Sending Juveniles to the California Youth Authority: The Need for Effective Procedural Safeguards

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Sending Juveniles to the California Youth Authority: The Need for Effective Procedural Safeguards

The Youth Authority Act of 1941 created the California Youth Authority (CYA) and established the tenet that the state would substitute training and treatment for retributive punishment in order to rehabilitate youthful offenders. This Act codified the concept that young offenders need and should be given help instead of punishment. Although the rehabilitative purpose remains a meritorious objective, growing reason exists to believe the original language of the Act is not consistent with the punitive nature of the CYA today. Over the years, the wards housed by the CYA have undergone continuous change. During the early history of the CYA, status offenders comprised a substantial portion of the institutionalized population. "Status offenders," defined as juveniles whose offenses would not be considered misdemeanors or felonies in the adult system, were excluded from the CYA in 1975. As a result of this exclusion, the average age and criminal sophistication of those committed to the CYA after 1975 increased substantially. Approximately forty-two percent of the juveniles presently in the CYA have been committed for crimes of violence, a proportion three times greater than in the mid-1960s. The CYA is the largest juvenile detention system in the nation.

3. Id. at 608.
4. Id.
5. Cal. Welf. & Inst. Code §602. Any person under the age of 18 years who violates the law is within the jurisdiction of the juvenile court and may be adjudged a ward of the court. Id.
6. West, supra note 2, at 608.
7. Id. at 615.
8. Id. at 615-16. Status offenders were excluded by departmental policy in 1975. This policy became law when section 207 of the California Welfare and Institutions Code subsequently was enacted. Section 207 was amended in 1978 to allow brief detention of status offenders in certain circumstances. Id.
9. See id. at 615.
11. West, supra note 2, at 615.
most serious juvenile offenders in the state, as well as young adult offenders committed to the CYA by the adult criminal court, are housed together. In short, the CYA bears little resemblance to the caring rehabilitative institution envisioned by the promulgators of the Youth Authority Act of 1941.

California statutory law allows a judge to commit a juvenile to the CYA if the judge is fully satisfied that the juvenile will benefit from the treatment provided by the CYA. In keeping with the basic purpose of the Youth Authority Act, the judge is given complete discretion to choose a disposition that the judge believes will be for the welfare of the child. The judge is not restrained by any set procedure other than the need to sign the dispositional order. Clearly the courts have not given up the original ideals of the juvenile justice system. Equally clear is the fact that while the CYA is labeled a rehabilitative treatment center in accordance with the Youth Authority Act of 1941, the institution in reality is more closely analogous to an adult prison. When an adult is sentenced to prison, the judge is required to write a statement of reasons supporting the sentence. A juvenile committed to the CYA suffers equally serious consequences and, therefore, should be entitled to the same due process protections.

This author will demonstrate that commitment of a juvenile to the CYA is analogous to a transfer from a rehabilitative noncriminal system to a punitive criminal system and that a decision to commit a juvenile to the punitive atmosphere of the CYA is sufficiently critical to compel the assurance of due process safeguards. Recognition of juvenile constitutional rights depends upon the presence of a "critical" proceeding, the requirements of which will be used as a framework to analyze the nature of a disposition to the CYA. The author will conclude that the California Supreme Court should implement a procedure requiring juvenile court judges to articulate a statement of reasons supporting a disposition to the CYA to protect the constitutional rights of juveniles. The first undertaking necessary to support this conclusion is the analysis of United States Supreme Court decisions that initially recognized juvenile constitutional rights.

13. Id. at 4-5.
14. CAL. WELF. & INST. CODE §734.
15. Id. §726.
17. See supra notes 1-3 and accompanying text.
18. See infra notes 119-37 and accompanying text.
20. See infra notes 107-48 and accompanying text.
21. See infra notes 23-93 and accompanying text.
22. See infra notes 107-48 and accompanying text.
U.S. CONSTITUTIONAL LAW AS APPLIED TO JUVENILES

From the inception of the juvenile court system in the United States, the procedural rights afforded juveniles have differed markedly from those afforded adults. A juvenile is not entitled to bail, indictment by grand jury, public trial, or trial by jury. The rationale for this inequity is that the juvenile court is engaged in determining the needs of the child rather than adjudicating criminal conduct.

In 1899, the Illinois Legislature passed the first Juvenile Court Act. Today, every state has enacted similar legislation. The Illinois Act established the first juvenile court and operated under the doctrine of parens patriae. Juvenile court proceedings were deemed civil in nature and stressed rehabilitation over punishment. Since these proceedings were nonadversarial, normal procedural protections were deemed superfluous. Instead of procedural protection, the informal proceedings were to provide careful, compassionate, and individualized treatment. Proponents of parens patriae asserted that the benefits unique to the system included the following: (1) juveniles were not classified as criminals; (2) juveniles were protected from public disclosure of their deviant behavior; and (3) informal proceedings were to provide guidance, help, and advice to facilitate rehabilitation. Although the informal proceedings did not provide the same constitutional protections afforded criminally accused adults, the unique non-criminal nature of the juvenile system was cited repeatedly as a justification for this result.

