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Juveniles

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Juveniles

Juveniles; juvenile court law—proceedings

Welfare and Institutions Code §800 (repealed); §§700.1, 800 (new); §§308, 395, 627, 800 (amended).

AB 3264 (Harris); STATS 1980, Ch 1092

Support: California Youth Authority; Department of Finance; Office of the Governor, Legal Affairs Unit

SB 379 (Presley); STATS 1980, Ch 1095

Support: Attorney General of California; California Youth Authority; Office of the Governor, Legal Affairs Unit

After being taken into custody by an officer for possible classification as a dependent child¹ or ward² of the court, a minor has the right, in the presence of a public officer or employee, to make two telephone calls.³ One call is permitted to an attorney and another may be made to a parent, guardian, responsible relative, or employer.⁴ Under prior law, the minor was entitled to make these calls at his or her own expense within *three hours* of being taken into custody, or immediately after being taken to a probation officer, unless compliance with these requirements was physically impossible.⁵ Chapter 1092 amends this procedure to require (1) that the minor be allowed to make the telephone calls within *one hour* of being taken into custody, or immediately upon being taken to a place of confinement, (2) that any local calls completed by the minor under this provision will be made at public expense, and (3) that the minor be specifically advised of the right to make these calls.⁶

Prior law additionally provided that either a court judgment declaring a juvenile to be a ward of the court⁷ or the denial of a motion to modify an order of a traffic hearing officer⁸ could be stayed by the court, and the juvenile could be released pending appeal upon a finding

1. *See generally* CAL. WELF. & INST. CODE §§305-324 (dependent children—temporary custody and detention).

2. *See generally id.* §§625-641 (wards—temporary custody and detention).

3. *See id.* §§308(b), 627(b).

4. *See id.*

5. *See* CAL. STATS. 1978, c. 1168, §2, at 3776 (amending CAL. WELF. & INST. CODE §308); CAL. STATS. 1971, c. 1030, §1, at 1977 (amending CAL. WELF. & INST. CODE §627).

6. *See* CAL. WELF. & INST. CODE §§308(b), 627(b).

7. *See id.* §§601, 602.

8. *See id.* §262.

that suitable provision had been made for the temporary maintenance, care, and custody of the juvenile.⁹ Chapter 1095 deletes these criteria, allowing the juvenile court to grant or refuse the temporary release of the juvenile based upon the court's discretion,¹⁰ thereby enhancing the possibility of avoiding confinement of the juvenile pending the appeal.¹¹

9. See CAL. STATS. 1978, c. 1385, §3, at 4591 (amending CAL. WELF. & INST. CODE §800).

10. Compare CAL. WELF. & INST. CODE §800 with CAL. STATS. 1978, c. 1385, §3, at 4591.

11. Compare CAL. WELF. & INST. CODE §800 with CAL. STATS. 1978, c. 1385, §3, at 4591. See also CAL. PENAL CODE §1272; B. WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Appeal* §674 (1963), (Supp. 1978).

Juveniles; court procedure—motion for dismissal

Welfare and Institutions Code §§355.8, 701.1 (new).

AB 3298 (Knox); STATS 1980, Ch 266

Support: American Civil Liberties Union; California Youth Authority; Officer of the Governor, Legal Affairs Unit

During a proceeding to declare a juvenile defendant a dependent child¹ or ward² of the court, the juvenile is empowered by Chapter 266 to make a motion for dismissal of the petition upon the conclusion of the petitioner's evidence, paralleling procedures provided for in criminal proceedings.³ For example, existing law permits a court, upon its own motion or a motion of the defendant, to enter a judgment of acquittal at the close of the prosecution's evidence in any criminal trial;⁴ making this motion does not impede the defendant's right to offer evidence if the motion is not granted.⁵ Similarly, a defendant in a civil trial may make a motion for a judgment of nonsuit once the plaintiff has completed the opening statement, or, in a jury trial, the presentation of evidence.⁶

Chapter 266 appears to counter a recent decision by a California Court of Appeal⁷ that rejected the application of these provisions of existing law to dependent child or wardship proceedings in juvenile court,⁸ despite the use of other procedural standards of criminal law

