FAM. CODE § 6922 (West 1994) (stating that those contracts that minors enter into which are necessary for their support or the support of their family may not be disaffirmed by the minor).
4. See Bonner v. Maron, 126 F.2d 121, 122 (D.C. Cir. 1941) (holding that performing surgery on a 15-year-old boy with only the consent of the minor, absent special circumstances, constitutes a battery regardless of the outcome of the surgery); see also Rowse H. Brown & Richard B. Tuitt, The Right of Minors to Medical Treatment, 28 DePaul L. Rev. 289, 290 (1979) (stating that parental consent is necessary for medical treatment of minors). But see G. Emmett Raitt, Jr., The Minor's Right to Consent to Medical Treatment, 48 S. Cal. L. Rev. 1417, 1418-19 (1975) (stating that minors may consent to medical treatment without the consent of their parents if they are "emancipated" minors).
5. 1992 Cal. Legis. Serv. ch. 162, sec. 10 at 543 (enacting CAL. FAM. CODE § 6929); see CAL. FAM. CODE § 6921 (West Supp. 1996) (proclaiming that if a minor consents to drug or alcohol abuse treatment, such consent is not subject to disaffirmance); cf. ALA. CODE § 22-8-6 (1990) (declaring that a minor may give effective consent to determine the presence of drug dependency); HAW. REV. STAT. ANN. § 577-26(c) (Michie 1993) (stating that the consent given to drug or alcohol abuse counseling by a minor who suffers or professes to suffer from drug or alcohol abuse shall be valid and binding as if the minor had reached majority); 410 ILL. COMP. STAT. ANN. 210/4 (West 1993) (acknowledging that a minor 12 years or older who may be determined to be an addict or an alcoholic or intoxicated person, and may give consent to the furnishing of medical care related to the diagnosis); MINN. STAT. ANN. § 144.343(1) (West 1989) (stating that any minor may give effective consent for medical, mental, and other health services to determine the presence of or to treat alcohol and other drug abuse).
ment, § 6929 also impliedly relieves a treating physician from incurring liability for the resulting treatment without subjecting a physician to legal liability. Existing law further provides that a minor's representative has a right to inspect the medical records of the minor, but creates an exception for such records concerning treatment for which legal consent by the minor alone may be given.6

Chapter 656 provides that a parent or guardian of a minor may consent to alcohol or drug abuse treatment of a minor even if the minor is over twelve years of age and has manifested an objection to the treatment.7 Chapter 656 also provides that parents who seek drug or alcohol abuse treatment for their minor children have a right to the disclosure of their child's medical records upon their request.8

II. PARENTS' CONSENT TRADITIONALLY

Raising a child in these modern times causes many parents fear. One such fear is that their child will somehow get involved in drugs and alcohol. The drug and alcohol abuse rate among teens in the United States has escalated to an astonishing figure.9 A national survey conducted in 1992 by the National Center for Health Statistics stated that forty percent of all youths in America have consumed alcohol ten or more times in their lives.10 The same study reported that three out of ten youngsters had at one time experimented with illegal substances.11

With this high rate of alcohol and drug abuse comes concerned parents. Supporters of Chapter 656 declare that parents who are concerned about their child's welfare need a legal mechanism entitling them to place their child in drug or alcohol abuse programs even over the protests of the affected child.12 However, these same