The first indication that juvenile proceedings conducted in accordance with the parens patriae doctrine inadequately protected the due pro-

24. Id.
27. Id.
28. Id. Pursuant to the parens patriae doctrine, the state is viewed as the guardian of individuals who are legally disabled. BLACK'S LAW DICTIONARY 1003 (5th ed. 1979). In effect, the concept refers to the duty of the state to “protect the young [and] helpless.” D. Besharov, JUVENILE JUSTICE ADVOCACY, PRACTICE IN A UNIQUE COURT 2 n.5 (1974).
29. Alster, supra note 26, at 44.
30. Id.
31. See 387 U.S. at 15-16.
32. Id. at 22-24.
33. People v. Silverstein, 121 Cal. App. 140, 142-43, 262 P.2d 656, 657 (1953). A juvenile was committed to the CYA for 15 months, released and convicted in superior court for the same charge. Id. The defendant was denied protection against double jeopardy because the juvenile proceeding was held not to be a criminal adjudication. Id.; In re Dargo, 81 Cal. App. 2d 205, 209, 183 P.2d 282, 284 (1947). A minor was denied protection against self-incrimination because a juvenile proceeding was held not to be a criminal adjudication. Id.
cess rights of children occurred in 1966 when the United States Supreme Court decided *Kent v. United States.* The Court in *Kent* recognized that lack of due process safeguards for juveniles often led to procedural arbitrariness. *Kent* extended due process protections to proceedings that allow the juvenile court to waive jurisdiction over a child and order the case tried in adult criminal court. The *Kent* decision addressed the procedural rights of a child being transferred out of the juvenile system. Subsequent Supreme Court holdings, however, do not extend due process protections only to those juveniles removed from the juvenile system. In 1967, the Court extended due process procedural rights to an action totally within the juvenile system. The Court in *In re Gault* recognized that the fourteenth amendment and the Bill of Rights apply to protect a minor during the adjudication phase of juvenile proceedings. *Gault* held that the risk of incarcerating a juvenile in a state institution was sufficiently critical to compel constitutional protection.

*Parens patriae* was the doctrine originally used for all juvenile proceedings. *Kent* and *Gault,* however, recognized the danger in a system that contained no procedural safeguards and, consequently, were the first cases in which constitutional protections were applied to juveniles. Despite the decisions in *Kent* and *Gault,* courts are reluctant to abolish the broad discretionary standard of *parens patriae.* To understand how procedural due process safeguards can be extended to juveniles who presently are not afforded this protection, the reasoning behind the *Kent* and *Gault* decisions must be explored.

A. Kent v. United States

The facts underlying *Kent v. United States* involved a sixteen year old boy who had been arrested on charges of house breaking, robbery,
and rape. Under the District of Columbia Juvenile Court Act, Kent was subject to the exclusive jurisdiction of the District of Columbia juvenile court. Statutory law also provided that the juvenile court, after a "full investigation," could decide to waive jurisdiction and transfer the juvenile for trial in the United States District Court for the District of Columbia. Kent opposed waiver of jurisdiction by the juvenile court and petitioned for a hearing on the issue. The juvenile court judge denied the hearing and entered the order of waiver with the recitation that the order was made after a full investigation. Kent subsequently was tried by the United States District Court for the District of Columbia, found guilty, and sentenced to prison. He appealed this conviction on the ground that the waiver of jurisdiction by the juvenile court constituted a denial of due process of law. After the appeals court affirmed the conviction, the United States Supreme Court granted certiorari to evaluate the impact that the parens patriae doctrine had upon the protection of the constitutional rights of children. The Court expressed concern that the child within the juvenile system receives neither the protections afforded adults nor the solicitous care and regenerative treatment postulated for children. That concern, however, did not induce the Court to rule that constitutional guarantees applicable to adults charged with serious criminal offenses must be applied to juvenile court proceedings when juveniles are charged with similar violations. Instead, the Court focused upon the important statutory right of Kent to be tried in the noncriminal juvenile system. Waiver of jurisdiction by the juvenile court was found to have been "critically important" since the consequence of that waiver was to deprive Kent of his right to noncriminal juvenile treatment.

The Court in Kent held that there must be a hearing before a juvenile court may waive jurisdiction. The Court also declared that an order of waiver must be accompanied by a statement of reasons explaining why the decision to waive was made. The statement need not in-

45. Kent, 383 U.S. at 543-44.
46. Id. at 543.
47. Id.
48. Id. at 545.
49. Id. at 546.
50. Id. at 548-50.
51. See id. at 552.
52. Id. at 552-55.
53. Id. at 556.
54. Id.
55. Id. at 556-57.
56. Id.
57. Id. at 560.
58. Id. at 561.
clude conventional findings of fact but should be sufficient to demonstrate that the statutory requirement of "full investigation" has been met. The written statement of reasons must be set forth with sufficient specificity to afford "meaningful appellate review." In this context, meaningful appellate review means that the reviewing court should not be required to assume that adequate reasons supported the decision to waive juvenile jurisdiction or that a "full investigation" has been made. The Court believed that this result was required by reading the statute in the context of constitutional principles relating to due process.