1. See CAL. WELF. & INST. CODE §300 (description of persons subject to dependent child proceedings).

2. See *id.* §§601, 602 (description of persons subject to wardship proceedings).

3. Compare *id.* §§355.8, 701.1 with CAL. CIV. PROC. CODE §581c and CAL. PENAL CODE §§1118, 1118.1.

4. See CAL. PENAL CODE §§1118, 1118.1.

5. See *id.*

6. See CAL. CIV. PROC. CODE §581c.

7. See *In re Joseph H.*, 98 Cal. App. 3d 627, 159 Cal. Rptr. 681 (1979).

8. See *id.* at 631-32, 159 Cal. Rptr. at 683.

elsewhere in juvenile court proceedings.⁹ Chapter 266 specifically provides that once the presentation of the petitioner's evidence is concluded, the court may, on the weight of the evidence and upon its own motion or the motion of the juvenile or his or her parent or guardian, dismiss a petition to declare the juvenile a dependent child or ward of the court.¹⁰ Further, the refusal of the court to grant the motion for dismissal does not limit the juvenile's right to subsequently offer evidence on his or her own behalf.¹¹

9. See CAL. WELF. & INST. CODE §701. See also *In re Winship*, 397 U.S. 358, 361-68 (1970); *McComb v. Commission on Judicial Performance*, 19 Cal. 3d Spec. Trib. Supp. 1, 11, 564 P.2d 1, 6-7, 138 Cal. Rptr. 459, 464-65 (1977).

10. See CAL. WELF. & INST. CODE §§355.8, 701.1.

11. See *id.*

Juveniles; juvenile court—open hearings

Welfare and Institutions Code §676 (amended).

AB 1374 (Felando); STATS 1980, Ch 322

Support: Attorney General of California; California Peace Officers Association

Opposition: American Civil Liberties Union; California Judges Association; California Parent and Teachers Association; County Supervisors Association of California; Judicial Council; Office of the Governor, Legal Affairs Unit

Prior to the enactment of Chapter 322, juvenile court hearings were ordinarily closed to the general public unless otherwise requested by the minor and any parent or guardian who was present.¹ The judge or referee was also vested with the discretionary power to admit those persons deemed to have a direct and legitimate interest in a particular case or the work of the court.² Chapter 322 retains the above limitations on public access to most juvenile court proceedings,³ but provides for admission of the public to juvenile court hearings on the same basis as public admission to adult criminal trials⁴ when the minor is accused of

1. See CAL. STATS. 1961, c. 1616, §2, at 3480; REPORT OF THE CALIFORNIA GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, A STUDY OF THE ADMINISTRATION OF JUVENILE JUSTICE IN CALIFORNIA 14 (1960).

2. See CAL. STATS. 1961, c. 1616, §2, at 3480; CAL. CT. RULES, Rule 1311 (persons present at juvenile court proceedings); REPORT OF THE CALIFORNIA GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, A STUDY OF THE ADMINISTRATION OF JUVENILE JUSTICE IN CALIFORNIA 14 (1960). See generally 1 B. WITKIN, CALIFORNIA PROCEDURE, *Courts* §50 (2d ed. 1970); 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §§298, 384A (8th ed. 1974), (Supp. 1980); CONTINUING EDUCATION OF THE BAR, CALIFORNIA JUVENILE COURT DESKBOOK §§6.5, 8.8 (1978).

3. Compare CAL. WELF. & INST. CODE §676 with CAL. STATS. 1961, c. 1616, §2, at 3480.

4. See U.S. CONST. amend. VI; CAL. CONST. art. I, §13; CAL. PENAL CODE §686(1). See

committing a specified violent felony.⁵ As enacted, Chapter 322 applies to minors who are wards of the court because of alleged criminal activity,⁶ but does not apply to dependent children of the court.⁷

A number of recent court decisions⁸ have cast doubt upon the constitutionality of conditional access statutes⁹ similar to those enacted by the California Legislature¹⁰ in its comprehensive revision of California's juvenile court law in 1961.¹¹ The California statutes¹² allowed the public and the press to attend juvenile court proceedings only if a rigid ethical standard of confidentiality was maintained, thereby stressing protection of the identity of the juvenile offender.¹³ The United States Supreme Court, while not directly ruling on the question of public access to juvenile court hearings, has ruled that the press cannot be prohibited from lawfully publishing the names of juvenile offenders; the Court held that the first amendment rights of the press and public prevail over the state's interest in protecting the anonymity of the juvenile offender.¹⁴ The Court used a similar rationale in ruling that adult criminal trials must be open to the scrutiny and access of the public;¹⁵ however, it is not yet clear whether the Court will extend the decision requiring open hearings for adults to juvenile court proceedings.¹⁶

generally *People v. Byrnes*, 84 Cal. App. 2d 72, 73, 76-78, 190 P.2d 290, 291, 292-94 (1948); B. WITKIN, CALIFORNIA CRIMINAL PROCEDURE, *Trial* §§324-328 (1963).