6. CAL. HEALTH & SAFETY CODE § 123115 (West 1995); see id. (stating that a parent is not entitled to inspect medical records when a doctor believes that allowing the inspection would be detrimental to the care of the minor); 42 C.F.R. § 2.14(b) (1995) (stating that where a minor patient can alone lawfully give consent to alcohol and drug abuse treatment under state law, consent for disclosure of medical records may be given only by the minor patient); id. § 2.14(c) (1995) (stating that where state law requires consent of parent for alcohol or drug abuse treatment, both the minor and the parent must give consent for disclosure of medical records); see also CAL. HEALTH & SAFETY CODE § 123110 (West 1995) (stating that a minor has a right to inspect his medical records only for the health care with respect to which he has a lawful right to consent).
7. CAL. FAM. CODE § 6929(f) (amended by Chapter 656).
8. Id. § 6929(g) (amended by Chapter 656).
9. See States Take Action, L.A. TIMES, Dec. 13, 1986, at 8 (surveying the situation of drug use in American schools); see also Christine Russell, Do You Know What Your Kids Are Doing?, WASH. POST, July 11, 1995, at Z10 (stating that teens are engaging in risky behavior that could lead to chronic disease, injury, and death, according to a national household survey of 10,645 youths from 12 to 21 years of age).
10. See Russell, supra note 9, at Z10 (verifying that the alcohol rate is inclusive of eight percent of 12- to 13-year-olds and one-third of 14- to 17-year-olds).
11. Id.
12. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2883, at 2 (May 8, 1996); see American Academy of Pediatrics v. Lungren, 12 Cal. 4th 1007, 1029, 912 P.2d 1148, 1161, 51 Cal. Rptr. 2d 210, 214 (1996) (stating that under our statutes there is a presumption that an unemancipated minor, unlike an emancipated minor or adult women, is incapable of informed consent); see id. (stating that even under California Family Code § 6929(c), treatment requires the minor's parents' involvement, unless, in the opinion of the professional
proponents feel that parents should be given this right without jeopardizing the right that children have been granted under California Family Code § 6929, enabling children to seek treatment on their own accord. Moreover, by allowing parents access to medical records of minor children, proponents assert that Chapter 656 will allow parents to make informed decisions about their children's care.

The apparent intent of the legislature in enacting the original legislation, California Family Code § 6929, was to provide minors above the age of twelve with the ability to obtain drug and alcohol abuse treatment when their parents were unable or unwilling to provide consent for them. Accordingly, supporters argue that nothing in the original legislation reflects an intent to limit the ability of parents to consent to treatment on behalf of their children, if they feel that their child has a problem with drugs or alcohol, even if that consent is given over the objection of the minor child.

The fact that the courts of the United States have consistently deferred to the decisions that parents make with respect to the well-being of their children lends Chapter 656 further justification. Courts continually emphasize the liberty interest parents possess in raising their children and the power they hold in making decisions concerning the health and well-being of their children. Normally a court will not interfere with parental custody and control of minor children unless the parents are proven to be unfit, which usually requires a showing that the parents' continued treating, it would be inappropriate).

14. Id.
15. Id. See generally American Medical Association Council on Scientific Affairs, Confidential Health Services for Adolescents, 269 JAMA 1420, 1421 (1993) (reporting that 49% of adolescents would seek medical treatment for drug use if they were assured it would be confidential as opposed to 17% if no assurance of confidentiality was given).
17. See Santosky v. Kramer, 455 U.S. 745, 753 (1982) (stating that parents have a liberty interest in the care, custody, and management of their child); Parham v. J.R., 442 U.S. 584, 604 (1979) (holding that the respective rights and prerogatives of the child and parent in the voluntary commitment setting permit the parents "to retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse, and that the traditional presumption that the parents act in the best interests of the child should apply"); In re John S., 66 Cal. App. 3d 343, 346, 135 Cal. Rptr. 893, 898 (1977) (declaring that parental rights include the ability, and also the duty, to prescribe medical treatment for a child that is in the child's best interest); see also Stanley v. Illinois, 405 U.S. 645, 651 (1972) (holding that an unwed father is entitled to a hearing on his fitness before his child is taken away because of the interest parents have in the care, custody, and management of their child); Loren Mark, The Competent Child's Preferences in Critical Medical Decisions, 11 W. ST. L. REV. 25, 28 (1983) (asserting that in family litigation, great deference is granted to parents in the assessment of the decisions a court should make as to the child's future). But see Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976) (holding that a statutory provision that grants a parent absolute power to overrule a determination made by a physician and his minor patient to terminate a pregnancy is unconstitutional).
18. Santosky, 455 U.S. at 753.
19. See id. at 760 (holding that until the state proves parental unfitness, the child and the parent share a vital interest in preventing erroneous termination of their natural relationship); Mark, supra note 17, at 29 (stating that absent a showing of parental unfitness or detriment that would result from allowing parents to retain custody, the state cannot disrupt the parent-child relationship).
custody and control would be contrary to the child’s best interests. Courts are reluctant to sever the tie that binds parent and child in recognition of the strong belief that family is a critical part of society. Accordingly, in order to preserve the sanctity of the family, courts give parents a great amount of deference in raising their children. However, this does not mean that parents have absolute control over their children. A court will interfere if it is in the child’s best interest.