In summary, the Kent Court identified as "critically important" any proceeding that carries the possibility of depriving the juvenile of the statutory right to noncriminal treatment within the juvenile system. The Kent decision originally was limited in scope since the decision seemed to be based on a statutory interpretation. Following references to Kent in In re Gault one year later, however, the weight of authority now favors the judgment that the principles stated in Kent are of constitutional dimension. Nevertheless, the Kent Court did not extend constitutional protection to juvenile offenders who were not threatened with removal from the juvenile system. This restraint was short lived. In 1967 the United States Supreme Court declared that the fourteenth amendment and the Bill of Rights apply to protect juveniles retained within the juvenile system who face the possibility of incarceration in a state institution.

B. In re Gault

In re Gault was the first case in which the United States Supreme Court applied the fourteenth amendment and the Bill of Rights to minors within the juvenile system. Gerald Gault, age 15, had been committed to the Arizona State Industrial School as a juvenile delinquent until he reached majority. He was taken into custody without his parents receiving notice of his arrest. The petition filed against

59. Id.
60. Id. at 560.
61. Id. at 561.
62. Id. at 557.
63. Id. at 561-57.
64. S. Davis, Rights of Juveniles §4.2, at 4-7 (1980).
65. United States ex rel. Turner v. Rundle, 438 F.2d 839, 842 (3d Cir. 1971); Powell v. Hocker, 453 F.2d 652, 654 (9th Cir. 1971); In re Harris, 67 Cal. 2d 876, 879, 434 P.2d 615, 617, 64 Cal. Rptr. 319, 321 (1967).
67. Id. at 7-8.
68. Id. at 5.
him made no mention of the factual basis for the judicial action. The officer who testified at the hearing stated that Gerald had admitted making a lewd telephone call. Neither of his parents were present when the confession was obtained nor had Gerald been informed of his right to silence. The Supreme Court held that Gerald had been denied due process of law. The Court stated that neither the fourteenth amendment nor the Bill of Rights apply to adults alone. Consequently, the Court held that the requirements of the fourteenth amendment and the Bill of Rights apply in any proceeding to determine whether a juvenile is a delinquent, when the outcome of that proceeding is the possibility of commitment to a state institution. The prospect of incarceration was viewed as sufficiently critical to require certain constitutional rights to apply, including: (1) written notice of the charges to the juvenile and his parents; (2) the right to counsel; (3) the privilege against self-incrimination; and (4) sworn testimony with an opportunity to cross-examine at the delinquency hearing.

Although Gault stated that a juvenile must be afforded full due process protections at proceedings in which delinquency may be determined, the Gault rationale reaches beyond the issues involved in that case. In the years since Gault the Supreme Court has extended the Gault due process standard by holding that a juvenile is entitled to the same standard of proof used in adult criminal trials. Additionally, the double jeopardy clause prevents prosecution in criminal court after an adjudication in juvenile court.

Gault and subsequent cases suggest that the courts should reappraise the assertion by the state of the parens patriae doctrine to deny minors procedural safeguards within the juvenile justice system. Kent held that a proceeding that determines the important right of the juvenile to noncriminal treatment is "critically important," and therefore, requires procedural due process protections. Read together,

69. Id.
70. Id. at 6.
71. Id. at 56.
72. See id. at 55-56.
73. Id. at 13.
74. Id. at 13, 55-56.
80. Kent, 383 U.S. at 556.
Gault and Kent indicate that a proceeding that determines an important statutory right is sufficiently critical to compel procedural due process protection, even if that proceeding does not include the possibility that a juvenile will be transferred out of the juvenile system.

Although juvenile proceedings are protected by many of the constitutional guarantees afforded adults in criminal proceedings, the Supreme Court and the California courts have refused to find the rights of juveniles coextensive with those of adults. The parens patriae doctrine often is relied upon as a justification for this result. As a consequence, juveniles frequently suffer similar punishment as adult criminals without receiving the same safeguards and constitutional protections. As previously stated, for example, a juvenile in California may be committed to the CYA with the mere signature of a judge on the dispositional order.

California law permits juvenile adjudications and dispositions to be made by a referee or by a judge of the juvenile court. If a referee orders a child removed from the home, the order must be approved by a judge. That approval may be accomplished by the signature of the judge on the disposition order: When the disposition is reviewed on appeal, the record contains a probation report together with a transcript of the adjudication hearing and the remarks of the referee. The California Supreme Court, in In re John H., held that nothing more is necessary for meaningful appellate review. When an adult is sentenced to prison, California statutes require the judge to prepare a statement of reasons for the sentence. An examination of John H. will reveal why the California Supreme Court has rejected a requirement that a similar statement of reasons must accompany a disposition to commit a juvenile to the CYA.