5. Compare CAL. WELF. & INST. CODE §676 with CAL. STATS. 1961, c. 1616, §2, at 3480. See generally CAL. WELF. & INST. CODE §707 (murder; arson of an inhabited building; robbery while armed with a dangerous or deadly weapon; rape with force or violence or threat of great bodily harm; kidnapping for ransom or for purpose of robbery, or with bodily harm; assault with intent to murder or attempted murder, or with a firearm or destructive device, or by any means of force likely to produce great bodily injury; discharge of a firearm into an inhabited or occupied building; or any offense described in CAL. PENAL CODE §1203.09); Comment, *Delinquency Hearings and the First Amendment: Reassessing Juvenile Court Confidentiality upon the Demise of Conditional Access*, 13 U.C.D.L. REV. 123, 145 (1980) [hereinafter cited as *Delinquency Hearings*].

6. See CAL. WELF. & INST. CODE §§602, 676.

7. Compare *id.* §602 with *id.* §§300, 346.

8. See, e.g., *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979); *Davis v. Alaska*, 415 U.S. 308 (1974). But see *State ex rel Oregonian Publishing Co. v. Deiz*, 289 Or. 277, 613 P.2d 23 (1980) (Oregon Supreme Court interpreted a statute similar to Chapter 322 (OR. REV. STAT. §419.498(1)) as allowing the judge to use his or her discretion to determine whether a hearing may be closed to the public to protect the privacy of the juvenile offender).

9. See generally *Delinquency Hearings*, *supra* note 5.

10. See CAL. STATS. 1961, c. 1616, §2, at 3480.

11. See *id.* See generally REPORT OF THE CALIFORNIA GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, RECOMMENDATIONS FOR CHANGES IN CALIFORNIA'S JUVENILE COURT LAW (1960).

12. See CAL. STATS. 1961, c. 1616, §2, at 3480.

13. See *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978).

14. See, e.g., *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 104, 106 (1979); *Davis v. Alaska*, 415 U.S. 308, 319 (1974).

15. See *Richmond Newspapers, Inc. v. Virginia*, 444 U.S. 896 (1980).

16. See *id.*

While Chapter 322 does not go so far as to require open hearings for all juvenile court proceedings, it does remove some of the discretion of the court by mandating that hearings for specific crimes be open to the press and the public,¹⁷ while at the same time validating the *parens patriae* doctrine¹⁸ of protection and confidentiality for lesser juvenile crimes.¹⁹

17. See CAL. WELF. & INST. CODE §§676, 707.

18. See *id.* §602; BLACK'S LAW DICTIONARY 1003 (5th ed. 1979). See generally REPORT OF THE CALIFORNIA GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, RECOMMENDATIONS FOR CHANGES IN CALIFORNIA'S JUVENILE COURT LAW 24 (1960); Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 109 (1909); *Delinquency Hearings*, *supra* note 5, at 127.

19. Compare CAL. WELF. & INST. CODE §676 with *Brian W. v. Superior Court*, 20 Cal. 3d 618, 620, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978). See generally Howard, Grisso, & Neems, *Publicity and Juvenile Court Proceedings*, 11 CLEARINGHOUSE REV. 203, 204 (1977).

Juveniles; duties of referees

Welfare and Institutions Code §§248, 250 (amended).

AB 1308 (Harris); STATS 1980, Ch 532

Support: California Youth Authority; Office of the Governor, Legal Affairs Unit.

Existing law enables juvenile court referees to hear delinquency adjudications¹ and allows them to perform subordinate judicial duties² in contested delinquency hearings.³ Chapter 532 places specific limitations on the powers and duties of referees in juvenile courts when they conduct juvenile hearings⁴ so that federal and state constitutional prohibitions against double jeopardy are not violated by referees exceeding their constitutional powers.⁵

Under prior statutory law, the legislature apparently gave juvenile court referees the power to make final determinations and orders in assigned cases.⁶ The California Supreme Court, however, has held that

1. See CAL. WELF. & INST. CODE §§247, 248, 250-252. Cf. Gough, *Referees in California's Juvenile Courts: A Study in Sub-Judicial Adjudication*, 19 HASTINGS L.J. 3, 14 (1967) (necessity of referees in juvenile court system). See generally 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent & Child* §388A (Supp. 1980).

2. See *In re Edgar M.*, 14 Cal. 3d 727, 732-35, 537 P.2d 406, 410-12, 122 Cal. Rptr. 574, 578-80 (1975); CAL. CONST. art. VI, §22. Cf. *Jesse W. v. Superior Court*, 20 Cal. 3d 893, 897, 576 P.2d 963, 965, 145 Cal. Rptr. 1, 3 (1978), *vacated and remanded*, 439 U.S. 922 (1978), *aff'd on rehearing*, 26 Cal. 3d 41, 603 P.2d 1296, 160 Cal. Rptr. 700 (1979). See generally 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent & Child* §388A (Supp. 1980); 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 560, 561 (1980).

