JUVENILE JUSTICE IN CALIFORNIA: A RE-EVALUATION

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Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.**

In re Gault¹ has focused the attention of bench, bar and legislators on our nation's juvenile justice system. This landmark decision holds that due process in the juvenile court is a constitutional requirement, and affords to the juvenile most of the rights now afforded the adult offender. Every state will be required to make some modification of its juvenile court laws as a result of the decision. Most will completely overhaul their juvenile court system.

California can take just pride in having initiated the trend towards procedural protection of the rights of juveniles. The Arnold-Kennick Juvenile Court Law² as enacted in 1961 has been hailed as a model for other states to follow. Such basic concepts as detention hearings,³ right to counsel,⁴ appointment of counsel for indigents,⁵ mandatory records of proceedings,⁶ and the sealing of records⁷ were spearheaded by California.

Significant developments have taken place since 1961. Both New York⁸ and Illinois⁹ have entirely rewritten their juvenile court laws. The Children's Bureau of the Department of Health, Education and Welfare has promulgated revised standards for juvenile and family courts.¹⁰ A wealth of valuable material casting new insight into the operation of the juvenile justice system has appeared in print. Student


¹ 387 U.S. 1 (1967).
² Cal. Welf. & Inst'ns Code §§ 500-914.
³ Cal. Welf. & Inst'ns Code § 632.
⁵ Cal. Welf. & Inst'ns Code § 700.
⁷ Cal. Welf. & Inst'ns Code § 781.
writers at two distinguished law schools have prepared thought-provoking notes based on the actual observation of the operation in numerous juvenile courts and interviews with court personnel.\textsuperscript{11} Earlier this year the President's Commission on Law Enforcement and Administration of Justice produced a comprehensive study of our nation's criminal court system, including its juvenile court system.\textsuperscript{12}

California now has the benefit of 6 years of practical experience under its Juvenile Court Law. Many problems of the law in operation have developed which were not apparent to its framers.\textsuperscript{13}

In response to \textit{Gault}, the legislature in the waning days of the 1967 regular session enacted legislation which cures some of the more glaring deficiencies in California law. However, many serious problems remain and, in some instances, newly enacted legislation will create additional problems, the ramifications of which perhaps were not fully considered by the legislature.

It is appropriate at this time to make a searching re-analysis and re-evaluation of our juvenile court law. Hopefully, such an analysis not only will assist California in improving its own juvenile justice system,\textsuperscript{14} but will also be useful to other states that propose to use our juvenile court law as a model for their own reform.

Before analyzing the law itself in detail it will be helpful to summarize briefly the general scheme of the law as enacted in California in 1961, the findings of the Governor's Special Study Commission on Juvenile Justice,\textsuperscript{15} the recommendations of the President's Commission, and \textit{Gault}.

\textbf{I.}

\textbf{A Thumbnail Sketch of the Juvenile Court Process}

Juvenile court jurisdiction depends upon two factors: (1) the age of the minor\textsuperscript{16} and (2) the conduct of the minor,\textsuperscript{17} or his circum-


\textsuperscript{13} Numerous housekeeping amendments were enacted in 1963 to cure minor vagaries in the law.

\textsuperscript{14} Revision in the juvenile court law in California is a continuous process. More than 40 bills were introduced in the legislature in 1967.

\textsuperscript{15} \textit{Governor's Special Study Comm'n on Juvenile Justice} (1960) [hereinafter cited as \textit{Cal. Juv. Justice Comm'n}].

\textsuperscript{16} The age of the minor is determined at the time of the commission of the offense. \textit{Cal. Welf. & Inst'ns Code} § 604(a). The judge may also certify the case to the juvenile court when the case is pending and the person is under 21. \textit{Cal. Welf. & Inst'ns Code} § 604(b).

\textsuperscript{17} Jurisdiction may be based upon either a violation of state, federal or local law, or of a court order (\textit{Cal. Welf. & Inst'ns Code} § 602), or conduct
In practice the cut-off point for juvenile court jurisdiction usually is the age of 18. However, cases of minors of 16 and 17 who commit criminal offenses can be remanded to the adult criminal courts if the minor is not amenable to the care, treatment, and training facilities available through the juvenile court. Proceedings against minors between 18 and 21 can be instituted in either the juvenile court or the adult courts, and either court system has the power to transfer the case of such a minor to the other. However, the juvenile court is seldom utilized for minors over 18.

The typical juvenile delinquency case begins with the apprehension of a minor by a policeman. The officer then has the alternatives of releasing the minor with a warning or citing him to appear before the probation officer, or physically delivering him to the probation officer. If the minor is delivered to the probation officer, he must be released unless urgent and immediate necessity for his detention exists. If so, a hearing must be had before the juvenile court within approximately 3 judicial days to determine whether further detention is warranted.

The probation officer has three alternatives in dealing with the minor: to admonish and dismiss; to institute a program of informal proceedings evidencing a strong tendency towards delinquency, e.g., the refusal to obey reasonable parental orders, children "beyond control," habitual truants, and those in danger of leading an idle or dissolute life (Cal. Welf. & Inst'ns Code § 601). In the language of the law such children are potential "wards." Cal. Welf. & Inst'ns Code § 726. In this article, wards are referred to as delinquents, which is the more conventional terminology utilized in the Nat'l Crime Comm'n Report.

18 Those lacking parental control, or who are destitute, or whose home is unfit by reason of neglect, cruelty or depravity. Cal. Welf. & Inst'ns Code § 600.
19 The juvenile court has exclusive jurisdiction over any person charged with the commission of a public offense or crime when such person was under the age of 18 years at the time of the alleged commission of the offense. Cal. Welf. & Inst'ns Code § 603.
21 Cal. Welf. & Inst'ns Code §§ 600-02 (defines persons under the age of 21 years as coming within the jurisdiction of the court).
23 Cal. Welf. & Inst'ns Code §§ 604(b), 707.
24 Cal. Welf. & Inst'ns Code § 625.
26 To be exact, the petition must be filed within 48 hours following the time of apprehension by the arresting officer, non-judicial days excepted (Cal. Welf. & Inst'ns Code § 631), and the detention hearing must be held before the expiration of the next judicial day after filing (Cal. Welf. & Inst'ns Code § 632). Non-judicial days are Saturdays, Sundays and legal holidays.
supervision with the consent of the minor's parents or guardian, to last not more than 6 months; or to file a petition with the court.

If a petition is filed the court holds a bifurcated hearing. At the adjudicatory or “factfinding” phase of the hearing the court determines whether it has jurisdiction over the minor, i.e., whether the minor has committed the offense or is in fact a dependent and neglected child. If the court finds that it has jurisdiction over the minor, it proceeds to the matter of disposition, which may or may not be heard on the same day. Dispositional alternatives include leaving the child in his home under the supervision of the probation officer, with or without wardship; removal to a foster home or private child-care institution; in the case of delinquent minors, placement in a county ranch, camp or home; and in the case of minors committing acts which constitute crimes or violation of court orders, committal to the California Youth Authority.

II.

The Governor's Special Study Commission on Juvenile Justice

The professional Advisory Committee of the Governor's Special Study Commission on Juvenile Justice made a study of juvenile court practices throughout the state of California, which culminated in a comprehensive report published in 1960. The Committee found these problems: (1) an absence of well-defined standards and norms to guide judges, and probation and law enforcement officials in their decision-making; (2) basic legal rights neither adequately nor uniformly protected; (3) inconsistencies in philosophy, imperfect coordination of efforts, and disparity in administration; (4) the quality of rehabilitative services of questionable effectiveness and in many instances based more upon expediency and administrative convenience than rehabilitation and social justice; (5) substantial unwarranted detention of children; and (6) numerous ambiguities and contradictions in the law which necessitated revision.

29 CAL. WELF. & INST'NS CODE § 654.
30 CAL. WELF. & INST'NS CODE §§ 652, 656.
31 CAL. WELF. & INST'NS CODE §§ 701-02.
32 CAL. WELF. & INST'NS CODE § 701.
33 CAL. WELF. & INST'NS CODE § 702.
34 CAL. WELF. & INST'NS CODE §§ 707, 730.
35 CAL. WELF. & INST'NS CODE § 727.
36 CAL. WELF. & INST'NS CODE § 730.
37 CAL. WELF. & INST'NS CODE § 731.
38 Note 15, supra.
39 CAL. JUV. JUSTICE COMM'N—PART I, at 12: "There are several major problems which seriously impede the efficient administration of juvenile justice in California. Among the most critical are the following:

1. There is an absence of well-defined, empirically derived standards
The Commission then prepared a draft law which entirely re-wrote the juvenile court law of the state, using the following principles as its guidelines:

1. That the juvenile court should not intervene in the parent-child relationship unless it has a sound basis in fact for its action.
2. That every child and his parents have a right to a fair hearing on the allegations which have brought the minor before the juvenile court, and all parties should have their legal and constitutional rights protected.
3. That the juvenile court should protect children from unnecessary separation from their parents, whether on a temporary or a permanent basis.
4. That the juvenile court law should have uniform application throughout the state, based upon clearly defined procedures.
5. That no child should be taken into custody or detained without reasonable cause for believing that the child has committed a delinquent act.

and norms to guide juvenile court judges, probation, and law enforcement officials in their decision making. Consequently, instead of a uniform system of justice, varied systems based upon divergent policies and value scales are in evidence. Actually, whether or not a juvenile is arrested, placed in detention, or referred to the probation department, and whether or not the petition is dismissed, probation is granted, or a CYA commitment is ordered by the juvenile court, seems to depend more upon the community in which the offense is committed than upon the intrinsic merits of the individual case.

2. Basic legal rights are neither being uniformly nor adequately protected under present juvenile court provisions and procedures.
3. The relatively independent status of the official agencies in the juvenile justice processes has produced inconsistencies in philosophy, imperfect coordination of efforts, and disparity in administration.
4. The quality of rehabilitative services is of questionable effectiveness and, in many instances, case decisions seem to be based upon considerations of expediency and administrative convenience rather than upon the objectives of rehabilitation and social justice. This is partly because juvenile courts and official delinquency control agencies have been seriously overtaxed by the sizeable growth in the number of children brought to their attention without commensurate increases in available services, staff, or treatment facilities.
5. There is excessive and unwarranted detention of children in the state.
6. The present juvenile court statute contains numerous ambiguities and contradictions and is in urgent need of revision and reorganization.

"Notwithstanding these observations, the Commission is of the firm conviction that the protective and rehabilitative philosophy of the juvenile court law is sound and should remain unchanged. To implement this philosophy, the Commission favors the continuance of a segregated court, operating in a relatively informal atmosphere, which is empowered to provide some or all parental guidance and assistance to children in need or in trouble, where such assistance is not available from the natural parents. However, statutory changes in the present juvenile court law are urgently needed if the critical problems and questionable practices which have been identified are to be corrected.

"As has been said above, all recommendations made by the Commission have been subjected to scrutiny and comment by professionally interested persons in California. Equally important, every recommendation relating to juvenile court processes and procedures reflects existing and tested practice somewhere in California."
delinquent offense, has exhibited delinquent tendencies, or is an abandoned or neglected child, and that such detention is necessary for his protection or that of the community.

6. That the juvenile court should have reasonable assurance that meaningful rehabilitation services will be provided when wardship is imposed for delinquent behavior or child neglect.

7. That the juvenile court must provide adequate protection to the child and the community.

8. That the juvenile court should exploit the clinical knowledge and skills of treatment specialists and should increase the status of probation departments.41

III.
The President's Commission on Crime

In July of 1965 President Johnson established the Commission on Law Enforcement and Administration of Justice, popularly known as the President's Commission on Crime.42 That commission made a searching study and re-evaluation of the entire criminal justice system as it existed throughout the United States, including the juvenile justice system, and issued its report in February of 1967.43

The reality of 1967 was that the administration of juvenile justice in most states (not including California) was a nightmare.44 Virtually no procedural safeguards were provided for the minor. No provision was made for the appointment of counsel, and in some states the presence of counsel was forbidden.45 Minors and their parents were given no written notification of the charges against them.46 Often the jurisdiction of the juvenile court was exercised by inferior court judges totally lacking in legal training or even college education.47 A minor could be detained between the time of apprehension and the time of hearing at the whim and caprice of the probation officer, without provision for bail.48 Unlimited dispositional alternatives were available to the court for the most trifling offense.49 Hearings, if they took place, were unreported.50 No provision was made for

41 Id. at 10-11.
43 Note 12 supra.
50 Del. Task Force Report 40. For an example of a case involving an unreported hearing, see In re Gault, 387 U.S. 1 (1967).
appeals. Treatment resources were negligible, and the minor frequently was committed to a "reform school" which did little more than train him for a life of crime. All too often the juvenile court, to use the words of Mr. Justice Fortas, was nothing more than a "kangaroo court."

To alleviate the situation, the President's Commission first calls for a clear recognition of the essential nature of the juvenile court—concern for the protection of the community as well as merely rehabilitation. It calls upon us to recognize the stigmatic effect of juvenile court proceedings, and suggests that the juvenile court be reserved for the more serious offender. At the same time it suggests that the full gamut of procedural safeguards must be made available to the juvenile offender because of the quasi-criminal nature of juvenile court proceedings.