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82. See supra notes 28-33 and accompanying text.
83. See infra notes 119-40 and accompanying text.
84. See supra notes 14-16 and accompanying text.
85. See supra note 40.
86. CAL. WELF. & INST. CODE §§247-248 (appointment, disqualification, and assignment of referees).
88. CAL. WELF. & INST. CODE §249.
89. 21 Cal. 3d at 26, 577 P.2d at 181, 145 Cal. Rptr. at 361.
90. Id. at 24, 577 P.2d at 180, 145 Cal. Rptr. at 360.
91. 21 Cal. 3d 18, 577 P.2d 177, 145 Cal. Rptr. 357 (1978).
92. Id. at 21, 557 P.2d at 178, 145 Cal. Rptr. at 358.
93. CAL. PENAL CODE §1170(c).
CALIFORNIA DECISIONAL LAW: In re John H.

In In re John H. the California Supreme Court held that the United States Constitution did not mandate a statement of reasons supporting a disposition to the CYA. Recognizing that the United States Supreme Court in Kent found that a statement of reasons is required in a "critically important" situation, the court, nevertheless, refused to find that a disposition to commit a juvenile to the CYA is "critical." The court distinguished Kent on the ground that Kent was removed from the juvenile system while, in John H., the disposition to the CYA retained the boy within the juvenile system.

John H. was declared a ward of the court and committed to the CYA. The adjudication and disposition had been made by a referee of the juvenile court and the disposition order had been signed by a judge. The John H. court inquired whether Kent mandated a statement of reasons to satisfy the requirements of the United States Constitution, and whether the California statutory scheme and California Constitution required a statement of reasons to assure that the commitment order was the decision of the judge and not the referee. In rejecting these propositions, the court held that a disposition to the CYA was not sufficiently "critical" to require application of Kent protections and that neither the California statutes nor the California Constitution expressly require the judge to state reasons for the disposition. The court refused to require this procedure, stating that the imposition of this requirement was properly within the province of the legislature. Since the California Supreme Court has held that a disposition resulting in commitment of a juvenile to the CYA is not a critically important proceeding and does not require a statement of reasons for meaningful appellate review, an inquiry into what constitutes a critically important proceeding and what is a sufficient record for meaningful appellate review is necessary.

94. 21 Cal. 3d at 21, 577 P.2d at 178, 145 Cal. Rptr. at 358.
95. Id. at 22-23, 577 P.2d at 178-79, 145 Cal. Rptr. at 358-59.
96. Id.
97. See supra note 5.
98. 21 Cal. 3d at 22, 577 P.2d at 178, 145 Cal. Rptr. at 358.
99. Id. at 29, 577 P.2d at 183, 145 Cal. Rptr. at 363 (Bird, C.J., dissenting).
100. See id. at 22, 577 P.2d at 178, 145 Cal. Rptr. at 358.
102. Id. at 22-23, 577 P.2d at 178-79, 145 Cal. Rptr. at 358-59.
103. Id. at 23, 577 P.2d at 179, 145 Cal. Rptr. at 359.
104. Id. at 25, 577 P.2d at 180, 145 Cal. Rptr. at 360.
105. Id. at 22, 577 P.2d at 178, 145 Cal. Rptr. at 358.
106. Cf. 383 U.S. at 561 (discussion of meaningful appellate review of a waiver order).
A. A "Critically Important" Proceeding

To determine whether a proceeding is "critically important," one must understand the phrase as used in Kent. In answering the question whether a child should be deprived of the special protections of the juvenile court, the Kent Court quoted with approval from the Court of Appeals of the District of Columbia: "[I]t is implicit in [the juvenile court] scheme that noncriminal treatment is to be the rule—and the adult criminal treatment, the exception . . . ." The Court determined that Kent had a statutory right to adjudication in the noncriminal juvenile system. Any proceeding leading to the deprivation of that right was held to be critically important.

In In re John H., the California Supreme Court specifically found that a dispositional hearing was not critical. The court distinguished a dispositional hearing from the hearing in Kent on the ground that Kent involved a proceeding to remove a minor from the juvenile system, while a decision to send a child to the CYA is completely within the juvenile justice system. The language in Kent, however, indicates that the definition of "critically important" turns not on the removal of the child from the juvenile system, but on moving the child from a protective noncriminal setting to a punitive criminal setting. The possibility of confinement in jail along with adults and the possibility of more severe sentencing was emphasized as the main disadvantage to which Kent was exposed by the juvenile court waiver of jurisdiction. Thus, the Court was concerned, not with the particular system in which the juvenile was incarcerated, but with the characteristics of the punishment to which he was exposed.

