

1-1-1987

Juveniles

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Juveniles*, 18 PAC. L. J. 697 (1987).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol18/iss2/26>

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Juveniles

Juveniles; custody and detention—parental notification

Welfare and Institutions Code § 307.4 (new).

AB 2648 (Hill); 1986 STAT. Ch. 386

Sponsor: Author

Support: Parents, Teachers Association; American Civil Liberties Union

Existing law authorizes peace officers, probation officers,¹ and social workers to take temporary custody of suspected abused minors.² Chapter 386 requires any peace officer, probation officer, or social worker, who takes a minor into temporary custody, to inform immediately the parent, guardian, or responsible relative that the minor has been taken into protective custody.³ Chapter 386 further directs that the parent, guardian, or responsible relative be informed that a written statement is available which explains the appropriate procedural rights and the preliminary stages of the dependency investigation and hearing.⁴ In addition, Chapter 386 provides that if a good faith attempt was made at notification, the failure to notify due to circumstances beyond the control of the peace officer, probation officer, or social worker, will not be construed to permit a new defense to any juvenile or judicial proceeding, or to interfere with any rights, procedures, or investigations accorded under any other law.⁵

SJB

1. CAL. WELF. & INST. CODE § 215 (definition of probation officer).

2. *Id.* §§ 305, 306. *See also* CAL. CIV. CODE § 25 (definition of minor).

3. CAL. WELF. & INST. CODE § 307.4(a) (notification must be through the most efficient means available).

4. *Id.* The written statement must be in simple language and include the following: (1) the conditions for the minor's release, any hearings which may be required, and the means of obtaining further specific information about the minor's case and conditions of confinement; and (2) the rights to counsel, privileges against self-incrimination, and rights to appeal possessed by the minor, and by the minor's parents, guardians, or responsible relatives. *Id.* § 307.4(a)(1), (2). *See generally id.* §§ 345-359 (hearings regarding custody of dependent children).

5. *Id.* § 307.4(b).

Juveniles; detention procedure

Welfare and Institutions Code §§ 207.1, 210.2 (new); §§ 206, 207, 209, 707.1 (amended).

SB 1637 (Presley); 1986 STAT. Ch. 1271

Sponsor: Council on Crime and Delinquency

Support: California Probation Parole Correction Association; County Welfare Directors Association; CPOA; California Police Chiefs Association; California Sheriffs' Association

Existing law requires separate detention facilities to be provided when specified minors¹ are taken into custody.² Chapter 1271 further specifies that certain minors³ may not be confined in a secure⁴ adult facility unless they are under continuous supervision and are not permitted to come into or remain in contact with adults in custody.⁵ Under existing law, minors may not be confined in any jail,⁶ lockup,⁷ juvenile hall, or other secure facility, unless the juvenile court determines no other proper and adequate facilities are available, or the minor has been charged or convicted of a felony.⁸ Chapter 1271, however, provides that a judge may not knowingly detain a minor who has allegedly committed a specified crime⁹ in a jail or lockup unless the minor has been determined not to be a fit and proper subject to be dealt with under juvenile law.¹⁰ In addition, Chapter 1271 requires that the following findings be made to detain a minor in a jail or other secure facility for the confinement of adults: (1)

1. CAL. WELF. & INST. CODE §§ 300, 601, 602 (specified minors include minors without proper care, minors who refuse to obey their parents, and minors adjudicated wards of the court due to criminal behavior). Minors without proper care and those refusing to obey their parents must be kept in separate facilities from those adjudicated wards of the court due to criminal behavior. *Id.* CAL. CIV. CODE § 25 (definition of minor).

2. CAL. WELF. & INST. CODE § 206.

3. *Id.* § 300(a), (b), (c) (minors who are in need of parental control, who are destitute, or who are dangerous to the public because of a mental or physical disorder, deficiency, or abnormality).

4. *Id.* § 206 (a secure facility is one that insures all entrances and exits are under the exclusive control of the staff, by using locked rooms or other physical restraints).

5. *Id.*

6. Pursuant to Chapter 1271, jail is defined as any building which contains a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults charged with violations of criminal law. *Id.* § 207.1(h)(1).

7. Pursuant to Chapter 1271, lockup is defined as a locked room or secure enclosure under the control of a sheriff or other peace officer, which is primarily for the temporary confinement of adults upon arrest. *Id.* § 207.1(2).

8. *Id.* § 207(a).

9. *Id.* § 707(b) (list of specified offenses).