The Commission suggests that the juvenile court is no longer the appropriate vehicle to deal with the petty delinquent or the minor in danger of becoming a delinquent, and that in its place youth service bureaus be established to perform this function and to act as coordinators of community resources. This proposal recognizes that delinquency results as much from societal conditions as it does from behavioral disorders, and that the only way to approach the overall problem of delinquency is to deal with the conditions that cause it.

61 DEL. TASK FORCE REPORT 40.
62 Id. at 8.
63 Id.
64 In re Gault, 387 U.S. 1, 28 (1967).
65 NAT'L CRIME COMM'N REPORT 80-81.
66 Id. at 88; DEL. TASK FORCE REPORT 92-93. See also In re Gault, 387 U.S. 1 (1967).
67 NAT'L CRIME COMM'N REPORT 85.
68 Id. at 85-86.
69 Id. at 66-67.
70 The specific recommendations of the Commission are as follows:

"Efforts, both private and public should be intensified to:
Reduce unemployment and devise methods of providing minimum family income.
Reexamine and revise welfare regulations so that they contribute to keeping the family together.
Improve housing and recreation facilities.
Insure availability of family planning assistance.
Provide help in problems of domestic management and child care.
Make counseling and therapy easily obtainable.
Develop activities that involve the whole family together." Id. at 66.

"Efforts both private and public should be intensified to:
Involve young people in community activities.
Train and employ youth as subprofessional aides.
Establish Youth Services Bureaus to provide and coordinate programs for young people.
Increase involvement of religious institutions, private social agencies, fraternal groups, and other community organizations in youth programs.
It also recognizes that the juvenile justice system screens out the middle and upper-class offender, and that the juvenile court system

Provide community residential centers.” *Id.* at 69.

“In order that slum children may receive the best rather than the worst education in the Nation, efforts, both private and public, should be intensified to:

- Secure financial support for necessary personnel, buildings, and equipment.
- Improve the quality and quantity of teachers and facilities in the slum school.

Combat racial and economic school segregation.” *Id.* at 73.

“In order that schools may better adapt to the particular educational problems of the slum child, efforts, both private and public, should be intensified to:

- Help slum children make up for inadequate preschool preparation.
- Deal better with behavior problems.
- Relate instructional material to conditions of life in the slums.” *Id.* at 74.

“In order that schools may better prepare students for the future, efforts, both private and public, should be intensified to:

- Raise the aspirations and expectations of students capable of higher education.
- Review and revise present programs for students not going to college.
- Further develop job placement services in schools.” *Id.*

“In order that schools may become more responsive to community needs and parental expectations, efforts, both private and public, should be intensified to develop cooperation between schools and their communities.” *Id.*

“Efforts, both private and public, should be intensified to:

- Prepare youth for employment.
- Provide youth with information about employment opportunities.
- Reduce barriers to employment posed by discrimination, the misuse of criminal records, and maintenance of rigid job qualifications.
- Create new employment opportunities.” *Id.* at 77.

“To the greatest feasible extent, police departments should formulate policy guidelines for dealing with juveniles.

All officers should be acquainted with the special characteristics of adolescents, particularly those of the social, racial, and other specific groups with which they are likely to come in contact.

Custody of a juvenile (both prolonged street stops and stationhouse visits) should be limited to instances where there is objective, specifiable ground for suspicion.

Every stop that includes a frisk or an interrogation of more than a few preliminary identifying questions should be recorded in a strictly confidential report.” *Id.* at 79.

“Police forces should make full use of the central diagnosing and coordinating services of the Youth Services Bureau. Station adjustment should be limited to release and referral; it should not include hearings or the imposition of sanctions by the police. Court referral by the police should be restricted to those cases involving serious criminal conduct or repeated misconduct of a more than trivial nature.” *Id.* at 82.

“Communities should establish neighborhood youth-serving agencies—Youth Services Bureaus—located if possible in comprehensive neighborhood community centers and receiving juveniles (delinquent and nondelinquent) referred by the police, the juvenile court, parents, schools, and other sources.” *Id.* at 83.

“Juvenile courts should make fullest feasible use of preliminary conferences to dispose of cases short of adjudication.” *Id.* at 84.

“Juvenile courts should employ consent decrees wherever possible to avoid
is primarily applied to the indigent.\textsuperscript{61}

The proposed juvenile justice system as outlined by the President's Commission is illustrated by the chart which appears on the next page.

IV.

\textbf{In re Gault}

The sad saga of Gerald Francis Gault, 15, demonstrates most of the vices which have existed in the juvenile court system.\textsuperscript{62}

Gerald was taken into custody by the police and delivered to the probation officer as a result of a verbal complaint of a neighbor about a telephone call made to her in which the caller made lewd or indecent remarks. His parents were given no notice that he had been taken into custody. The following day a petition was filed with the court, but never served on Gerald or his parents.

At the court hearings no witnesses were sworn, and no record of the proceedings was made. Although Gerald himself denied having used any lewd language, and attributed it to a friend, the complaining witness was not called. Gerald was not advised of his right to counsel,

\textsuperscript{61} See also DEL. TASK FORCE REPORT 10; Paulsen, \textit{Juvenile Courts, Family Courts, and the Poor Man}, 54 Calif. L. Rev. 694 (1966). The circumstantial probability of the family of the middle class offender being able to deal with situations confronting it are great, and the odds that the authorities concerned will view the case in this fashion are even greater. The family of means generally has alternatives available to it which are substantially better than those available through the juvenile court system, e.g., private psychiatric care, enrollment of the minor in a military or boarding school, or, if necessary, the hiring of a full-time attendant. The children of middle and upper class families seldom are before the court in neglect proceedings, other than child beating.

\textsuperscript{62} The facts of the case are set out in \textit{In re Gault}, 387 U.S. 1, 4-11 (1967).
his right of confrontation and cross-examination, or his privilege against self-incrimination.

For an adult the maximum penalty for the offense Gerald was alleged to have committed would have been 2 months in jail. Since he was a minor the juvenile court in the exercise of its tender mercy had the power to commit him to the Arizona State Industrial School until the age of 21, which it did. Under Arizona law no provision existed for appeal.

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**Proposed Juvenile Justice System**

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Referral Source

Parents  Schools  Police

Youth Services Bureau

Referral or Direct Services

Residential Facilities  Psychiatric Therapy  Coordination of Programs  Remedial Education  Recreation  Counselling  Medical Aid  Job Placement  Vocational Training

Juvenile Court

Intake

Out of System

Judge

Consent Decree (Judicial Approval)

Institution

Probation

Out of System

Aftercare Programs

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63 Id. at 29.
Mr. Justice Fortas, speaking for the majority, first noted that:

We do not in this opinion consider the impact of these constitutional provisions upon the totality of the relationship of the juvenile and the state. We do not even consider the entire process relating to juvenile "delinquents." For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process. . . . We consider only the problems presented to us by this case. These relate to the proceedings by which a determination is made as to whether a juvenile is a "delinquent" as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution. As to these proceedings, there appears to be little current dissent from the proposition that the Due Process Clause has a role to play. The problem is to ascertain the precise impact of the due process requirement upon such proceedings.64

The Court then analyzed in detail the history of the juvenile court movement.65 It noted that the early reformers called for the abandonment of the idea of crime and punishment. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be clinical rather than punitive.66 The doctrine of parens patriae was explored by the Court and discredited.67

The Court then proceeded to ruthlessly cut through the rhetoric that had surrounded the juvenile court system and noted that the juvenile court system had been ineffective in furnishing the rehabilitation which it promised. It noted that due process was not at variance with the basic objectives of the juvenile court system, that the absence of due process often impeded rehabilitation, and that the presence of due process would encourage it.68 The Court summarized its observation by stating, "Under our Constitution the condition of being a boy does not justify a kangaroo court."69

64 Id. at 13-14. "The Nat'l Crime Comm'n Report recommends that 'Juvenile courts should make fullest feasible use of preliminary conferences to dispose of cases short of adjudication.' . . . Since this 'consent decree' procedure would involve neither adjudication of delinquency nor institutionalization, nothing we say in this opinion should be construed as expressing any views with respect to such procedure. The problems of pre-adjudication treatment of juveniles, and of post-adjudication disposition, are unique to the juvenile process; hence, what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process." Id. at 31, n.48.

66 Id. at 12-25.

67 "The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. . . . [T]here is no trace of the doctrine in the history of criminal jurisprudence." Id. at 16.

68 Id. at 24-27.

69 Id. at 28.
Turning to the specific issues raised in the case, the Court held that written notice of the offense charged and the time of hearing, together with adequate time to prepare, was required; that there is a right to counsel and the appointment of counsel in case of indigency in every instance in which the minor may be removed from his home to an institution in which his freedom is impaired and that parents must be advised of this right; that the right of confrontation and cross-examination must be provided; that the privilege against self-incrimination applies and must be explained to the minor; and that jurisdiction can be based only on "sworn testimony subjected to the opportunity for cross-examination." The court found it unnecessary to rule on the right to appellate review and transcript of proceedings.

Mr. Justice Black, concurring, held that the Constitution requires that minors be afforded all the guarantees of the Bill of Rights that are made applicable to the states by the fourteenth amendment.

Mr. Justice White, concurring, suggested that the court should have reserved matters relating to the privilege against self-incrimination for another day, but otherwise concurred in the opinion.

Mr. Justice Harlan, concurring in part and dissenting in part, took the position that due process required nothing more than adequate notice, advice of right to counsel, and the maintenance of a record.

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70 Id. at 31-34.
71 Id. at 41. Quaere: Is counsel required if commitment of the child to an institution is not sought? The writer submits that the answer should be in the affirmative. Counsel should be provided whenever the state proposes to intervene in the relationship between parent and child.
72 Id. at 56.
73 Id. at 55.
74 Id. The State of Arizona ingeniously argued that while the minor might have the right to remain silent, nevertheless the court ought not to be required to warn the minor of that right because confession is good for the soul. The court, id. at 51, pointed to the observations of Wheeler & Cottrell, Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966), reprinted in Del. Task Force Report, app. T, at 409, as authority for the proposition that the child who is induced to confess by parental urging on the part of officials, followed by disciplinary action, is likely to be hostile, adverse, and to believe that he has been "tricked."
75 In re Gault, 387 U.S. 1, 57 (1967).
76 Id. at 58. The procedure in Arizona provided for neither a record nor appellate review. Id. at 57-58. The Court noted that the effect was "to impose upon the juvenile judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him." Id. at 58.
77 Id. at 61.
78 Id. at 65.
79 Id. at 72.
Mr. Justice Stewart, dissenting, was the sole champion for the classic position that juvenile proceedings are not criminal, inasmuch as the juvenile court is concerned solely with rehabilitation. He concluded that inflexible restrictions should not be imposed on those "public social agencies known as juvenile or family courts." On the facts he found no need to deal with the questions presented, finding that Gerald Gault had received adequate notice.

As noted above, the decision is specifically limited to the rights of minors at the adjudicatory hearing. It does not pass on requirements for either pre-adjudicatory procedures or dispositional hearings. These questions are reserved for another day.

V.

Analysis of the California Juvenile Court Law

The following analysis is designed to bring to light the more significant defects in the California Juvenile Court Law, and to suggest remedial measures. For convenience of reference the organization is in accordance with that of the Juvenile Court Law. Included are summaries of the more important changes made by the 1967 amendments, and where the amendments themselves have caused additional problems, these are discussed.

Article I—General Provisions

Section 517 of the California Welfare and Institutions Code, adopted in 1963, gives the court power to order compensation for appointed counsel, the amount of which shall be determined by the court, and paid out of the general fund of the county. However, section 634, as amended in 1963, provides only that the court can fix compensation for appointed counsel in "a county where there is no public defender." Can the court order compensation for appointed counsel in a county having a public defender? The law is not clear.

All major counties in the state have a public defender system. However, the public defender is not authorized to appear in dependency cases. In addition, private counsel frequently is appointed to represent the minor or his family in delinquency cases when an understaffed public defender is unable to provide necessary personnel or

80 Id. at 79.
81 Id. at 81.
82 See note 64 supra.
83 CAL. WELF. & INST'NS CODE §§ 500-914. All textual references to sections are to CAL. WELF. & INST'NS CODE, unless otherwise indicated.
84 CAL. GOV'T CODE § 27706(e).
where there is a conflict of interest. Appointed counsel should be entitled to adequate compensation in all cases.

Article 2—Commissions and Committees

The Juvenile Justice Commission in California is the watchdog of the juvenile justice system. However, the members of the commission in each county are now appointed by the judge of the juvenile court. Since the commission oversees the operation of the court, as well as the operation of the probation department, its independence should be insured by having someone other than the juvenile court judge act as the appointing body.

In counties having regular rotation of the juvenile court judgeship many of the commissioners will not have been appointed by the incumbent juvenile court judge. Commissioners serve 4-year terms. In some larger counties rotation occurs as frequently as once every 6 months. On the other hand, in some other larger counties the juvenile court judge has served for at least 4 years and at the end of that time all commissioners have been appointed by the incumbent judge. In any event, for the commission to properly play its "watchdog" role it must be an independent public body which owes its appointment and responsibility to some appointing authority other than the juvenile court judge (whether incumbent or not) and which is not a part of the very system it guards.