In California, the statutory scheme pertaining to the adjudication and disposition of juveniles is the Juvenile Court Law. The express purpose of the Juvenile Court Law is to secure as nearly as possible the equivalent level of care and guidance to juveniles that would normally be given by parents. The right to noncriminal treatment specifically is established by this statutory scheme. In addition, the

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107. Kent was the first case to label a juvenile court proceeding "critically important."
108. Id. at 560-61.
109. Id. at 557.
110. Id. at 556.
111. 21 Cal. 3d at 22-23, 577 P.2d at 178-79, 145 Cal. Rptr. at 358-59.
112. Id. at 22-23, 577 P.2d at 178-79, 145 Cal. Rptr. at 358-59.
113. See supra notes 55-56 and accompanying text.
114. 383 U.S. at 553-54.
115. CAL. WELF. & INST. CODE §§200-966.
116. Id. §202 (statement of purpose).
117. Id.
Juvenile Court Law provides that a judge can commit a juvenile to the CYA if the judge is fully satisfied that the juvenile will benefit from the treatment provided.118

The CYA is the most restrictive and punitive of all California juvenile detention facilities.119 The population of the CYA is made up of the most serious juvenile offenders in the state, as well as an increasing number of serious offenders who are young adults.120 The increase in the young adult population at the CYA is due to recent amendment of California Welfare and Institutions Code section 1731.5 (commonly referred to as Senate Bill 821),121 which went into effect January 1, 1984.122 The new law, aimed at relieving overcrowding in state adult prisons, allows a criminal court judge to sentence adult offenders under the age of twenty-one to the Department of Corrections and require the CYA to house them until age twenty-five.123 This provision has resulted in a significant increase in the CYA of the number of older offenders sentenced for serious crimes by an adult criminal court. In 1983, of the total 2,891 first commitments124 accepted by the CYA, 660 were referrals from criminal court.125 In 1984, 1,088 of 3,216 first commitments were referrals from criminal court.126 An even higher number of criminal court referrals is expected in 1985.127 The increasing population at the CYA has resulted in a facility where crowding and double ceiling128 are common.129 Young juveniles often are incarcerated with older, criminally-hardened offenders in a setting in which physical assaults, including sexual attacks frequently occur.130

118. Id. §734.
119. In re Aline D., 14 Cal. 3d 557, 564, 536 P.2d 65, 68-69, 121 Cal. Rptr. 816, 820-21 (1975). The court stated that the California statutory scheme contemplates a progressively restrictive and punitive series of disposition orders including: (1) home placement; (2) foster home; (3) local treatment facility; and as a last resort, (4) Youth Authority placement. Id.
120. 1983 ANnuAL REPORT, supra note 10, at 4.
123. 1983 Cal. Stat. c. 701, §1, at ___ (amending CAL. WELF. & INST. CODE §1731.5);
125. Id. at 16, table 3.
127. Id.
128. Double ceiling is the practice of housing two inmates in a space intended for one. Telephone conversation with Paul DiRousso, Chief Deputy, Juvenile Court Services (Jan. 9, 1985) (notes on file at the Pacific Law Journal).
129. Telephone conversation with Art German, Information Officer of the Youth Authority (March 13, 1985) (notes on file at the Pacific Law Journal); Sacramento Bee, January 12, 1985, at A12, col.1.
While the CYA prides itself on providing educational programs, job training, and public service work to juveniles, these rehabilitative programs do not outweigh the penal aspect of the CYA. The measure of success of a rehabilitation program is the recidivism rate. The primary goal of the CYA is to turn the youthful offender into a productive member of society. Statistics show, however, that after offenders serve time and are released on parole, they frequently return to their community to repeat their pattern of criminal behavior. In 1981, approximately 4,321 juveniles were released from the CYA. During the next two years, almost fifty percent violated parole and were either recommitted to the CYA or sentenced to an adult penal institution. The conclusion seems inescapable that the CYA has failed to achieve the rehabilitative ideal. This failure, in addition to the increase in the serious juvenile and adult offender population at the CYA, combine to make the CYA more closely resemble an adult prison than the place of care and guidance envisioned by the promulgators of the California Juvenile Court Law.

In Kent, the United States Supreme Court held that the prospect of exposing a minor to incarceration with adult criminals in a punitive atmosphere was critically important. A proceeding in which a juvenile could lose his right to noncriminal treatment was held sufficiently critical to warrant application of procedural due process safeguards. The CYA today bears a close resemblance to the adult prison environment that the Kent Court envisioned for Kent. A juvenile offender in California has a statutory right to receive caring rehabilitative treatment when incarcerated. This statutory guarantee is virtually identical to the noncriminal treatment the U.S. Supreme Court found guaranteed to Kent. Just as the District of Columbia statutory scheme provided a means for the court to deprive Kent of his right to noncriminal treatment by transferring him out of the juvenile system,

131. See West, supra note 2, at 625.
133. See P. Pierma, J. Canousie, A. Volenik, H. Swanger, & P. Connell, Law and Tactics in Juvenile Cases §1.2 (3d ed. 1977) (juvenile institutions are criticized for failure to return young offenders to the community).
134. West, supra note 2, at 624-25.
135. Id.
137. Id. at 34.
138. 383 U.S. at 556-57.
139. Id.
140. See supra notes 119-37 and accompanying text.
the California Juvenile Law also provides a means of depriving a juvenile offender of the right to noncriminal treatment by allowing a judge to commit the juvenile to the CYA.\textsuperscript{143} The California Supreme Court, however, has refused to find that a dispositional hearing resulting in commitment to the CYA is critical because commitment to the CYA does not remove the juvenile from the juvenile court system.\textsuperscript{144}