10. *Id.* § 207.1(a), (b).

detaining the minor in juvenile hall would endanger the safety of the public or would be detrimental to others in juvenile hall, (2) the contact between the minor and adults is restricted, (3) the minor is adequately supervised, and (4) the facilities meet Youth Authority standards.¹¹

Furthermore, Chapter 1271 provides that any minor fourteen years of age or older, taken into temporary custody for committing specified offenses,¹² may be securely detained in facilities for adults only if (1) the minor is held for the purpose of investigating the case, facilitating the minor's release to a parent or guardian, or arranging transfer to an appropriate facility; (2) the minor is detained for six hours or less; (3) at the time of detention, the minor is informed of the reason for the secure detention, the length of time the detention is expected to last, and the six-hour limit on the secure detention; (4) contact with confined adults is restricted; (5) the minor is adequately supervised; and (6) a record is kept describing the offense for which the minor is being detained, and the reasons and circumstances for the decision to place the minor in a secure facility.¹³ Chapter 1271 provides that minors in temporary custody solely as wards of the court¹⁴ must be held in a supervised nonsecure facility ensuring that no contact occurs with the adults in custody.¹⁵ Under Chapter 1271, any minor determined not to be a fit and proper subject to be dealt with under juvenile law is entitled, after a fitness hearing, to be released on bail or on the minor's own recognizance, upon the same terms as any adult charged with the same offense.¹⁶

JER

11. *Id.* § 207.1(b)(1)-(4).

12. *See id.* § 602 (minors adjudged wards of the court due to criminal behavior).

13. *Id.* § 207.1(d)(1)-(6).

14. *Id.* § 725(b) (minors adjudged wards of the court).

15. *Id.* § 207.1(d). A nonsecure facility is a facility not characterized by the use of physically restricting construction, hardware, and procedures, and which provides the residents with access to the surrounding community. *Id.* § 206.

16. *Id.* § 207.1(c).

Juveniles; out-of-custody juveniles

Welfare & Institutions Code §§ 653.5, 658, 777 (amended).
AB 3769 (Mojonnier); 1986 STAT. Ch. 757
(Effective September 15, 1986)

Sponsor: State Coalition of Probation Organization

Opposition: State Bar Committee on Criminal Justice

Existing law provides that whenever any person files an affidavit¹ with a probation officer² to commence juvenile court proceedings against a minor for violating the law, the probation officer must immediately investigate and determine whether proceedings should be commenced.³ Upon an affirmative finding, the probation officer must submit the affidavit to the public prosecutor.⁴ Chapter 757 requires the prosecuting attorney, in cases involving out-of-custody juveniles,⁵ to institute juvenile court proceedings within five days of receiving the affidavit, unless the prosecuting attorney determines the affidavit was not properly referred, or that the offense for which the minor was charged requires additional substantiating information.⁶

SDS

1. CAL. WELF. & INST. CODE § 653.5(a). The affidavit must: (1) allege that a minor has committed an offense within the county; (2) allege that the minor was, or currently is, in the county; and (3) state the facts in support of the allegation. *See also id.* § 653 (form and contents of affidavit to commence proceedings).

2. *Id.* § 215 (definition of probation officer).

3. *Id.* § 653.5(a). Any person under the age of 18 who violates a law other than an ordinance establishing a curfew based solely on age is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court. *Id.* § 602.

4. *Id.* § 653.5(b). *See id.* § 653.5(c) (public prosecutors have discretionary power to decide whether to file a petition to institute proceedings). *See also id.* § 656 (petition contents).

5. *Id.* § 653.5(d) (if the minor is not in custody but has been declared a probationer or a ward of the court).

6. *Id.* § 653.5(d) (the attorney must notify the probation officer immediately of the further actions to be taken). *Cf. Rucker v. Superior Court*, 75 Cal. App. 3d 197, 200-01, 141 Cal. Rptr. 900, 902 (1977) (any person who has reached adulthood and who does not desire to take advantage of the juvenile court process, when they have the right to do so, may waive the benefits of the juvenile law and demand proceedings applicable to adults). Under Chapter 757, if the prosecuting attorney decides to file a supplemental petition in which the minor has been declared a ward of the court, or a probationer in the original matter, the clerk of the juvenile court must provide notice to the minor, the minor's parents, the minor's attorney, and the probation officer or prosecuting attorney. *Id.* § 658(b). With the enactment of Chapter 757, the legislature intends to enable probation officers supervising juvenile offenders to take advantage of the expeditious procedures currently available to probation officers supervising adult offenders, and to provide consistent standards of accountability for wards of the juvenile court similar to those in existence for adult probationers. 1986 Cal. Stat. 757, sec. 2, at ____.