The State Conference of Barristers (attorneys under 35) has set up panels in major counties throughout the state to handle both dependency and delinquency cases of indigents on a regular basis. Using the City and County of San Francisco as an example, one full-time public defender is assigned to the juvenile court to cover the caseload of one judge and three full-time referees. The public defender handles only delinquency cases. The Legal Aid Society of San Francisco, the San Francisco Neighborhood Legal Assistance Foundation (funded by the Office of Economic Opportunity), and the Juvenile Court Panel of the Barristers Club (affiliated with the Bar Association of San Francisco), all provide counsel in dependency cases. In addition, the Panel has provided counsel in delinquency cases when requested to do so either by an indigent minor or by the public defender's office, and in instances in which the court has declined to appoint counsel in delinquency cases in which appointment is discretionary. In October, 1967, the Legal Aid Society opened an office with three attorneys who will devote all their time to juvenile court work.


It is the duty of the commission "to inquire into the administration of the juvenile court law in the county or region in which the commission serves." Cal. Welf. & Inst'n's Code § 529. All counties with the exception of the County of Los Angeles have juvenile justice commissions.

Cal. Welf. & Inst'n's Code § 525. If the county has more than one juvenile court judge, the appointment is made by the presiding judge of the juvenile court.

Id.
In most larger counties the independence of the commission could be better preserved by having the appointments made by a majority of the judges of the superior court acting jointly.\textsuperscript{90} In one-judge counties the board of supervisors might act as a confirming body.

Provision should also be made for staggering the 4-year terms of the commissioners.\textsuperscript{91} And some orderly means for increasing or decreasing the number of commissioners is required to clear up the ambiguity in the present law.\textsuperscript{92}

\textbf{Article 3—The Juvenile Court}

\textit{Right to be Tried by a Judge}

No person should be deprived of his liberty without being tried before a judge if he so desires.\textsuperscript{93} Under the present system a person's only hearing may be before a referee\textsuperscript{94} who is not a lawyer.\textsuperscript{95} If the hearing is reported there is no automatic right to a rehearing before a judge.\textsuperscript{96} The law should be amended to provide that at the request

\textsuperscript{90} The recommendation is made in a recent study of the administration of the probation department of the County of San Mateo, California. \textsc{Griffin-Hagen-Kroeber, Inc., Administration of the Probation Department, County of San Mateo} (1964).

\textsuperscript{91} In place of a juvenile justice commission, the County of Los Angeles has a probation committee whose members' terms are staggered. \textsc{Cal. Welf. & Inst'ns Code §§ 540-42}.

\textsuperscript{92} The draft law proposed by the Governor's Special Study Commission provided that the Board of Supervisors could increase the number of commissioners. \textsc{Cal. Juv. Justice Comm'n—Part I}, at 55. This particular portion of section 525 was not enacted by the legislature. It is therefore unclear whether the number of commissioners is inflexible, or whether the judge of the juvenile court has the right to increase the number of commissioners at will.

\textsuperscript{93} Some attorneys prefer to have contested jurisdictional matters heard by a judge, on the theory that long term referees (particularly those who are former supervising probation officers) may be too thoroughly integrated into the administrative system of the probation department. On the other hand, the judge, particularly a recently appointed one, may focus more upon the evidence than upon a belief that the child has everything to gain and nothing to lose by obtaining the benefit of the "services" available from the court.

\textsuperscript{94} Juvenile court referees are appointed by the presiding judge of the juvenile court, and hear such cases as are assigned to them by him. \textsc{Cal. Welf. & Inst'ns Code § 554}. Referees appointed since 1961 are required to have a total of 5 years experience as practicing attorneys, or as supervising probation officers, or as a combination thereof. \textsc{Cal. Welf. & Inst'ns Code § 553}. Neither the New York Family Court Act, nor the Illinois Juvenile Court Law provides for referees.

\textsuperscript{95} Persons who have had more than 5 years experience as supervising probation officers, but who lack legal training may be appointed as referees. \textsc{Cal. Welf. & Inst'ns Code § 553}. The U.S. Children's Bureau suggests that all referees should be members of the bar in which they serve, with some experience in the practice of law. \textsuperscript{106} \textsc{Standards 106}.

\textsuperscript{96} The hearing is transcribed and reviewed by the judge, who may in
of the minor or his parents the hearing in the first instance must be held before a judge of the juvenile court. No good reason exists to deny the minor this option, and many courts already grant such requests as a matter of course.

Use of Probation Officers as Referees

In some counties, supervising probation officers regularly employed by the county are also appointed as part-time referees. This practice is condemned by the United States Children’s Bureau and should be forbidden. The judiciary is to act as an independent check upon the administrative system. Elementary concepts of due process are violated by such a system, and the objectives of the law are frustrated.

Disqualification of Referees

The law contains no provision for disqualifying juvenile court referees. It would seem appropriate to extend to referees the provisions of section 170 of the Code of Civil Procedure relating to the disqualification of judges. In place of the objection procedure now set forth, the juvenile court judge logically would pass upon the question of disqualification. In addition, consideration might be given to adopting a pre-emptory disqualification procedure similar to the one set forth in section 170.6 of the Code of Civil Procedure.

The following interesting question in regard to disqualification of referees exists: Referees serve at the pleasure of the presiding judge of the juvenile court. If the presiding judge of the juvenile court is disqualified, does this in turn automatically disqualify all the referees? The conclusion would necessarily seem to follow, since

his discretion grant or deny a rehearing. CAL. WELF. & INST’NS CODE § 558. If the hearing is not reported the minor is entitled to a rehearing before the judge as a matter of right. CAL. WELF. & INST’NS CODE § 558. If the rehearing is granted the hearing before the judge is conducted de novo. CAL. WELF. & INST’NS CODE § 560.

97 STANDARDS 106.
99 CAL. CODE CIV. PROC. § 170(5) provides for the judge and the party disqualifying him, in case of a contest as to adequate grounds for disqualification, to select some mutually acceptable justice or judge to decide the matter. If the parties cannot agree, the appointment is made by the Chairman of the Judicial Council.
100 CAL. CODE CIV. PROC. § 170.6(2)(3) provides that an attorney may make an oral or written motion supported by affidavit or oral statement under oath to the effect that the judge has a prejudice against the attorney or the party. Upon such motion, without any further act or proof, the judge supervising the master calendar shall assign another judge to the case. In the case where there is no supervising judge, the chairman of the judicial council shall assign another judge to the case.
101 CAL. WELF. & INST’NS CODE § 553.
otherwise the minor's case would be heard by an officer who serves at the pleasure of a judge whose bias and prejudice have been established in the manner provided by law. For this reason it is desirable to provide for the appointment of referees by a majority of the judges of the superior court, acting jointly, rather than by the presiding judge of the juvenile court. The problem thereby would be solved in counties having more than one judge, and in most of the one-judge counties the referee system does not prevail.

Notice of Whether Court Reporter Will Be Present

No provision is made for notification to counsel as to whether a hearing before a referee will be taken down by a court reporter. Such information is essential to adequate preparation and the development of trial strategy. If the hearing is unreported the minor is entitled to a rehearing before the judge as a matter of right. If the hearing is reported a rehearing is a matter of discretion, based upon the court's review of the transcript of the proceedings before the referee. The practical consequences of this distinction are self-evident. If the hearing is unreported the minor has another bite at the apple if he loses, and consequently can present his case without concern for making a record. He need not attempt to put on a full case—which in and of of itself may be desirable in promoting the informality and interplay which the juvenile court process usually seeks. If the finding or disposition are unsatisfactory his automatic rehearing is available.

Rehearing before a Judge

The referee should be required to advise the minor and his parents at the conclusion of the hearing of the right to request a rehearing before the judge. If the minor is not represented by counsel and desires a rehearing, the referee himself should be required to prepare and file the application. The minor who has waived his right to appointed counsel in the hope of simplifying the proceedings should not be put to the disadvantage of having to prepare legal documents because of the waiver.

After application for rehearing of a reported case has been filed,

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102 The official court reporter transcribes hearings before referees "as directed by the court." Cal. Welf. & Inst'ns Code § 677. The decision as to whether or not to report the case is often determined by the exigencies of the circumstances, such as the availability of the regular court reporter if the judge is not holding court at the same time. As a matter of practice the probation officer often makes the decision.

103 Cal. Welf. & Inst'ns Code § 558.

104 Id.

the judge is required to read the transcript of the proceedings before the referee, and to determine whether or not to grant the rehearing.\textsuperscript{106} This is an affirmative duty imposed on the judge. Yet the law states that the application shall be deemed denied if not granted within 20 days.\textsuperscript{107} There is no rational basis for the assumption that the judge's failure to make any order means that he has carefully reviewed the record and has determined not to grant the request for rehearing. Instead, the law should be revised to provide that the application for rehearing shall be deemed granted unless the court within 20 days denies the application.

In addition, some time limits should be provided for the completion of the rehearing before the judge. Section 657 requires that a hearing on the merits be held within 30 days after the filing of the petition unless the minor is detained in custody at that time, in which case the hearing must be held within 15 judicial days. However, no time limits whatsoever are established for the judge to conduct a rehearing if the initial hearing was conducted before a referee. As a result a minor could languish in juvenile hall for weeks until the rehearing takes place.

Article 4—Probation Officers

Administrative Independence of the Probation Officer

The greatest single defect in the juvenile court law as enacted in 1961 is its failure to unequivocally place administrative control of the probation department in the hands of the chief probation officer.

Prior to 1961 the law provided that the chief probation officer would be nominated by the probation committee\textsuperscript{108} and appointed by the juvenile court judge.\textsuperscript{109} He could be removed by the judge for cause, and by the judge without cause with the consent of the probation committee.\textsuperscript{110} In charter counties the manner of appointment was governed by the county charter.\textsuperscript{111} The practical effect was to give the court virtually unfettered power to hire and fire the chief probation officer.

\textsuperscript{106} Cal. Welf. \\& Inst'ns Code § 558.
\textsuperscript{107} Id.
\textsuperscript{108} The Probation Committee was the predecessor to the Juvenile Justice Commission. At the recommendation of the Governor's Committee, the name of the Probation Committee was changed and its duties were modified to relieve it of all administrative responsibilities. Cal. Juv. Justice Comm'n—Part I, at 50.
\textsuperscript{109} Cal. Stats. 1945, ch. 1395, § 6, at 2600 (formerly Cal. Welf. \\& Inst'ns Code § 105).
\textsuperscript{111} Cal. Stats. 1963, ch. 2136, § 1, at 4445-46 (formerly Cal. Welf. \\& Inst'ns Code § 634).
The Governor's Commission observed:

Present statutes vest administrative control of probation departments in the hands of the juvenile court judges by giving them the authority to select probation officers in all but two counties. The two exceptions, Los Angeles and San Diego Counties, have county charters which provide for appointment and administrative control of chief probation officers by the board of supervisors.

The Commission observes that juvenile court judges play varying roles in the administration of probation departments. A small number of judges are intimately involved in the details of administration. The majority, however, have delegated administrative responsibilities to their chief probation officers, largely because of the pressure of other judicial duties. However, almost all juvenile court judges retain and exercise ultimate policy making powers.

The Commission believes that the juvenile court judge's role in the treatment process should be limited to establishing judicial checks on an administrative function.112

The Commission went on to note both the lack of logic and the vices engendered by the existing scheme, and the advantages of a clean-cut separation of powers.113

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112 CAL. JUV. JUSTICE COMM'N-PART I, at 39.
113 Id.

"1. The present administrative arrangement produces an unnecessary co-mingling of judicial and treatment functions without parallel in any other court. In our view, there is no more logic for a juvenile court judge to administer a probation department than for a criminal court judge to be administratively responsible for the district attorney's office, county jails, or honor farms. In the adult field, these functions have been recognized as separate and distinct; the same should apply to the juvenile field.

"2. The present administrative relationship between juvenile court judges and probation departments is an inappropriate historical vestige, created 50 years ago under totally different social and governmental conditions. The large scale probation departments of today bear little resemblance to their historical counterparts. Nowadays, probation departments have extensive administrative responsibilities, whereas a half century earlier they had only minor administrative responsibilities. Today, probation departments not only have large professional staffs, but also operate clinics, juvenile halls, and camps. Fifty years earlier, their staffs were small and no institutions were administered.

"The complex problems of administering probation departments require chief probation officers to confer frequently with county administrative officers on budgets, capital outlay, and personnel. If there is to be effective administration, there must be a direct relationship between probation officers and county managers so that appropriate administrative problems can be resolved without the delay often created by having to involve the juvenile court judge in the decision making process.

"3. The experience of the two large counties functioning under the proposed administrative arrangement, Los Angeles and San Diego, reinforces the conclusion that this recommendation is both sound and practical. In both instances, despite the administrative independence of one from the other, there is a compatible, cooperative relationship between the juvenile court judge and the chief probation officer.

"4. This recommendation will insure more consistent administrative policies and procedures. In many of the large counties, juvenile court judges are currently rotated on an annual or more frequent basis. In many instances, whenever a new juvenile court judge is appointed, the probation department
The Governor's Commission proposed a plan of appointment in which a majority of the judges of the superior court would nominate a candidate from a list of three persons selected on a merit system, and the board of supervisors in turn would make the appointment.\textsuperscript{114} Removal of the chief probation officer would require the combined action of a majority of the superior court judges and the board of supervisors.\textsuperscript{115} Charter counties would be required to follow the general law.\textsuperscript{116}

The reform proposal was opposed both by juvenile judges and by chief probation officers. The juvenile court judges feared diminution of their powers. Probation officers, particularly in smaller counties, were concerned that they would be subjected to political pressure from the board of supervisors if they lost their sheltered status as court appointed attachés. In the face of this opposition the sponsors of the bill abandoned these provisions, and the law remained unchanged.\textsuperscript{117}

The Corrections Task Force of the President's Commission, like the Governor's Commission, analyzed the problems created by the juvenile court judge acting as administrative head of the probation department primarily from a practical and policy viewpoint:

\textit{has to radically adjust its policies and procedures. Furthermore, these policy changes are often based on totally different treatment philosophies from the previous judge. These result in administrative complications which, in our view, are totally unnecessary.}

"5. In a few counties, two or more judges share equally the juvenile court responsibilities. Probation officers in these counties are sometimes in the unenviable position of attempting to satisfy two judges who may have divergent views on appropriate probation department policies." Id. at 39-40 (emphasis added).