3. See CAL. WELF. & INST. CODE §§602, 653.

4. See CAL. CONST. art. I, §15. Compare CAL. WELF. & INST. CODE §248 with CAL. STATS. 1976, c. 1068, §4, at 4751.

5. See *Richard M. v. Superior Court*, 4 Cal. 3d 370, 375, 482 P.2d 664, 668, 93 Cal. Rptr. 752, 756 (1971); U.S. CONST. amend. V.

6. See CAL. STATS. 1976, c. 1068, §4, at 4751 (enacting CAL. WELF. & INST. CODE §250).

a referee's powers are constitutionally limited to the performance of subordinate judicial duties and acts.⁷ On the basis of this determination, the court declared that a referee conducting a juvenile court hearing cannot acquit a juvenile offender without violating the provisions of the California Constitution.⁸ Moreover, the court later held that by allowing a juvenile court referee to make determinations of guilt, the juvenile found guilty was placed in double jeopardy⁹ because an independent rehearing by a juvenile court judge would require that a second trial be conducted before the judge could acquit the juvenile or recommend a harsher penalty.¹⁰ Since jeopardy attached to the juvenile during the first hearing,¹¹ subsequent rehearing violated federal and state constitutional provisions.¹²

Chapter 532 codifies this existing case law by providing statutory authority to permit juvenile court referees to hear all assigned cases except those to which state or federal constitutional prohibitions against double jeopardy apply.¹³ However, the parties may *stipulate* in writing that the referee may act in the capacity of a temporary judge; when the referee sits as a temporary judge,¹⁴ his or her orders become final in the same manner as orders made by a juvenile court judge, thereby eliminating any constitutional problems due to the attachment of jeopardy.¹⁵

See generally In re Perrone C., 26 Cal. 3d 49, 54, 603 P.2d 1300, 1303, 160 Cal. Rptr. 704, 707 (1979).

7. *See* 26 Cal. 3d at 54, 603 P.2d at 1303, 160 Cal. Rptr. at 707; *Jesse W. v. Superior Court*, 20 Cal. 3d 893, 897, 576 P.2d 963, 965, 145 Cal. Rptr. 1, 3 (1978); *In re Edgar M.*, 14 Cal. 3d 727, 735, 537 P.2d 406, 412, 122 Cal. Rptr. 574, 580 (1975); CAL. CONST. art. VI, §22. *But see* *Swisher v. Brady*, 438 U.S. 204, 217-18 (1978). *See generally* CAL. CT. RULES, Rule 1316(a).

8. *See* 26 Cal. 3d at 54-57, 603 P.2d at 1304-05, 160 Cal. Rptr. at 708-09; 26 Cal. 3d at 47 n.5, 603 P.2d at 1299 n.5, 160 Cal. Rptr. at 703 n.5.

9. *See* *Breed v. Jones*, 421 U.S. 519, 528, 541 (1975); 26 Cal. 3d at 44, 603 P.2d at 1297, 160 Cal. Rptr. at 701. *See generally* BLACK'S LAW DICTIONARY 440 (5th ed. 1979) (definition of double jeopardy).

10. *See* 26 Cal. 3d at 54-57, 603 P.2d at 1304-05, 160 Cal. Rptr. at 708-09; 26 Cal. 3d at 44, 603 P.2d at 1297, 160 Cal. Rptr. at 701.

11. *See* 421 U.S. at 531, 541; *Richard M. v. Superior Court*, 4 Cal. 3d 370, 375-76, 482 P.2d 664, 668, 93 Cal. Rptr. 752, 756 (1971).

12. *See* 26 Cal. 3d at 54-57, 603 P.2d at 1304-05, 160 Cal. Rptr. at 708-09.

13. *See* 26 Cal. 3d at 44, 603 P.2d at 1299, 160 Cal. Rptr. at 703; U.S. CONST. amend. V; CAL. CONST. art. VI, §15; CAL. WELF. & INST. CODE §248. *See generally* 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent & Child* §388A (Supp. 1980); 7 PAC. L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 486 (1976) (double jeopardy and the transfer of minors to adult criminal court).

14. *See* 26 Cal. 3d at 57, 603 P.2d at 1305, 160 Cal. Rptr. at 709; CAL. WELF. & INST. CODE §§248, 250.

15. *See* CAL. WELF. & INST. CODE §250.