Juveniles; removal from parental custody—placement with relatives

Welfare and Institutions Code § 361.3 (new).

AB 2645 (Grisham); 1986 STAT. Ch. 640

Sponsor: Human Rights for Grandparents and Grandchildren

Opposition: State Bar on Juvenile Justice Committee

Under existing law, minors¹ deemed dependents of a juvenile court may, under specified circumstances, be removed from the physical custody of their parents.² A minor may be placed in one of several designated facilities³ during the removal period.⁴ Chapter 640 requires a juvenile court to give preferential consideration⁵ to a request by a relative⁶ of the minor that the minor be placed with the relative during the removal period.⁷ In determining whether a placement with the minor's relative is appropriate, the probation officer and the

1. CAL. CIV. CODE § 25 (definition of minor).

2. See CAL. WELF. & INST. CODE § 361(a) (the court may limit parental control in appropriate situations). See also *id.* § 361(b) (grounds for removal of a child). A juvenile court will not relinquish physical custody of a minor to the minor's parents if the court finds that return of the minor would create a substantial risk of harm to the minor's physical or emotional well-being. *Id.* § 366.2(e). See generally *Review of Selected 1984 California Legislation*, 16 PAC. L.J. 695 (1985) (disposition and placement of dependent minors); 5 C. MARKEY, CALIFORNIA FAMILY LAW §§ 85.20-25 (1986) (disposition and placement of dependent minors). A minor may be adjudged a dependent of a juvenile court in the following circumstances: (1) the minor needs parental care or control and has no parent or guardian willing or capable of actually exercising such care or control; (2) the minor is destitute, not provided with the necessities of life, or not provided with a suitable place of abode; (3) the minor is dangerous to the public because of a mental or physical disorder; (4) the minor's home is an unfit place for the minor because of neglect, cruelty, depravity, or physical abuse of the minor's parents or guardian; and (5) the minor has been freed for adoption for 12 months. See CAL. WELF. & INST. CODE §§ 300(a)-(e); 5 C. MARKEY, *supra*, § 84.30. See also CAL. WELF. & INST. CODE § 360 (procedure for adjudging minors dependents of the court).

3. Designated placement facilities include (1) the home of a relative, (2) a suitable licensed community care facility, (3) a home-finding agency, and (4) a home or facility in accordance with the federal Indian Child Welfare Act. CAL. WELF. & INST. CODE § 362(a)(1)-(4). See also 25 U.S.C. §§ 1901-1963 (1963) (Indian Child Welfare Act).

4. WELF. & INST. CODE § 362(a). If a minor is removed from the physical custody of the minor's parents or legal guardian, the court must review the minor's placement at least once every six months until the minor is placed in a permanent home. See 5 C. MARKEY, *supra* note 2, § 87.06. If physical custody of the parents or guardian is not restored following the six month review, the court must place the minor in a permanent home no later than twelve months after the original hearing removing the minor from the physical custody of the minor's parents. *Id.* § 87.07.

5. WELF. & INST. CODE § 361.3(c)(1) (preferential consideration means that the relative seeking placement must be the first placement considered and investigated).

6. *Id.* § 361.3(c)(2) (relative means an adult who is a grandparent, aunt, uncle, first cousin, or sibling).

7. *Id.* § 361.3(a). If a removed minor is not placed with relatives, the minor must be placed in foster care. *Id.* § 361(c).

juvenile court must consider the ability of that relative to provide a secure and stable environment for the minor.⁸

SLP

8. *Id.* § 361.3(a). Factors to consider in assessing the ability of the relative to provide a secure and stable environment include (1) the good moral character of the relative, (2) the ability of the relative to exercise proper and effective care and control of the minor, (3) the ability of the relative to provide a home and the necessities of life for the minor, (4) which relative is most likely to protect the minor from the minor's parents, (5) which relative is most likely to facilitate visitation with the minor's other relatives and reunification efforts with the minor's parents, and (6) the best interests of the minor. *Id.* When more than one appropriate relative requests preferential consideration, the probation officer and the court must consider the best interests of the child, and which relative is most likely to protect the minor from the minor's parents, facilitate visitation with other relatives, and facilitate reunification efforts with the minor's parents. *Id.* § 361.3(b). In addition, consideration must be given to placing siblings and step-siblings in the same home if such placement is in their best interests. *Id.*