\textsuperscript{114} Section 575 of Cal. Welf. & Inst'ns Code, as proposed by the Governor's Commission, reads as follows:

"In every county, there shall be a department of probation, supervised by a probation officer. Such probation officer shall be appointed by the board of supervisors on recommendation of a majority of all judges of the superior court of the county, acting jointly, from among the three highest ranking applicants for the office on a list of eligible persons established pursuant to a civil service or merit system. The probation officer can be removed from office by the board of supervisors for cause on recommendation of the judges of the superior court, acting jointly. The probation officer shall receive the compensation fixed by the board of supervisors or civil service commission."

\textit{CAL. JUV. JUSTICE COMM'N—PART I, at 60.}

\textsuperscript{115} Id.

\textsuperscript{116} The draft laws proposed by the Governor's Commission contain no provision corresponding to Cal. Stats. 1946, ch. 66, § 1, at 99 (formerly Cal. Welf. & Inst'ns Code § 634), reenacted as CAL. WELF. & INST'NS CODE § 576. This section permits charter counties to establish their own method of appointment. It is not clear whether the Governor's Commission considered CAL. CONST. art. XI, § 7, relating to the independence of charter counties. The answer to that question is beyond the scope of this article.

\textsuperscript{117} Interview with an informed source, September 27, 1967, who prefers to remain anonymous.
In most major cities... the probation department is a complex organization requiring continuous and intensive administrative attention by professional, full-time managers. This is particularly true of local juvenile probation departments, which often operate detention homes, psychiatric clinics, and foster homes, as well as carrying out supervision functions. To manage so widely dispersed an operation requires specialized expertise and close control which are almost impossible for a judge whose career investment is not in administration. Moreover, organizational effectiveness and continuity of policy are apt to be seriously impaired in an agency subject to detailed administrative direction by both a judge and a chief probation officer.118

Apparently, at least in this area of juvenile court law, no attention was given by either the Governor’s Commission or the Task Force to constitutional considerations of due process—not surprising in the pre-Gault era.

The writer submits that Gault requires the juvenile court judge to be totally divorced from the administrative system of the juvenile probation department. Reduced to its simplest terms, Gault holds that “the hearing must measure up to the essentials of due process and fair treatment.”119 The juvenile court judge cannot in a legal sense be impartial if he also acts as chief administrator of the department responsible for presenting and prosecuting the case against the minor. In the juvenile court, as well as in any other court, the judiciary must be independent.120

Article 4 of the Juvenile Court Law should be amended to unequivocally state that the chief probation officer is the chief executive and administrator of the juvenile probation department, and that the juvenile court judge shall not involve himself in the administration of the probation department.121 Furthermore, the law should

118 President's Comm'n on Law Enforcement and Administration of Justice, Task Force Report: Corrections 35 (1967).
120 Cf. A.B.A. Canons of Professional and Judicial Ethics, Canon 24, at 51 (1957) provides:
"24. Inconsistent Obligations. A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."
121 Nothing in the juvenile court law provides that juvenile court judge shall in fact act as the chief administrator of the juvenile probation department, and this is a result of historical relationships rather than a mandate of the statute. As the Governor’s Report notes: “[P]resent statutes vest administrative control of probation departments in the hands of the juvenile court judges by giving them the authority to select probation officers in all but two counties.” Cal. Juv. Justice Comm’n—Part I, at 39 (emphasis added). In theory the problem might be resolved by a clear mandate that the judge was not to interfere in administration, but it is doubtful that the long-standing historical relationship could be so easily broken.
be amended to provide a scheme of appointment and removal of chief probation officers which relieves the chief probation officer from the predicament of serving at the pleasure of the juvenile court judge. The scheme proposed by the Governor's Commission is a reasonable one. Others are available.

The Probation Officer in Court

The probation officer is placed in an impossible position in the contested juvenile court case. For all practical purposes, he acts as the prosecutor. The supposed friendly counselor to the minor, who is expected to play the role of helpful mentor both before and after the hearing, becomes the minor's adversary during the hearing.

If the minor is represented by counsel, the result frequently is catastrophic. No probation officer can be expected to play the role of an attorney when questions of evidence and the admissibility of confessions are presented. All too often the result is that the judge must become the attorney for the probation officer. This in turn may lead the minor to believe (sometimes with justification) that he cannot receive a fair and impartial hearing because the judge has now become his adversary. Juvenile court judges, referees, probation officers and attorneys all have found the situation to be a difficult

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122 "Probation officers may at any time be removed by the judge of the juvenile court for good cause shown; and the judge of the juvenile court may in his discretion at any time remove any such probation officer with the written approval of the majority of the members of the juvenile justice commission." CAL. WELF. & INST'NS CODE § 575. Bearing in mind that no standards are established "for good cause shown," and that the juvenile court judge appoints the Juvenile Justice Commission (But see note 90 supra), the juvenile court judge as a practical matter has the power to hire or fire the chief probation officer at will.

123 See note 114 supra.

124 In some chartered counties the office of the chief probation officer is included within the Civil Service System. In Los Angeles and some other chartered counties, the chief probation officer is appointed and removed by the board of supervisors.

125 REPORT OF JUVENILE COURT COMM. OF THE BAR ASS'N OF SAN FRANCISCO 22-24 (1962) [hereinafter referred to as SAN FRANCISCO REPORT].

126 Id.


"In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men."
one.128

The legislature this year adopted a solution which may create more vices than it remedies. Now the district attorney will be permitted to appear in juvenile court cases if the minor is represented by counsel, and if the court invites him to appear.129 Practice will vary from county to county, and from court to court, depending upon the disposition of the judge. We may anticipate that in some counties the district attorney will appear as a matter of routine in all cases in which the minor is represented by counsel. The introduction of the district attorney may well serve to unduly and unnecessarily intensify the adversary nature of juvenile court proceedings, and tend to overemphasize the quasi-criminal nature of the juvenile court. In the final analysis the workability of the plan will depend upon how effectively the court exercises its power to fix terms and conditions of representation.130

An unfortunate side effect may be to discourage the minor from obtaining counsel. If he does not obtain counsel, the district attorney cannot appear to prosecute him.

The existing scheme obviously is unworkable,131 and better solutions are available. Larger probation departments could add attorneys to their own staff, who in turn would present contested cases in court.132 One might reasonably anticipate that such attorneys would

128 SAN FRANCISCO REPORTS 22-24. The U.S. Children's Bureau recommends:

"No staff member of the court should assume the role of prosecutor. This follows from the noncriminal nature of neglect and delinquency proceedings. However, an attorney to represent the State, especially in contested cases, should be available to the court. This is necessary in order to prevent the judge from being placed in the untenable position of being a party to the proceedings." STANDARDS 73.

129 CAL. WELF. & INST'NS CODE § 681:

"In a juvenile court hearing, where the minor who is the subject of the hearing is represented by counsel, the district attorney may, with the consent of the juvenile court judge, appear and participate in the hearing to assist in the ascertaining and presenting of the evidence. Where the petition in a juvenile court proceeding alleges that a minor is a person described in either subdivision (a) or subdivision (b) of Section 600, and either of the parents, or the guardian, or other person having care or custody of the minor, or who resides in the home of the minor, is charged in a pending criminal prosecution based upon unlawful acts committed against the minor, the district attorney may represent the minor in the interest of the state at the juvenile court proceeding with the consent or at the request of the juvenile court judge. The terms and conditions of such representation shall be with the consent or approval of the judge of the juvenile court." (emphasis added).

130 Id.

131 See SAN FRANCISCO REPORT 22-24.

132 Id. In several other counties a few probation officers have been specially trained as court hearing officers and present all contested cases in court. This practice may present problems in the unauthorized practice of law, and in any event represents the use of time and talents of a professional which are outside the area of his professional competence.
be close to the philosophy of the juvenile court law. In counties not large enough to utilize the services of an attorney in the department on a full-time basis, the role of the attorney could better be filled by the county counsel in counties where this system prevails. The use of the district attorney could be relegated to those counties where there is no county counsel.

Article 5—Jurisdiction

Dependent Children

The President's Commission suggests that "[d]ependency jurisdiction should be abolished since such cases involve inability rather than willful failure to provide properly for children and can adequately and more appropriately be dealt with by social, nonjudicial agencies." Accordingly, our law defining jurisdiction in the juvenile court should be amended to delete reference to one "[w]ho is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode" or who has no parent or guardian.

Moreover, a 1965 amendment to the dependency section brings within its provisions children physically dangerous because of mental deficiency. This is an inappropriate use of the juvenile court and specific provisions for placement in appropriate mental institutions ought to be provided. Section 506 already requires that dependent children be kept physically separated from delinquent children. This has created a substantial practical problem for the probation department in that it is placed in the position of housing physically dangerous children in facilities not designed for such children.

Minors in Danger of Leading an Immoral Life

Section 601 provides:

Any person under the age of 21 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or any person who is a habitual truant from school within the meaning of any law of this State, or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court.

The President's Commission suggests that:

Any act that is considered a crime when committed by an adult

134 Cal. Welf. & Inst'ns Code § 600.
135 Id.
should continue to be, when charged against a juvenile, the business of the juvenile court.

The conduct-illegal-only-for-children category of the court's jurisdiction should be substantially circumscribed so that it ceases to include such acts as smoking, swearing, and disobedience to parents and comprehends only acts that entail a real risk of long-range harm to the child, such as experimenting with drugs, repeatedly becoming pregnant out of wedlock, and being habitually truant from school. Serious consideration, at the least, should be given to complete elimination of the court's power over children for noncriminal conduct.\(^{137}\) Revision of section 601 would appear appropriate.\(^ {138}\) If and when youth service bureaus as suggested by the President's Commission are established,\(^ {139}\) elimination of section 601 jurisdiction entirely may well be in order.

Article 6—Temporary Custody and Detention

Advice as to Constitutional Rights

A 1967 amendment to the Juvenile Court Law now requires both the arresting officer and the probation officer to advise the minor that anything he says may be used against him, and to advise him of his constitutional rights, including the right to remain silent, the right to have counsel present during any interrogation, and the right to have counsel appointed if the minor is unable to afford counsel.\(^ {140}\) The minor is permitted to make an intelligent waiver of these rights.\(^ {141}\) Uncertainty exists as to whether any waiver made in the absence of an attorney or a knowledgeable parent will be deemed intelligent.\(^ {142}\)

\(^ {137}\) Nat'l Crime Comm'n Report 85.
\(^ {138}\) Compare N.Y. Family Ct. Act § 712(b) (1963), and Ill. Rev. Stat. ch. 37, §§ 702-3, 702-4(b) (1965).
\(^ {139}\) Nat'l Crime Comm'n Report 83.
\(^ {140}\) Cal. Welf. & Inst'ns Code §§ 625(c), 627.5.
\(^ {141}\) Cal. Code Civ. Proc. § 372. The following language was added to this section in 1967:

"Nothing in this section or in any other provision of this code, the Probate Code, or the Civil Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of his constitutional rights in any proceedings under the Juvenile Court Law . . . .""

\(^ {142}\) The Supreme Court said in Gault: "We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. . . . If counsel is not present for some permissible reason when an admission is obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it has not been coerced or suggested, but also that it is not the product of ignorance of rights or of adolescent fantasy, fright or despair." In re Gault, 387 U.S. 1, 55 (1967).

The Supreme Court of California recently came to grips with the problem of whether a minor can waive his constitutional rights in the absence of
Notice to Parent or Guardian of Detention of Minor

The present law places the burden on the arresting officer of notifying the family that the minor has been delivered to juvenile hall. This burden should instead be placed on the probation officer to provide for centralized handling of notification. A police officer frequently takes the minor directly from the scene of an event to the juvenile hall, and if the officer does not succeed during his shift, because of the involvements of business or otherwise, in notifying the family of the detention, often no notification will be received at all. The probation officer is in an ideal position to directly provide this notification, either by telephone or telegram.