III. A MINOR’S RIGHT TO DUE PROCESS

While the purpose behind Chapter 656 seems commendable, its basis may be constitutionally unsound. Although minors may not have rights as extensive as adults under the United States Constitution, they are still considered “persons,” and are afforded protection. Accordingly, because this legislation states that minors could be placed in treatment over their objection, Chapter 656 may work to deprive minors of their Fourteenth Amendment due process rights.

The United States Supreme Court in Parham v. J.R., set the minimum procedural requirements that should be afforded minors before minors can be institutionalized against their will. In Parham, a minor boy was placed in a Georgia state mental hospital involuntarily, upon the request of his parents, pursuant to a Georgia statute. The Court recognized that a child has a liberty interest in not being confined unnecessarily for treatment and analyzed the statute and procedure of admittance into the hospital in order to determine whether the minor’s rights had been violated.

20. Mark, supra note 17, at 29.
21. See supra note 18 and accompanying text.
22. Id.
23. Prince v. Massachusetts, 321 U.S. 158, 166 (1944); see id. (declaring that the rights of parents are not beyond limitation when the minor’s well-being is at stake).
24. See American Academy of Pediatrics v. Lungren, 12 Cal. 4th 1007, 1024, 912 P.2d 1148, 1156-57, 51 Cal. Rptr. 2d 201, 210 (1996) (explaining that an unemancipated minor’s rights are in some instances more limited than the rights held by an adult); In re Roger S., 19 Cal. 3d 921, 928, 569 P.2d 1286, 1290, 141 Cal. Rptr. 298, 302 (1977) (asserting that the liberty interest of a minor is not coextensive with that of an adult).
25. See Planned Parenthood v. Danford, 428 U.S. 52, 74 (1976) (declaring that minors, as well as adults, possess constitutional rights); In re Scott K., 24 Cal. 3d 395, 401, 595 P.2d 105, 108, 155 Cal. Rptr. 671, 674 (1979) (stating that minors are also “persons” under the Constitution, thus their rights must be recognized); Raitt, supra note 4, at 1432 (stating that minors are persons under the Federal Constitution).
26. See U.S. Const. amend. XIV (guaranteeing that “no person shall be deprived of life, liberty, or property, without due process of law”).
28. See infra notes 31-33 and accompanying text.
29. Parham, 442 U.S. at 584.
30. Id. at 600; see In re Roger S., 19 Cal. 3d at 927, 569 P.2d at 1289, 141 Cal. Rptr. at 301 (holding that a minor should have been granted a precommitment hearing in front of a neutral fact finder before he was confined in a mental institution); In re John S., 66 Cal. App. 3d 348, 358, 135 Cal. Rptr. 893, 901 (1977) (stating that a decision by parents to treat their minor’s mental disorder in a private institution does not work as a denial of the minor’s due process rights).
make this determination, the court applied a balancing test. Among the factors considered by the Court were the private interest that would be affected by the action, the risk of mistakenly depriving the minor of such an interest because of the procedures used by the state, and the state's interest in following the stated procedure.