This author has established that the severity of the CYA confinement is sufficiently similar to an adult prison to render a disposition that results in a juvenile commitment to the CYA "critically important" within the meaning of \textit{Kent}.\textsuperscript{145} The loss of the statutory right to care and rehabilitation upon commitment to the CYA is just as critical to a California youth as was the loss by Kent of the statutory right to noncriminal treatment in the juvenile system of the District of Columbia. The U.S. Supreme Court has found that juveniles do not lose their right to due process protection simply because they are retained within the juvenile system.\textsuperscript{146} The Court expressly stated in \textit{Gault} that juveniles within the juvenile system have the right to certain procedural safeguards.\textsuperscript{147} Given the severity of the CYA and the due process requirements that apply within the juvenile system, no reason exists to suggest that a disposition to the CYA is not a critically important proceeding deserving of the same procedural safeguards mandated by \textit{Kent}. \textit{Kent} held that a critically important proceeding mandated a record sufficient for "meaningful appellate review."\textsuperscript{148} Thus, an examination must be made to determine what should be contained in a record sufficient for meaningful appellate review.

\textbf{B. Meaningful Appellate Review}

The California Supreme Court held that the record in \textit{In re John H.} was sufficient for meaningful appellate review.\textsuperscript{149} John had been adjudicated a ward of the court in a hearing before a juvenile court referee.\textsuperscript{150} At the dispositional hearing the referee ordered the youth committed to the CYA.\textsuperscript{151} Since this decision involved removing the youth from his home, the order of the referee was not effective until

\begin{footnotes}
\footnotetext[143]{\textit{Compare} CAL. WELF. \& INST. CODE §734 \textit{with} D.C. CODE §11-1553 (Supp. IV, 1965).}
\footnotetext[144]{\textit{John H.}, 21 Cal. 3d at 23, 577 P.2d at 179, 145 Cal. Rptr. at 359.}
\footnotetext[145]{\textit{See supra} notes 119-43 and accompanying text.}
\footnotetext[146]{\textit{See} \textit{In re Gault}, 387 U.S. 1 (1967).}
\footnotetext[147]{\textit{Id.} at 21-22.}
\footnotetext[148]{383 U.S. at 560-61.}
\footnotetext[149]{21 Cal. 3d at 24, 577 P.2d at 180, 145 Cal. Rptr. at 360.}
\footnotetext[150]{\textit{Id.} at 22, 577 P.2d at 178, 145 Cal. Rptr. at 358.}
\footnotetext[151]{\textit{Id.}}
\end{footnotes}
approved by a juvenile court judge.152 The judge gave approval by
signing a preprinted form, submitted to him by the referee, which
recited that the court had found that the minor probably would benefit
from the CYA.153 The order did not state any reasons for the disposi-
tion. In affirming the order, the California Supreme Court held that
an appellate record containing a probation report, a transcript of the
adjudication hearing, and the remarks and conclusions of the referee
were sufficient for meaningful appellate review.154 The court concluded
"we think it fair to presume from the judge's approval of the order
that the judge relied upon the same or similar reasons as those. .
[of]. . .the referee."155 The Kent Court, however, specifically stated
that a record sufficient for meaningful appellate review must be one
from which the reviewing court was not required to make
assumptions.156 Kent required a statement of reasons supporting the
decision of the judge so the reviewing court would not need to assume
the judge had fulfilled his statutory duty.157

California statutory law specifically addresses the commitment of
a juvenile to the CYA.158 When a ward is committed to the CYA,
the statute expressly requires that a judge of the court be fully satisfied
that the juvenile probably would benefit from the CYA.159 The statute
requires more than the mere approval of the judge; rather, the judge
is required to be fully satisfied. Implicit in the notion of full satisfac-
tion is the idea that the judge will consider carefully the juvenile and
his crime, weigh the alternative placements, and rationally arrive at
the decision that is most beneficial for the youth. While these may
be the steps followed by a referee in determining a disposition, the
statute specifically requires the judge, not the referee, to be the one
fully satisfied.160 Whether the disposition originally is made by a referee
and approved by a judge or whether the disposition is made by the
judge is irrelevant. The statute describes a duty that the judge alone
is required to fulfill.

The Supreme Court in Kent stated that an appellate court should
not be required to assume a judge had fully investigated a waiver
of jurisdiction over the juvenile.161 Kent required the judge to set forth

153. 21 Cal. 3d at 29, 577 P.2d at 183, 145 Cal. Rptr. at 363 (Bird, C.J., dissenting).
154. Id. at 24, 577 P.2d at 180, 145 Cal. Rptr. at 360.
155. Id.
156. 383 U.S. at 561.
157. Id.
159. Id.
160. Id.
161. 383 U.S. at 561.
the reasons for the waiver with sufficient specificity to assure the appellate court that the judge actually had fully investigated the decision to waive juvenile jurisdiction. When a judge in California commits a ward to the punitive atmosphere of the CYA, an appellate court should not be required to assume the judge is fully satisfied that the ward will benefit from the treatment provided by the CYA. Juvenile court judges should be required to set forth the reasons for the disposition with sufficient specificity to assure the appellate court that the judge personally is fully satisfied that the ward will benefit from commitment to the CYA.