Duty of the Probation Officer to Investigate and Release—Time for Release

Under the scheme of the law, the probation officer is charged with the responsibility to "immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody," and to immediately release the minor to the custody of his parents unless it appears that continued "detention of the minor is a matter of immediate and urgent necessity for the protection of the

a competent attorney or parent. People v. Lara, 67 A.C. 367, 62 Cal. Rptr. — (1967). The defendants were charged with first degree murder and kidnapping. Lara, 18 at the time of the commission of the offense, was sentenced to death. Alvarez, a co-defendant, 17 at the time of the commission of the offense (jurisdiction having been waived by the juvenile court) was sentenced to life imprisonment. Despite the uncontradicted evidence that Alvarez had a mental age of 10 years and 2 months, the majority permitted the confessions to be admitted, stating:

"We cannot accept the suggestion of certain commentators (see 7 Santa Clara Lawyer 114, 127 (1966); 40 Wash. L. Rev. 189, 200-201 (1965)) that every minor is incompetent as a matter of law to waive his constitutional rights to remain silent and to an attorney unless the waiver is consented to by an attorney or by a parent or guardian who has himself been advised of the minor's rights. Such adult consent is of course to be desired, and should be obtained whenever feasible. But as we will explain, whether a minor knowingly and intelligently waived these rights is a question of fact; and a mere failure of the authorities to seek the additional consent of an adult cannot be held to outweigh, in any given instance, an evidentially-supported finding that such a waiver was actually made." Id. at 381, 62 Cal. Rptr. at —.

Justice Peters, in a well-reasoned dissent, took the position that "no minor may waive his constitutional right to remain silent, and his right to counsel, unless and until he has the advice and counsel of some friendly adult." Id. at 399, 62 Cal. Rptr. at —.

The Supreme Court of the United States probably will hear this case, particularly since the death penalty is involved. Hopefully the Court will come to grips with the broad proposition raised by Justice Peters in his dissent, as well as with the narrower question of whether on the facts the waiver was intelligent.

143 CAL. WELF. & INST'NS CODE § 627.
144 CAL. WELF. & INST'NS CODE § 628.
person or property of another."145 or unless the minor is "likely to flee the jurisdiction of the court."146 While this provision has resulted in substantial improvement in the practices prevailing in California prior to 1961,147 it has not been sufficient to relieve California of the ignoble distinction of having one of the highest detention rates in the county.

Most minors are arrested at night or on the weekend. The Attorney General has ruled that the obligation to immediately investigate is satisfied if the probation officer begins the investigation at 8 a.m. on the next judicial day.148 The result is that in many counties a minor detained on Friday evening will be automatically detained until Monday morning, and no practical means exists for obtaining release of the minor in the interim.149 The probation officer should be required to investigate 7 days a week.150 While this may impose a bur-

145 Id.
146 Id.
147 The Governor's Commission observed:
"California has been severely criticized by national probation and child welfare organizations for excessive juvenile detention practices. The Commission's study, unfortunately, substantiates the validity of this criticism. This conclusion is supported by the following facts: In 1958, more than 50,000 juvenile charges with delinquent acts were detained in juvenile halls, and several thousand more were held in local police lockups or jails. In the same year, California law enforcement agencies referred to probation departments 68,000 juveniles for delinquent acts. In other words, almost three-fourths of the delinquent juveniles referred to probation departments by law enforcement agencies were detained in juvenile halls. In some communities, the ratio was even higher—virtually every juvenile referred by law enforcement officers to the probation department was detained, notwithstanding the fact that some minors were apprehended in error, many committed inconsequential offenses, and many others had responsible parents able to control the minor pending the juvenile court appearance.
"The number of juveniles detained for minor offenses is shocking. The Bureau of Criminal Statistics report on children admitted to juvenile hall during 1958 discloses that approximately 8,400 juveniles were held for such basically minor offenses as curfew violations, truancy, traffic violations, disturbing the peace, and minor liquor law violations. The Commission also has knowledge of at least one case where the juvenile was detained for jaywalking!
"Furthermore, we note that a significant proportion of minors placed in juvenile halls were later released without having juvenile court petitions filed. This is further proof of excessive detention because, generally speaking, if a minor's delinquency is serious enough to require juvenile court action, a petition will normally be filed. Conversely, if the case is less serious, a petition is not likely to be filed. The facts show that almost half (49 percent) of the 49,000 juveniles initially referred to probation departments for delinquent acts last year did not have a petition filed. In a majority of instances, they were detained in juvenile halls anywhere from a few hours to several days."
CAL. JUV. JUSTICE COMM'N—PART I, at 41.
150 The San Francisco Report suggested that a probation officer should be on duty from 8:00 A.M. until midnight, 7 days per week. San Francisco
den on smaller probation departments, a price must be paid for a system that has no other provision for release, and in the long run in dollars should be less than the cost of care of the unnecessarily detained child.

The probation officer can detain the minor for 48 hours, non judicial days excepted, without filing a petition,\(^{151}\) and the detention hearing is not held until the following day.\(^{152}\) As a practical matter this may stretch the period of detention to 6 days.\(^{153}\) The time period should be limited to a flat 48 hours without any exceptions.\(^{154}\)

Still another defect in the overall scheme is that while the probation officer is charged with the obligation to "immediately investigate,"\(^{155}\) the arresting officer who delivers the minor to the probation officer is not required at the time of delivery to provide the probation officer with sufficient initial facts to conduct that investigation. Towards that end the arresting officer should be required to furnish the probation officer with a detailed police report at the time the minor is delivered to the probation officer.\(^{156}\)

**Right to Make Telephone Calls**

The law grants the minor no right to make telephone calls after being detained. The practical result is that in many counties the minor may be held incommunicado until such time as he comes to court, unable to contact his parents, friends or an attorney who might arrange for his release. The minor should be given the same absolute right to make two telephone calls currently afforded to arrested

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\(^{151}\) CAL. WELF. & INST'NS CODE § 631.
\(^{152}\) CAL. WELF. & INST'NS CODE § 632.
\(^{153}\) A 3-day holiday may intervene.
\(^{154}\) The flat 48-hour period is a common and frequently recommended one. See Ill. Rev. Stat. ch. 37, § 703-5 (1965); NAT'L CRIME COMM'N REPORT 87.
\(^{155}\) CAL. WELF. & INST'NS CODE § 628.
\(^{156}\) At an Institute for Probation Officers conducted by the School of Criminology, University of California, Berkeley, on September 19-20, 1967, probation officers throughout the state complained of a lack of police reports at the time of delivery. In many cases the officer bringing the minor to juvenile hall was reported to be a "transportation officer" who knew nothing of the details of the offense.
adults.\textsuperscript{157}

In opposition to this proposal it has been suggested by some that the minor might use the opportunity to make two telephone calls to warn accomplices, to urge fellow gang members to take retributive action against those responsible for his detention, or to otherwise interfere with the due administration of justice or public order. This reasoning is equally applicable to adult offenders. Furthermore, such objections ignore the fact that section 851.5(a) of the Penal Code requires the calls to be made in the presence of a public officer or employee.

\textbf{Bail}

The law makes no provision for bail for minors detained as delinquents. The constitutional right to bail granted to adults in California\textsuperscript{158} has been denied to minors on the theory that juvenile court proceedings are not criminal in nature.\textsuperscript{159} This rationale—that juve-

\textsuperscript{157} \textit{Cal. Pen. Code} § 851.5 provides:

“(a) Any person arrested has, immediately after he is booked, and, except where physically impossible, no later than three hours after his arrest, the right to make, at his own expense, in the presence of a public officer or employee, at least two telephone calls from the police station or other place at which he is booked, one completed to the person called, who may be his attorney, employer, or a relative, the other completed to a bail bondsman.

“(b) Any public officer or employee who deprives an arrested person of the rights granted by this section is guilty of a misdemeanor.”

\textsuperscript{158} \textit{Cal. Const.} art. I, § 6 provides: “All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted.”

\textsuperscript{159} In re Magnuson, 110 Cal. App. 2d 73, 242 P.2d 362 (1952). In that case the minor had already been adjudged a ward of the juvenile court and sought to be admitted to bail pending an appeal. The court stated:

“These conclusions are fortified by a consideration of the general purposes to be served by proceedings to declare a minor a ward of the court. Such proceedings are for the benefit and protection of the minor when such protection is needed by the occurrence of causes for wardship, as set forth in the pertinent code sections. The result of a declaration of wardship, far from being a conviction of crime, is more in the nature of a guardianship such as is provided for in the Probate Code. To consider that such restraint as the court, acting as guardian of its ward, finds necessary for the protection and benefit of the minor, amounts to imprisonment, is to ignore the beneficial purposes of the law. The control exercised by the court and by the persons or agencies in whose immediate custody the ward may be placed is akin to the former parental control for which it is a substitute. Indeed, it would be surprising to find in this statute provisions for bail.” \textit{Id.} at 75, 242 P.2d 364.

However, no decided California case directly passes upon the right to bail prior to a declaration of wardship.

In the adult criminal courts bail after conviction upon appeal is a matter of right when the appeal is from a judgment imposing a fine only or from a judgment imposing imprisonment in case of misdemeanor, and is a matter of discretion in all other cases. \textit{Cal. Pen. Code} § 1272.
Nile court proceedings are civil—has been thoroughly destroyed, and the question of the applicability of the state constitutional provision must now be considered an open one. The United States Supreme Court in Gault specifically held that its opinion did not necessarily relate to pre-adjudicatory hearing matters, but at least one state court has anticipated that the Court will hold that denying bail to minors is unconstitutional.

As a practical matter unnecessary and unwarranted detention still frequently occurs in California. The rhetoric of the Juvenile Court Law is no substitute for reality. Despite the basic undesirability of a bail system, the introduction of such a system as ancillary

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160 Some other states have interpreted their constitutions as requiring admission to bail in juvenile court cases. See Annot., 160 A.L.R. 287 (1946).
161 See note 64 supra.
162 The Kentucky Circuit Court for Jefferson County recently held that bail is required:

"While the Supreme Court stated that it did not pass on the application of the Bill of Rights to pre-trial proceedings in the Juvenile Court, the broad and sweeping language used by it leaves little doubt in the mind of this Court that when the question is presented to that Court, it will hold that juveniles are entitled to bail just as are adults at any stage of the proceedings. The right to bail is predicated upon the presumption of innocence. That presumption of innocence remains with every person charged with a crime no matter how serious until he is finally found guilty. In the instant case, although Judge Sueli has acted promptly and wisely under the existing Kentucky law, it seems to this Court that the section of the Kentucky statute which denies bail to juveniles is unconstitutional. The statute does not limit the right of the Juvenile Court to detain the juvenile for an indeterminate period until the proceedings relating to him are disposed of. The Juvenile Judge may order the juvenile confined with a written order. The law as written does not require the Judge to state his reasons for the issuance of the order. Even if it did, the fact remains that the juvenile is being confined in an institution with locks on the doors and restrained of his liberty without the right to bail no matter how wise it may be to so confine him." 1 Crim. L. Bull. 2121 (1967).


163 A recent study by the California Youth Authority, covering 12 counties, shows that out of 21,321 minors detained, more than 20 percent were brought into detention one day and released the next. 65 percent of the children detained were released within 4 days. Only 15 percent of those detained were released the same day. CAL. DEPT. OF JUSTICE, CRIME & DELINQUENCY IN CALIFORNIA, 1965, at 190, table X-6 (1966).

164 DEL. TASK FORCE REPORT observes at 36:

"The concept of bail, whereby an arrested person is given an opportunity to buy his release, may be seriously questioned as a rational solution to the problems of prehearing custody, despite its ancient and constitutional lineage. These questions are discussed elsewhere in this report. In any event, it is one of those attributes of the criminal process that it is wise for the juvenile court system to be free of. Release as of right plainly may interfere with the protection or care required in some cases, and availability of freedom should not turn on the ability the child or his family to purchase it. On the other hand, detention of children appears to be far too routinely and frequently used, both while they are awaiting court appearance and during the
The present system provides no means of insuring release during the first 72 hours after arrest, and so far has in practice failed to effectively guard against unnecessary and unwarranted detention. As undesirable as bail is, it is the most effective check on the refusal of probation officers to exercise their discretionary powers of release prior to the detention hearing.

Notice of Detention Hearing

The law provides that if the probation officer determines that a minor is to be retained in custody he shall immediately file a petition to have the minor declared a dependent child or a ward of the court. The petition is filed with the clerk of the juvenile court, who automatically sets the matter down for a detention hearing before the court on the next judicial day. The probation officer is required to notify the minor's family of the time and place of hearing, and this notice period after disposition and before institution space is available. The notorious inadequacy and overcrowding of child detention centers and the not uncommon use of adult jails and lockups make the practice even less tolerable.

However, the President's Commission on Crime, in dealing with the question of bail for adult offenders, noted:

"Although bail is recognized in the law solely as a method of insuring the defendant's appearance at trial, judges often use it as a way of keeping in jail persons they fear will commit crimes if released before trial. In addition to its being of dubious legality, this procedure is ineffective in many instances. Professional criminals or members of organized criminal syndicates have little difficulty in posting bail, although, since crime is their way of life, they are clearly dangerous.

"If a satisfactory solution could be found to the problem of the relatively small percentage of defendants who present a significant risk of flight or criminal conduct before trial, the Commission would be prepared to recommend that money bail be totally discarded. Finding that solution is not easy. Empowering magistrates to jail defendants they believe to be dangerous might well create more of a problem than the imposition of money bail, in the light of the difficulty of predicting dangerousness. Such a system also might raise issues under State and Federal constitutional grants of a right to bail, issues that have not been determined by the Supreme Court." NAT'L CRIME COMM'N REPORT 131 (emphasis added).

The U.S. Children's Bureau, while suggesting that bail discriminates against the poor, points out that "[i]n some jurisdictions . . . the right to bail, provided for in the State Constitution, may extend to cases of delinquency. Furthermore, many persons are of the opinion that to leave no avenue of release for the child is a denial of a basic right to which all persons are entitled." STANDARDS 63.