Applying the factors, the Court held that a person has a liberty interest in not being confined unnecessarily, and further found that there is a high risk of error when parents are allowed to make the decision for treatment. Moreover, the Court required that the state establish some sort of inquiry to be undertaken prior to confinement so as to decrease the chance of erroneously depriving a child of a liberty interest. This inquiry, the Court explained, must, at the least, explore the child's background using parents, schools, and other social agencies as keys in this investigation. An interview with the child is also necessary to determine whether the child satisfies the medical standards for admission. Finally, the Court stated that the child's continuing need for commitment must be reviewed periodically to determine whether the child is in further need of treatment. The Court held that Georgia's state procedures met these minimum requirements, and thus did not deprive the minor of the constitutional right to due process.

Although Chapter 656 is not aimed at institutionalization in a state mental hospital, it gives parents the opportunity to place their children in drug and alcohol abuse treatment programs which, in some cases, could involve involuntary confinement of the minor. Thus, because Chapter 656 has the potential of confining minors against their will, it involves a liberty interest analogous to the one in Parham, which the Supreme Court found to be deserving of constitutional protection. Similar to the situation in Parham, the risk of error in affording a parent an absolute right to place a child in drug or alcohol abuse treatment is high. This is due to the fact that parents tend to overreact when confronted with the behavior of difficult teens, and thus might

32. Id.
33. Id. at 606; see id. at 604-05 (declaring that the state also has an interest in reserving its state facilities for cases of genuine need).
34. Id. at 606.
35. Id. at 606-07.
36. Id. at 607.
37. Id.
38. Id. at 616-17; see id. at 591 (remarking that the Georgia state statute involved a procedure which required a superintendent of a facility to observe a minor and then, only after finding evidence of mental illness, admit the minor for treatment); id. (stating that the Georgia statute enabled a superintendent of the facility to discharge those who had recovered from the illness or who had sufficiently improved); see also id. at 604 (clarifying the difference between the statute struck down in Planned Parenthood v. Danforth, which provided for an absolute parental veto over the child's decision to obtain an abortion, and the Georgia statute, which in no way involved an absolute right to commit children to state hospitals, but only required the superintendent of each hospital to decide independently whether the child was in need of confinement).
39. See supra note 34 and accompanying text (discussing the Parham decision).
mistakenly attribute their behavior to drug or alcohol dependency. The state, however, does have an interest in ensuring the well-being of minors who are unable to recognize that they need help and in providing parents with the authority to obtain that help.

Thus, with respect to confinement in a drug or alcohol treatment program, Chapter 656 mirrors the situation presented in Parham. However, unlike the statute involved in Parham, which mandated that the child first be determined to be in need of treatment before being confined against his or her will, Chapter 656 does not set forth any procedural requirements to determine whether a minor is actually in need of drug or alcohol abuse treatment prior to placing the minor in a program. However, drug or alcohol abuse programs will afford minors the procedure to which they are entitled perhaps by administering a drug or alcohol abuse test prior to admittance in the program. Nonetheless, because Chapter 656 does not require a finding that a minor who is admitted by the minor’s parents is genuinely in need of confinement, Chapter 656 could potentially come under constitutional attack if at any time a treatment facility does not take the necessary steps to ensure the protection of the minor’s liberty interests.

IV. CONCLUSION

Although the intent behind the enactment of Chapter 656 is commendable, it leaves itself open to potential due process problems. By simply stating that parents may place their child into drug and alcohol abuse treatment against the minor’s will, without specifying some type of procedure to be used to determine whether the child really needs the treatment, Chapter 656 could be used as a tool in the violation of a minor’s right to constitutional due process.

APPENDIX

Code Section Affected

Family Code § 6929 (amended).
AB 2883 (Boland); 1996 STAT. Ch. 656

40. In re John S., 66 Cal. App. 3d at 348, 135 Cal. Rptr. at 901-02; see id. (recognizing that parents do not always view the problems of their child objectively, and consequently, may commit a child in a mental institution as a sanction for misbehavior, because the parents have financial problems with the child, or simply because they are unwilling to assume the responsibilities of parenthood).

41. Parham, 442 U.S. at 591.

42. CAL. FAM. CODE § 6929(f), (g) (amended by Chapter 656).