The California Supreme Court in John H., however, permits the appellate court to review the disposition of a juvenile to the CYA on a record which has been held constitutionally inadequate in similar circumstances. This record, absent a statement of reasons, forces the appellate court to assume that adequate reasons exist for the CYA disposition and that the judge is fully satisfied that commitment to the CYA will benefit the youth. In refusing to impose a requirement that juvenile judges state reasons for a CYA disposition, the court relied upon the fact that no California statute explicitly requires a judge to specify the reasons for the disposition chosen. The court failed to recognize that something more than a mere signature is necessary to give effect to the statutory language requiring the judge to be fully satisfied that the ward will benefit from commitment to the CYA. While no statute explicitly requires a judge to prepare a statement of reasons, this author has shown that a statement of reasons implicitly is required to effectuate the juvenile law statutory scheme.

A statement of reasons by the judge would serve as a functional guard against cursory review and assure that the judge is fully satisfied. A requirement of articulated reasons to support a decision to commit a juvenile to the CYA serves numerous interests. A statement of reasons would serve as an inherent guard against abuse of discretion by the judge, allowing the appellate court to review the analysis used by the judge in arriving at a decision. In addition, requiring a statement of reasons would serve as a built-in procedural check to assure that the substance of the statutory rights given to a juvenile by the state of California are protected. Each of these interests now will be examined.

162. Id.
163. Compare id. with 21 Cal. 3d at 24, 577 P.2d at 180, 145 Cal. Rptr. at 360.
164. 21 Cal. 3d at 23, 577 P.2d at 179, 145 Cal. Rptr. at 359.
165. See supra notes 156-62 and accompanying text.
1. Tracing the Analysis Used by the Judge

A statement of reasons supporting commitment to the CYA will enable an appellate court reviewing the disposition to trace and examine the analysis used by the judge, thereby bridging the gap between a record containing raw evidence and the final disposition. Absent articulated reasons, an appellate court is forced to search through the record to determine which evidentiary items support the conclusions of the lower court. Juvenile judges are empowered to make dispositions according to the indefinite "best interests of the child" standard. While a case by case determination is desirable under the parens patriae doctrine, the U.S. Supreme Court in Kent recognized that judicial discretion requires procedural regularity sufficient to assure that the basic requirements of due process and fairness are satisfied. As a practical matter, the broad discretionary standard allows the judge to use personal beliefs to make dispositional decisions. Decisions based upon personal belief or unchecked by defined criteria and procedure pose the risk that the decisions will be arbitrary. The state cannot avoid providing basic procedural protections by assuming that juvenile judges always act in the best interests of the child. Dispositional decisions have been characterized as the most important aspect of a juvenile court case. Requiring a statement of reasons would provide some measure of control over the discretion of the judge. A statement of reasons is an inherent guard against a careless decision, and insures that the judge has analyzed the problem and given full consideration to the essentials of due process and fair treatment. Although a treatment or rehabilitation philosophy envisions more dispositional discretion than a "just desserts" philosophy, judicial supervision is called for in both instances and a statement of reasons

166. See Topanga Association for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 515-16, 522 P.2d 12, 18, 113 Cal. Rptr. 836, 842 (1974).
167. See id. at 516, 522 P.2d at 18, 113 Cal. Rptr. at 842.
169. 383 U.S. at 553.
170. See Developments in the Law, supra note 168, at 1232.
173. STANDARDS RELATING TO DISPOSITIONAL PROCEEDINGS, INSTITUTE OF JUDICIAL ADMINISTRATION—AMERICAN BAR ASSOCIATION JOINT JUVENILE JUSTICE STANDARDS 3 (1980) [hereinafter cited as STANDARDS].
174. Id. at 53.
would enable the appellate court to administer that supervision.176

2. Procedural Safeguard to Protect the Statutory Rights of the Juvenile

The California Legislature has set forth specific statutory language requiring a judge to be fully satisfied that a juvenile will benefit from commitment to the CYA.177 The legislature has provided that the duty of the judge is to evaluate personally the suitability of a minor before any commitment can be made to the CYA.178 Procedural due process serves to protect substantive rights and assures that the rules of law are followed accurately and consistently.179 A procedure requiring the judge to detail the specific reasons for the decision to commit a juvenile to the CYA would assure the appellate court that the judge fulfilled his statutory duty to give the problem his personal evaluation.