The time period in fact may be as long as 6 days. See text at note supra.

In many counties, on every Monday a large number of children who have been detained over the weekend are released without a petition being filed or without a detention order being sought. In the absence of a bail system no alternative to compel release exists.

CAL. WELF. & INST'NS CODE § 630.

Id.
may be given orally.\textsuperscript{170}

Existing procedures are defective in that they do not provide that the minor be notified of the reasons for the probation officer’s conclusion that further “detention of minor is a matter of immediate and urgent necessity for the protection of the person or property of another,”\textsuperscript{171} or that “the minor is likely to flee the jurisdiction . . . .”\textsuperscript{172} Mr. Justice Fortas observed in \textit{Gault} that:

Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a youth’s freedom and his parents’ right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet.\textsuperscript{173}

While \textit{Gault} dealt with the right to written notice of the nature of the misconduct which the probation officer claimed gave the court jurisdiction, the rationale is applicable to notification as to the facts justifying detention. The law provides for a detention hearing, and the right to a detention hearing is meaningless unless the minor is placed in a position in which he can reasonably prepare for it.

Certain practical accommodations must be made to time schedules which are beneficial to the minor. The detention hearing is held the day following the date of the filing of the petition.\textsuperscript{174} Under these circumstances, it is reasonable for the probation officer to notify the parent or guardian orally of the time and place of the hearing.

If the minor is to be detained, the petition itself should contain a “concise statement of facts”\textsuperscript{175} to support the conclusion that detention is required. The probation officer should be required to deliver a copy of the petition to the minor and his parent not later than the time of the detention hearing.

Some time for preparation is provided by section 638, which requires the court to continue the hearing for 1 day upon motion of the minor or his parents. This provision is defective, however, in not re-

\begin{footnotesize}
\begin{enumerate}
\item[170] Id. The notice may be given by telephone. \textit{In re Patterson}, 58 Cal. 2d 848, 27 Cal. Rptr. 10, 377 P.2d 74 (1962).
\item[171] \textsc{Cal. Welf. & Inst’ns Code} § 628.
\item[172] Id. It is the existing practice in many counties for the probation officer to prepare and file with the court and serve upon the minor and his parents at the detention hearing a written statement of the reasons why detention is necessary. However, the charging allegation may amount to nothing more than a rubber stamped notice stating something such as: “‘Said custody and detention are matters of immediate and urgent necessity for the protection and welfare of said minor . . . . and should be continued for the following reasons:’ . . . . ‘for the protection of the person and property of another and the community.’” \textit{In re Macidon}, 240 Cal. App. 2d 600, 603, 49 Cal. Rptr. 861, 863 (1966).
\item[173] Id. \textit{In re Gault}, 387 U.S. 1, 33-34 (1967).
\item[174] \textsc{Cal. Welf. & Inst’ns Code} § 632.
\item[175] \textsc{Cal. Welf. & Inst’ns Code} § 656(f).
\end{enumerate}
\end{footnotesize}
quiring the court to so advise the minor. The 1 day limitation is too short, and should be revised to provide for a continuance of 5 judicial days or such lesser period of time as the minor may designate. In this fashion an outer limit will be set and at the same time the minor will have control over the period of continuance.

The Detention Hearing

The detention hearing under California practice has tended to be pro forma. It frequently consisted of nothing more than a brief report by the probation officer and a cursory review of the police report. One salient change brought about by the 1967 amendments is the addition to section 630, which reads in part: "In . . . [the detention] hearing the minor . . . has a right to confrontation by, and cross-examination of, witnesses." This means that in a delinquency hearing the probation officer will be required to present a prima facie case that the minor committed the offense, since the "immediate and urgent necessity" for detention is necessarily premised upon this assumption. This requirement for full evidentiary hearing, coupled with provision for appointment of counsel, should, in and of itself, do more than anything else to remedy California's over-detention practices.

Standards for Detention

The statutory standard for detention is inadequate. It provides that at the detention hearing the judge shall order the minor released unless:

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\text{it appears that such minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court . . . .}^{178}
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The "immediate and urgent necessity" test is hopelessly vague, and provides no simple yardstick for the court to follow. Furthermore, under present practice no attempt is made to determine whether there is probable cause that the minor has committed the offense.\(^{179}\)

\(^{176}\) CAL. WELF. & INST'NS CODE § 635.

\(^{177}\) See note 163 supra.

\(^{178}\) CAL. WELF. & INST'NS CODE § 635 (emphasis added).

\(^{179}\) In Los Angeles County, the superior court manual specifically provides "[t]hat the minor at the detention hearing shall not be asked concerning the truth of the allegations of the petitions except transients and potential returnees to the Youth Authority." THE EXECUTIVE OFFICE OF THE LOS ANGELES SUPERIOR COURT, MANUAL OF POLICIES AND PROCEDURES, JUVENILE DEPARTMENTS § 15 (1966). This practice would appear to be changed by the addition of CAL. WELF. & INST'NS CODE § 630(b), which now provides for a right of confrontation by, and cross-examination of, witnesses at the detention hearing.
The New York Family Court Act provides a simple and straightforward test:

After the filing of a petition . . . the court in its discretion may release the respondent or direct his detention. In exercising its discretion . . . the court shall not direct detention unless it finds that unless the respondent is detained:

(a) there is a substantial probability that he will not appear in court on the return date; or
(b) there is a serious risk that he may before the return date do an act which if committed by an adult would constitute a crime.  

This test is in accord with the recommendations of the Standard Family Court Act. The Illinois law goes further and requires a finding of probable cause and appears to require a full evidentiary hearing as to that. While the New York Family Court Act is unclear on the subject it does require the adjudicatory hearing to commence within 3 calendar days following the detention order, as contrasted to 15 judicial days in California. California appears to have followed the lead of Illinois.

**Appointment of Counsel**

The Supreme Court said in Gault:

We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in a commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

The President's Commission on Crime went further and observed:

Counsel should be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent.

Immediate and urgent necessity in a section 602 case necessarily depends upon the assumption that the offense was committed by the minor and upon consideration of the surrounding circumstances. In the past, this was established from the police report; now evidence will be required.

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180 N.Y. FAMILY CT. ACT § 739 (McKinney 1963).
181 STANDARD FAMILY CT. ACT §§ 33-34.
182 ILL. REV. STAT. ch. 37, § 703-6(1) (1965).
183 ILL. REV. STAT. ch. 37, § 703-6 (1965); N.Y. FAMILY CT. ACT § 747 (McKinney Supp. 1967).
184 CAL. WELF. & INST'NS CODE § 657.
185 See note 179 supra.
186 In re Gault, 387 U.S. 1, 41 (1967).
187 NAT'L CRIME COMM'N REPORT 87. The Commission prefaced the foregoing quotation by stating:

"Fears also have been expressed that the formality lawyers would bring into juvenile court would defeat the therapeutic aims of the court. But informality has no necessary connection with therapy; it is a device that has been used to approach therapy, and it is not the only possible device. It is quite possible that in many instances lawyers, for all their commitment to formality, could do more to further therapy for their clients than can the small, overworked social staffs of the courts. A lawyer—especially a poverty
California has responded affirmatively to these suggestions. A 1967 amendment provides not only that counsel must upon request be appointed for the indigent minor alleged to be a person described in section 601 (delinquent tendencies) or 602 (delinquency), but goes on to provide that:

[T]he court must appoint counsel for the minor if he appears at the hearing without counsel, whether he is unable to afford counsel or not, unless there is an intelligent waiver of the right of counsel. In some cases a minor may make an intelligent waiver of the right to counsel, but it may reasonably be anticipated that the very searching process in which the court must engage to determine whether or not a proposed waiver is intelligent will, in the normal case, result in the minor's requesting appointment of counsel. Many minors will be incapable of making an intelligent waiver, and it may be reasonably anticipated that appellate courts will be loath to find an intelligent waiver if hindsight indicates that such a waiver was improvident on the part of the minor. The practical effect should be to ensure that all minors charged with delinquency are represented by counsel.

This proposition is illustrated by the recent case of In re Butterfield. Following a suicide attempt in February of 1966, the minor was charged as being a person coming within section 601, and was made a ward of the court. After a second suicide attempt in 1967, program or legal aid lawyer or other practitioner specializing in criminal matters—is often familiar with the various rehabilitative and preventive programs and organizations available in his community. He might already know the youngster's family or neighborhood. Thus he often would be, in other words, in a position to assist the court in developing a plan of disposition and treatment appropriate for the individual juvenile and, more important, in seeing that it is carried out: in making the appointments and taking the other specific steps that the press of business may force the probation officer to leave to the reluctant child or his bewildered parents. There are not nearly enough lawyers now with the skills to perform this role, but the fact that there are some argues that there could be more if there were more calls for their services. To suggest that lawyers perform these tasks is not to suggest that they become social workers. It is to suggest that in many instances lawyers can, and do, perform services for their clients that go beyond formal court representation." Id. at 86.

For further discussion of the role of counsel and the need for counsel in all proceedings, whether or not contested, see authorities collected in In re Gault, 387 U.S. 1, 33-42, nn. 55-71 (1967). For a concurring social work viewpoint, see Berg, Social Work Practice and the Trend Toward a Legalistic Juvenile Court, Social Casework 94 (1966).

188 Cal. Stats. 1963, ch. 2136, § 1, at 4445 (formerly Cal. Welf. & Inst'ns Code § 634), provided that the court must upon request appoint counsel for the indigent minor if he was accused of an offense which, if committed by an adult, would constitute a felony, and otherwise made the appointment discretionary.

189 CAL. WELF. & INST'NS CODE § 634. In CAL. WELF. & INST'NS CODE § 700, the same requirement is set forth in slightly different language.

a petition was filed under section 602, charging that the second suicide attempt was a violation of the terms of probation imposed following the section 601 adjudication in 1966. Before the hearing, both the girl, who was 15, and her mother were advised of their right to counsel, and waived that right. The court found full compliance with the statutory requirement for warning of the right to counsel. The girl admitted the second suicide attempt, and the juvenile court promptly ordered her committed to the California Youth Authority. The court of appeal held the waiver to be unintelligent because the girl and her mother had not been specifically warned that long-term confinement in a correctional institution was a possible consequence of the order.191

Findings by the Court

The law should require the court to make specific findings as to why it ordered the minor detained; at present it does not.192 Such could easily be cast in one or two sentences beginning, "Detention of the minor is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another in that . . . ." In the absence of any such findings, the court of appeal or the supreme court, in a habeas corpus action to review the detention order,193 may be faced with great difficulty in determining the factual basis for detention.

Article 7—Commencement of Proceedings

Contents of the Petition

The significance of the petition would be substantially enhanced if it were required that it contain a statement as to whether or not the probation officer seeks to have physical custody of the minor removed from his parents or other guardian.194 If the probation officer was uncertain as to a dispositional recommendation at the time of the filing of the petition, he could so state. The minor and his parent would be immediately advised of the seriousness of the case as viewed by the

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191 Compare People v. Lara, 67 A.C. 367, 62 Cal. Rptr. — (1967) in which the supreme court held that a minor of 17½ could waive his rights without the advice of a friendly adult. It is significant that the hearing in Butterfield was denied after the decision in Lara. Apparently the supreme court will not show special consideration for the sophisticated juvenile offender who has a long and extensive record, but will be sympathetic to the unsophisticated child who has suffered real prejudice through his waiver of rights. 192 In re Macidon, 240 Cal. App. 2d 600, 611, 49 Cal. Rptr. 861, 868 (1966). 193 Habeas corpus is the appropriate means of review. Id. at 606–07, 49 Cal. Rptr. at 865. 194 See CAL. WELF. & INST’NS CODE § 656 for requirements for the contents of the petition.
probation officer, and would respond accordingly. Such information
would also be of practical significance to the attorney in permitting
him to make a preliminary evaluation of the case, and would alert the
court beforehand so that it can consider the appropriateness of the
remedy.

Notice of the Jurisdictional Hearing

The Supreme Court stated in Gault that “[n]otice, to comply
with due process requirements, must be given sufficiently in advance
of scheduled court proceedings so that reasonable opportunity to pre-
pare will be afforded . . .”195 Prior to Gault California had required
only 24 hours notice of the jurisdictional hearing.196 In response to
the mandate of Gault a 1967 amendment to the Juvenile Court Law
requires that the minor and his family be given 10 days notice of the
hearing if the minor is not detained,197 or 5 days notice if the minor is
detained unless the hearing is set for a shorter period of time, in
which event at least 24 hours notice must be given.198 Since cases
normally are set for hearing at or near the last allowable date, the
practical effect will be to provide longer notice in most cases.

Furthermore, it is now made mandatory rather than permissive
that the court continue the hearing to appoint counsel, or to enable
counsel to acquaint himself with the case, or to provide reasonable
opportunity for the minor and his parent or guardian to prepare for
the hearing.199

Another 1967 amendment requires the clerk, upon timely request,
to notify counsel of hearings in the same manner notice is furnished
to the parent or child.200 The clerk must, as a matter of course, fur-
nish the minor’s counsel, if known, with a copy of the petition.201

Informal Dispositions and Preliminary Conferences

Most delinquency matters referred to the probation department
do not go to court. In 1965, 49.6 percent of all initial referrals were
closed by the probation department or referred to another agency,
and another 13.6 percent of the cases were placed under informal
supervision with no petition having been filed.202 A petition was filed

195 In re Gault, 387 U.S. 1, 33 (1967).
196 Cal. Stats. 1961, ch. 1616, § 2, at 3459 (formerly Cal. Welf. & Inst’ns
Code § 660).
198 Id.
201 Cal. Welf. & Inst’ns Code § 658.
202 Cal. Dep’t of Justice, Crime and Delinquency in California, 1965,
at 164 (1966).
in only 36.8 percent of the cases.\textsuperscript{203}

The first step in the intake proceedings is for the probation officer to confer with the minor, his parents and other interested persons. Some cases at that point are dismissed for lack of evidence. Others are disposed of on the basis that it will be sufficient for the probation officer to admonish and dismiss the minor. Some counties make frequent use of programs of informal supervision of the minor in lieu of the filing of a petition;\textsuperscript{204} others make virtually none.\textsuperscript{205}

The President's Commission, recognizing the stigmatizing effect of juvenile court referrals,\textsuperscript{206} has suggested that youth service bureaus be established.\textsuperscript{207} These agencies would act as central co-ordinators of all community services for young people, and would also provide services lacking in the community or neighborhood, especially services that are designed for less serious delinquents. The police, schools and other concerned agencies would normally refer minors first to the youth service bureau, which would provide central diagnosing and co-ordinating services.

Unless and until youth service bureaus are established (which appears unlikely in the absence of federal funding) the intake procedures of the probation department will continue to fill this role by default.\textsuperscript{208} The President's Commission recognizes that today it is the juvenile court where problems of lack of accurate, up-to-date information about needs and alternatives; lack of co-ordination among available services; and lack of systematic ways to bring the juvenile and the service together are particularly acute.\textsuperscript{209}

The Commission recommends:

To meet those difficulties, the court intake function of pre-judicial disposition should be more systematically employed and more formally recognized and organized. Written guides and standards should be formulated and imparted in the course of inservice training. Staff resources should be augmented where necessary to keep abreast of service opportunities and programs in the community and to make inquiries into the backgrounds of juveniles sufficiently comprehensive to select intelligently amongst alternatives.\textsuperscript{210}

Both the Illinois\textsuperscript{211} and the New York\textsuperscript{212} law provide for prelimi-
nary conferences attended by court personnel, the juvenile, parents, and other involved parties to resolve grievances without adjudication.\textsuperscript{213} While such procedures are used in California, they have not been systematized, organized, or specifically provided for in the juvenile court law.\textsuperscript{214} This should be done.

The President's Commission on Crime notes that:

Safeguards essential to such a procedure are that it occur within a specifically limited time, to eliminate the indirect coercion of an indefinite threat that a petition will be filed at some later date, and that use of statements made at the conference be inadmissible in subsequent court proceedings.\textsuperscript{215}

Both the Illinois\textsuperscript{216} and the New York\textsuperscript{217} laws so provide. Such amendment also is necessary in our juvenile court law. Free communication between the minor and his family and the probation officer is impeded when statements made in the course of attempting to obtain an informal disposition may be used against the minor in court.

A frequent impediment to voluntary disposition through conference in California is the requirement that a petition must be filed for the minor to be detained for more than 48 hours.\textsuperscript{218} Counsel often is appointed only after the petition has been filed. At this point the probation officer may take the position that the filing of the petition precludes informal disposition.\textsuperscript{219} The law should be amended to make it explicit that the probation officer has the power without the consent of the court to dismiss the petition at any time prior to adjudication by the court.

The President's Commission on Crime also suggests:

Juvenile courts should make fullest feasible use of preliminary conferences to dispose of cases short of adjudication.

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Juvenile courts should employ consent decrees wherever possible to

\begin{footnotes}
\textsuperscript{214} \textit{Cal. Welf. & Inst'ns Code} § 654 does provide:
"In any case in which a probation officer, after investigation of an application for petition or other investigation he is authorized to make, concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within such jurisdiction, he may, in lieu of filing a petition, and with consent of the minor's parent or guardian, undertake a program of supervision of the minor, for not to exceed six months, and attempt thereby to adjust the situation which brings the minor within the jurisdiction of the court or creates the probability that he will soon be within such jurisdiction. Nothing in this section shall be construed to prevent the probation officer from filing a petition at any time within said six-month period."
\textsuperscript{215} \textit{Natl Crime Comm'n Report} 84.
\textsuperscript{216} \textit{Ill. Rev. Stat.} ch. 37, § 703-8(5) (1965).
\textsuperscript{217} \textit{N.Y. Family Ct. Act} § 735 (McKinney Supp. 1967).
\textsuperscript{218} \textit{Cal. Welf. & Inst'ns Code} § 631. See text at note 151 \textit{supra}.
\textsuperscript{219} This has frequently occurred in the writer's experience in the City and County of San Francisco.
\end{footnotes}
avoid adjudication while still settling juvenile cases and treating off-
fenders.220

Section 654 permits the probation officer at the present time to
undertake informal programs of supervision for a period not to ex-
ceed 6 months. In order to encourage the use of such programs it
would seem desirable to increase the maximum duration to 1 year.
It also appears desirable to adopt the safeguard recommended by the
President's Commission of requiring court approval of such consent
decrees.221

A statutory directive providing for the use of settlement confer-
cences and consent decrees whenever possible should be adopted.
While some counties make substantial use of the existing procedures,
others have made little use of them222 and should be encouraged to do
so by means of such a directive.

Article 8—Hearings and Transfer

Separate Hearings

Section 675 provides in part: "No person on trial, awaiting trial,
or under accusation of crime, other than a parent, guardian, or relative
of the minor, shall be permitted to be present at any . . . session
[of the juvenile court] except as a witness." Does this provision pro-
hibit the joinder of causes in the juvenile court? Frequently the case
of a number of minors involved together in the same offense is heard
at the same time. Clarification would seem desirable.

As a matter of policy it is suggested that joinder be permitted
during the adjudicatory phase of the hearing, and while the circum-
stances of the offense and the degree of participation of each of the
minors is being determined. But the case of each minor should be
heard separately in the dispositional phase.223 The nature of juvenile
court proceedings is such that family matters of a highly confidential
nature are likely to be revealed at the dispositional hearing, and the
objectives of privacy are destroyed if these facts are disclosed to a
minor's friends and to their parents.

Pre-hearing Discovery

The law is silent as to the right of the minor to engage in dis-
covery. It can be argued that the full range of discovery procedures
provided for in the Code of Civil Procedure are available in juvenile

220 NAT'L CRIME COMM'N REPORT 84.
221 Id.
222 See notes 204 and 205 supra.
223 This is the recommendation of the U.S. Children's Bureau. STAND-
ARDS 77.
court cases because they are civil proceedings. Yet the very limited period of time available in the processing of a juvenile court case and the quasi-criminal nature of juvenile court proceedings make it of dubious wisdom to make the full range of discovery of civil cases available. Since the minor possesses a privilege against self-incrimination, discovery in delinquency cases necessarily would be a virtually one-way affair.

Specific provision should be made for discovery at least as broad in scope as that currently provided in the criminal courts. This would include the right of the minor to obtain such things as copies of his own statements, statements of the prosecution's witnesses, statements used by the probation officer to impeach the minor's witnesses, names and addresses of eyewitnesses known to the probation officer, and notes used by the police officer in preparing his police report.

Accepting an Admission of the Charges

The hearing customarily begins with the court, after warning the minor of his rights, asking whether or not the minor admits the allegations of the petition. If the allegations are admitted, the court then proceeds to a dispositional hearing; if not, an adjudicatory hearing takes place.

The age of the persons with whom the juvenile court deals, their lack of sophistication, and their often culturally deprived background are such that solicitous care ought to be exercised to insure that the juvenile recognizes the full consequences of admitting commission of the offense, and that he in fact did commit the offense with which he is charged. The Federal Rules of Criminal Procedure as amended in 1966 wisely established the following requirement in accepting pleas in adult criminal cases:

A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defend-

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224 CAL. CODE CIV. PROC. §§ 2016-36 deal with depositions and discovery in actions. CAL. CODE CIV. PROC. § 2035 provides that the word "action" is to be construed, whenever necessary to do so, as including a special proceeding of a civil nature. CAL. CODE CIV. PROC. § 24 states that there are only two kinds of actions: civil and criminal. Since juvenile court proceedings are expressly declared not to be criminal (CAL. WELF. & INST'NS CODE § 503), they must be civil.

225 CAL. WELF. & INST'NS CODE §§ 630(b), 702.5.

226 See generally 1 CALIFORNIA CRIMINAL PRACTICE 147-175 (Cal. Cont. Educ. Bar ed. 1964) for a discussion of the scope of discovery in criminal cases under California law.
The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea. The same rule should be adopted in juvenile court cases.

**Right of Trial by Jury**

The Supreme Court of California held in 1924 in *In re Daedler* that there is no constitutional right to trial by jury in juvenile court cases in California. *Gault* undermines the rationale of this decision.

In determining that there is no constitutional right to trial by jury the court in *Daedler* began with the premise that "[i]n order to [make] a determination of these contentions, it will be necessary to review briefly the history and philosophy of juvenile court laws." The court then went on with a classic statement of the philosophy and background of the juvenile court law as it was known in 1924, premising the law upon the doctrine of *parens patriae*. The court quoted from an earlier case:

The action of the police judge here in question did not amount to a criminal prosecution, nor to proceedings against the minor according to the course of the common law, in which the right of trial by jury is guaranteed. The purpose in view is not punishment for offenses done, but reformation and training of the child to habits of industry, with a view to his future usefulness when he shall have been reclaimed to society, or shall have attained his majority.

Referring to practices in other jurisdictions, the court in *Daedler* noted:

While, as we have stated, there was some disposition in the earlier decisions of the courts of certain states to give strict application of the constitutional safeguards of trial by jury and due process of law to proceedings before the juvenile courts, and to hold that the proceedings in the cases of minors brought before such courts were criminal in their nature, the main trend of modern (pre-1924) authority has been away from this viewpoint...

The President’s Commission teaches us that “[t]he juvenile court is a court of law, charged like other agencies of criminal justice to protecting the community against threatening conduct.” It points out that “[j]uvenile court laws and procedures that can be rationalized solely on the basis of the original optimistic theories endure as if the

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228 194 Cal. 320, 228 P. 467 (1924), overruling *Ex parte* Becknell, 119 Cal. 496, 51 P. 692 (1897). See also *Ex parte* Ah Peen, 51 Cal. 280 (1876); *In re* Brodie, 33 Cal. App. 751, 166 P. 605 (1917); *In re* Shinn, 195 Cal. App. 2d 683, 16 Cal. Rptr. 165 (1961).
229 194 Cal. at 324, 228 P. at 469.
230 *In re* Daedler, 194 Cal. 320, 325, 228 P. 467, 469 (1924), quoting *Ex parte* Ah Peen, 51 Cal. 280 (1876).
231 *In re* Daedler, 194 Cal. 320, 328, 228 P. 467, 470 (1924).
vitality of those theories were undiluted." The searching analysis of Justice Fortas in Gault demonstrates, too, that the *parens patriae* doctrine endorsed by the court is "murky" and "its historic credentials are of dubious relevance." Due process for the juvenile is now a constitutional right.

A complete re-evaluation by the Supreme Court of California of the constitutional right to trial by jury in delinquency cases will be required. The question is not free from doubt. The court may well be influenced by the recommendation by the Delinquency Task Force Report that trial by jury is undesirable in juvenile court cases, and permit *Daedler* to stand even though its foundations have been undermined.

Almost all juvenile court judges, referees and probation officers take the position that trial by jury as a matter of policy is undesirable in juvenile court cases. On the other hand, many public defenders and other experienced juvenile court defense counsel interviewed by the writer have indicated a strong desire for the right to trial by jury. They claim that there is a strong tendency on the part of juvenile court judges and referees to sustain jurisdiction whenever any evidence exists upon which such a finding would be upheld by an appellate court, on the theory that no harm could come to the minor from the juvenile court's taking jurisdiction, and that the minor needs the treatment available from the juvenile court. Many feel that the juvenile court judge may be influenced by extrajudicial confessions of the minor which would not have been admissible in the adult courts. The tendency of the juvenile court judge to sustain

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233 Id.
234 *In re Gault*, 387 U.S. 1, 16 (1967).
235 For a strong argument that the right to trial by jury is a constitutional right in the juvenile court, see Antieau, *Constitutional Rights in Juvenile Courts*, 46 COWELL L.Q. 387, 399-400 (1961). State courts are split on the subject. See cases collected in Annot., 100 A.L.R.2d 1241 (1965). The right to trial by jury generally has been afforded only when the minor is charged with some specific crime.
236 DEL. TASK FORCE REPORT 38.
238 The U.S. Children's Bureau suggests that juries are incompatible with "the informal setting of the court hearings." STANDARDS 73. This presupposes that a contested jurisdictional hearing with the minor represented by counsel can, or should, be informal.
239 It may be doubted whether introducing provisions for the right to trial by jury in fact would result in frequent jury trials in the juvenile court. In Denver, where jury trials have been permitted for 25 years, there have been only two requests, both withdrawn before trial. Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 793-94 (1966).
240 "Apart from the question of constitutional requirements, trial by jury should be provided as a matter of policy for those who desire it as a pro-
jurisdiction may well be subconsciously promoted by the practice of many juvenile court judges of reading the social report on the minor before the jurisdictional hearing has begun.\textsuperscript{241} With the right to jury trial withdrawn and the “preponderance of evidence” test prevailing,\textsuperscript{242} obtaining dismissal of the petition can be difficult indeed.