California law allows juvenile court referees to render adjudications and dispositional decisions in much the same way as a juvenile judge.180 The California Constitution, however, specifically limits the powers of the referee to "subordinate judicial duties."181 "Subordinate judicial duties" is not defined in the constitution nor in the statutes. Logically, however, these duties do not include any that are given expressly to a judge by statute.182 California statutes expressly state that a judge must be fully satisfied that a juvenile will benefit from commitment to the CYA. Clearly, this is a duty for the judge and not a subordinate judicial duty.183 To comply with the California Constitution, therefore, a CYA disposition made by a referee must be reviewed and adopted in a meaningful way by a juvenile court judge.184 A mere signature does not assure that the judge gave the order more than cursory review. A signature without significant judicial review is not sufficient to make the order of the referee equivalent to an order of a judge as statutorily and constitutionally required. A statement of reasons by the judge, set forth with sufficient specificity to support a CYA disposition, is essential to assure that the power of the referee is limited to fulfilling only subordinate judicial duties.

176. Standards, supra note 173, at 53.
178. John H., 21 Cal. 3d at 33, 577 P.2d at 185, 145 Cal. Rptr. at 365 (Bird, C. J., dissenting).
180. See supra notes 85-88 and accompanying text.
182. 21 Cal. 3d at 32-33, 577 P.2d at 185, 145 Cal. Rptr. at 365 (Bird, C. J., dissenting).
183. Id.
184. Id.
In summary, the *John H.* court held that a statement of reasons supporting a decision to commit a juvenile to the CYA is not required by the U.S. Constitution because a dispositional hearing resulting in commitment to the CYA is not critical.  Further, *John H.* held that the court will not require a judge to state reasons for the decision to commit a juvenile to the CYA by judicial fiat, but will wait until the legislature elects to enact such a requirement. The United States Supreme Court, however, has held that constitutional safeguards apply in certain juvenile proceedings. These proceedings are nearly identical in consequence to the juvenile proceedings that the California Supreme Court has held do not require constitutional safeguards. By shifting to the legislature the burden to provide greater procedural protection to juvenile defendants, the Justices of the California Supreme Court are abdicating the duty to guarantee due process in the judicial court system. The conclusion is axiomatic that due process protections mandated by the Supreme Court must be implemented by the California judiciary, not the legislature.

**CONCLUSION**

Under California law, a judge is not required to prepare an articulated statement of reasons when committing a juvenile to the CYA. A juvenile can be adjudicated delinquent at a hearing conducted by a referee and a referee can make the dispositional decision. The only express requirement under current California statutory and decisional law is that a juvenile judge approve the order. This presently is accomplished by having the judge countersign the dispositional order form prepared by the referee.

The California Supreme Court will not require a judge to state the reasons for CYA disposition by judicial fiat, but will wait until the legislature elects to make such a requirement. This author contends that this duty is not that of the legislature; the duty to guarantee due process falls upon the judiciary. The United States Supreme Court

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185. *Id.* at 22-23, 577 P.2d at 178-79, 145 Cal. Rptr. at 358-59.
186. *Id.* at 25, 577 P.2d at 180, 145 Cal. Rptr. at 360.
187. *See In re Ricky H.*, 30 Cal. 3d 176, 184, 636 P.2d 13, 17, 178 Cal. Rptr. 324, 328 (1981). In *Ricky H.*, decided three years after *John H.*, the California Supreme Court acknowledged that the lack of a statement of reasons makes appellate review difficult and uncertain. *Id.* at 184, 636 P.2d at 18, 178 Cal. Rptr. at 329. The court did not hold, however, that a statement of reasons was required. *Id.* In refusing to overrule *John H.*, the court stated that “the silence of a judge regarding his reasons for making a [CYA] commitment has never been held to violate statutory or constitutional requirements.” *Id.*
188. CAL. WELF. & INST. CODE §249; *John H.*, 21 Cal. 3d at 24, 577 P.2d at 180, 145 Cal. Rptr. at 360.
189. 21 Cal. 3d at 25, 577 P.2d at 180, 145 Cal. Rptr. at 360.

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held in *Gault* that certain due process protections must be applied within the juvenile system.\(^{190}\) In addition, the United States Supreme Court held in *Kent* that a statement of reasons is required for "meaningful appellate review" of a "critically important" juvenile proceeding.\(^{191}\) This author has demonstrated that a dispositional hearing resulting in commitment to the CYA is a "critically important" proceeding. The consequence to a juvenile of being committed to the CYA is sufficiently punitive in nature to be analogous to a transfer out of the rehabilitative juvenile system. *Kent* held that due process requires a statement of reasons when a youth is transferred out of the juvenile system. A disposition to the CYA, therefore, should be accompanied by a statement of reasons sufficient for "meaningful appellate review." The lack of specifically stated reasons supporting a decision to commit a juvenile to the CYA is a violation of the due process rights of the minor involved. In addition, California statutes and the California Constitution require the judge to do more than give cursory review to a CYA dispositional order. An express statement of reasons by the judge assures the appellate court that the judge fulfilled this requirement. The U.S. Constitution, supported by the California statutes and the California Constitution, requires a judge to issue a statement of reasons to ensure that due process is afforded a juvenile subject to a "critically important" CYA disposition.

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\(^{190}\) *See In re Gault*, 387 U.S. 1 (1967).

\(^{191}\) 383 U.S. at 560-61.