The right to trial by jury in criminal cases is considered to be such a basic right as to be guaranteed in both the federal\textsuperscript{243} and state\textsuperscript{244} constitutions. So long as this right is cherished by adults, who are unwilling to surrender it, it should likewise be made available to our children.\textsuperscript{245}

\textit{Tests for Admissibility of Evidence in the Adjudicatory Hearing}

Section 701 provides:

\begin{quote}
At the hearing, the court shall first consider only the question whether the minor is a person described by Sections 600, 601, or 602, and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring him within the jurisdiction of the juvenile court is admissible and may be received in evidence....
\end{quote}

The intent of section 701 is clear from the report of the Governor's protection against jaded judges who hear case after case, day in and day out, and decide on past prejudices rather than present evidence. Also present is the previously discussed problem of excluding illegal or coerced confessions. Under current procedures the same judge who must decide the case is also asked to rule on the legality of the confession. Of course, in an ordinary criminal case tried by a judge without jury, he might be asked to do the same thing. But in a criminal case the defendant chooses whether trial will be by jury. If he fears prejudice in having the trier of fact hear the confession, even if it is eventually proved illegal, he may protect himself by asking for a jury. The danger of this kind of prejudice would seem to be most substantial where the litigant does not claim actual coercion but merely that the confession was obtained under illegal circumstances. This problem could be solved by the use of pre-trial procedures to exclude illegal confessions, using a system of rotating judges so that the same man does not sit on both the pre-trial and the fact-finding hearings. Of course in the many areas where there are only one-judge juvenile courts, judges from the regular legal system would be required to hear the pre-trial claims concerning illegal confession. The need for these complicated procedures could be obviated by offering trial by jury. It should be noted also that while a two-judge procedure could effectively exclude an illegal confession from consideration by the trier of fact, it does not satisfy the concern raised about prejudiced or jaded judges. Comment, \textit{Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal}, 114 U. Pa. L. Rev. 1171, 1187-88 (1966).

\begin{footnotes}
\textsuperscript{241} See text at notes 260-63 infra.
\textsuperscript{242} See text at notes 253-54 infra.
\textsuperscript{243} U.S. Const. amend. VIII.
\textsuperscript{244} See Annot., 100 A.L.R.2d 1241 (1965); Cal. Const. art. 1, § 5.
\textsuperscript{245} The writer wishes to emphasize that he is not suggesting that the minor or counsel ought to make use of the right to trial by jury. This is a decision which must be made upon a case-by-case basis. The question is one of the availability of the right, to be intelligently waived or not by the minor on a case-by-case basis as he believes best serves his interests.
\end{footnotes}
Commission. All relevant and material evidence, including the incompetent, may be received by the court at the adjudicatory hearing. However, the court in making its decision is to sift the evidence, cast the incompetent from its mind, and rely only upon the competent. Such a proposal may have made sense to those accustomed to a juvenile court in which minors were seldom represented by counsel, but makes none in this day and age where most minors are represented by counsel and the district attorney may appear for the probation officer.

The compromise which Section 701 represents is highly prejudicial to the minor. It is unrealistic to assume that the judge can drive all incompetent testimony from his mind. It is more reasonable to assume that the unconscious pattern of judicial thinking will involve the court first coming to a decision, and then sifting the evidence to see if there is sufficient competent evidence to support that decision. The possible prejudice involved outweighs any advantage to be gained through informality.

The fear of loss of informality is illusory. Contested jurisdictional hearings normally cannot be informal. Informality is not promoted by the law even in its present state. Counsel must object at each point at which incompetent evidence is offered in order to obtain a ruling from the court that this evidence, while being received, will not be considered. The relaxed rules generally followed in nonjury cases provide as much informality as is consistent with due process.

It should be noted that the Supreme Court in Gault quoted with approval the recommendations of the Children's Bureau's Standards for Juvenile and Family Courts that only competent, material and relevant evidence should be admitted. In Illinois the rules of evi-

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247 It has been held that the probation officer's report is itself evidence. In re Patterson, 58 Cal. 2d 848, 27 Cal. Rptr. 10, 377 P.2d 74 (1962); In re Garcia, 201 Cal. App. 2d 662, 20 Cal. Rptr. 313 (1962); In re Halamuda, 85 Cal. App. 2d 219, 192 P.2d 781 (1948). Under the rationale of these cases it is possible for the court to consider hearsay, weigh it, come to its decision, and then merely search the record to determine whether sufficient evidence can be found to support a decision against attack on appeal.

For arguments against the court's even seeing the probation officer's report prior to dispositional hearing, see text at notes 260-63 infra. This practice is condemned by the Advisory Council of Judges of the National Council on Crime and Delinquency. ADVISORY COUNCIL OF JUDGES FOR THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY, PROCEDURE AND EVIDENCE IN THE JUVENILE COURT, GUIDE FOR JUDGES (1962).

248 For a discussion of the role of the district attorney in delinquency determinations, see text at notes 129-30 supra.

249 See generally Note, Admission and Use of Evidence in the California Juvenile Courts, 18 HASTINGS L.J. 668 (1967).

250 In re Gault, 387 U.S. 1, 56-57 (1967).
idence in the nature of civil proceedings in the state are applicable to juvenile court proceedings.\textsuperscript{251}

\textit{Standard of Proof}

The standard of proof in juvenile court cases is regulated by section 701:

\begin{quote}
\textit{[A]} preponderance of evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described by Section 602, and a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Sections 600 or 601.
\end{quote}

Consideration should now be given to changing the standard of proof in delinquency cases to the criminal law standard of proof beyond a reasonable doubt.\textsuperscript{252} The only real justification for applying a lesser standard of proof in the juvenile court is the unjustified assumption that the “treatment” process always may be presumed to be more helpful than harmful and that the jurisdictional hearing is nothing more than a formality in the road to curing the child.\textsuperscript{253} This line of reasoning is discredited by both the report of the President's Commission\textsuperscript{254} and by\textit{Gault}.\textsuperscript{255} If the general pattern of the minor's life is such that serious risk exists that he will become a delinquent, an independent basis for jurisdiction may well exist under section 601. If, however, the entire hearing is focused solely upon whether or not the minor admitted a specific act no justification can exist for requiring a lesser standard of proof of commission of that act in the juvenile court than in the adult courts.

It should be borne in mind that the question is one of how much evidence should be required to force the minor to submit to the jurisdiction of the juvenile court. It may well be that the “treatment” the court affords would be of benefit to the minor whether or not he committed the act. Hopefully, if this is the case, some informal adjudication can be reached that will result in the minor being placed in the hands of some treatment offering facility in the community. The reality of the situation is that the question frequently is not whether the minor is to be treated, but rather whether society is to remove him to a “reform school” for its own protection. Adults for their own

\begin{footnotes}
\item[251] ILL. REV. STAT. ch. 37, §§ 704-6 (1965).
\item[252] The U.S. Children's Bureau recommends the “clear and convincing” proof test as a middle ground. STANDARDS 72.
\item[253] It is frequently attempted to justify the “preponderance” test in terms of the proceedings being not criminal. This approach does nothing more than continue the gap between rhetoric and reality. The consideration should be one of rationale, not labels.
\item[254] NAT'L CRIME COMM’N REPORT 85.
\item[255] \textit{In re Gault}, 387 U.S. 1, 56-57 (1967).
\end{footnotes}
protection demand proof beyond a reasonable doubt, and our children are entitled to equal protection.

Bifurcation of the Hearing

The juvenile court hearing is bifurcated. First the court considers whether or not it has jurisdiction over the minor, i.e. whether the minor committed the offense charged. After determining that it has jurisdiction the court receives the social study and determines what disposition should be made of the minor. The court may, but need not, postpone the jurisdictional hearing until another day to receive the social study of the probation officer or to receive other evidence.

Provision should be made for a mandatory continuance of the dispositional hearing if desired by the minor. Time and effort is required to properly prepare for the dispositional hearing, and counsel frequently should not be forced to undertake the time and expense involved to do so while jurisdiction still is in question. Furthermore, a good atmosphere for a dispositional hearing cannot exist with the testimony of the witnesses on jurisdiction still ringing in the ears of the court and the parties present. A "cooling off" period generally is desirable.

Premature Delivery of the Social Study

Section 702 implies that the court will not receive the social study until after jurisdiction has been determined. The Task Force Report on Delinquency observed:

The juvenile judge's use of social investigatory reports on the child's background and history is indispensable to sound and informed dispositional decisions. To minimize the danger that adjudication will be affected by inappropriate considerations, however, social investigation reports should not be made known to the judge in advance of adjudication. Adoption of the bifurcated hearing and imposition of legislative evidentiary regulations should help to meet the challenge the exparte and confidential nature of these reports has presented to maintenance of fair procedures.

256 CAL. WELF. & INST'NS CODE §§ 701, 702.
257 CAL. WELF. & INST'NS CODE § 701.
258 CAL. WELF. & INST'NS CODE § 702.
259 Id.
260 CAL. WELF. & INST'NS CODE § 702 provides in part: "Prior to [hearing evidence on the question of the proper disposition to be made of the minor, the court] . . . may continue the hearing, if necessary, to receive the social study of the probation officer . . . ."
261 DEL. TASK FORCE REPORT 35. This viewpoint is supported by all authority found by the author, including the U.S. Children's Bureau. STANDARDS 73, quoting with approval, Note, Employment of Social Investigation Reports in Criminal Juvenile Proceedings, 58 COLUM. L. REV. 702, 723 (1958); Note, Correct Use of Background Reports in Juvenile Delinquency Cases, 5 SYRACUSE L. REV. 67 (1953).
Nevertheless, one of the consultants' papers to the Task Force Report on Delinquency reports reveals:

Bifurcated hearings were made mandatory in California in 1961 as part of a wholesale revision of its juvenile court law, but according to a 1965 survey by the author, a majority of judges (67 percent) continue to read the dispositional (social) report before jurisdictional hearings.262

The probation officer should be expressly prohibited from furnishing, and the judge from receiving or reading, the probation report until such time as an adjudication has been made. Along the same lines, the probation officer should be prohibited from discussing any case ex parte with the court, as occurs all too frequently under the existing system.263 In order to insulate the judge it will be necessary for the minor to be tried by a judge other than the one who heard the detention hearing if the minor was detained. That judge will have already received much of this information.

The Dispositional Hearing

The probation officer is required to prepare for every dispositional hearing a social study of the minor, containing such matters as may be relevant to a proper disposition of the case.264 The social study must include the probation officer's recommendation for disposition of the case.265

In re Halamuda266 held that the unverified contents of the probation officer's report, though based on hearsay, were required to be regarded as legal evidence, on which the court could decide the case, on the theory that such a report was an official document and became a judicial record to be considered in deciding the case. Section 702 implies that the social study of the probation officer is evidence.267 Yet the report of the probation officer often is hearsay in its rankest form. The Supreme Court in Gault specifically declined to rule as to whether hearsay could be used as evidence at the disposition hearing.268

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262 President's Comm'n on Law Enforcement & Administration of Justice, Selected Consultants' Papers 101 (1967).
263 Compare A.B.A., Canons of Professional and Judicial Ethics, Canon 17, at 49 (1957): "A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for ex parte application."
265 Cal. Welf. & Inst'ns Code § 582.
267 The court may continue the hearing "to receive the social study of the probation officer or to receive other evidence . . . ." Cal. Welf. & Inst'ns Code § 702 (emphasis added).
268 In re Gault, 387 U.S. 1, 13, 31 n.48 (1967).
No easy solution to this problem can be presented. In most cases the factual content of the probation officer’s report will not be subject to substantial challenge, and dispute will revolve around the inferences to be drawn from the facts set forth. Nevertheless, disputes frequently do arise as to the accuracy or truthfulness of the hearsay set forth in the report. As a middle ground, it is suggested that the probation officer’s report maintain its evidentiary status at the dispositional hearing, but that it be made clear that the probation officer, upon request, must produce as a witness any person whose statement is contained in the probation officer’s report. In that event the testimony should supersede the report. Hopefully such provision would meet any tests later laid down by the Supreme Court.

Transfer to the Adult Courts

Section 707 provides in part:

At any time during a hearing upon a petition alleging that a minor is, by reason of violation of any criminal statute or ordinance, a person described in Section 602, when substantial evidence has been adduced to support a finding that the minor was 16 years of age or older at the time of the alleged commission of such offense and that the minor would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, . . . the court may make a finding . . . that the minor is not a fit and proper subject to be dealt with under this chapter, and the court shall direct the district attorney or other appropriate prosecuting officer to prosecute the person under the applicable criminal statute or ordinance . . . .

Two problems are encountered by the practicing lawyer in questions of transfer: the vagueness of the standards for transfer and the lack of adequate notice.

269 This is the prevailing practice in most counties in California, and is implicit in the law. The minor and his parents have a right to receive the probation report. CAL. WELF. & INST’NS CODE § 827.

270 For a comprehensive discussion of the problems involved based on a widespread observation, see Note, Rights and Rehabilitation in the Juvenile Courts, 67 COLUM. L. REV. 281, 313-20 (1967). The note writers point out that two approaches are taken by juvenile court judges towards transfer which they characterize for convenience as the jurisdictional and dispositional models:

“The two broad approaches which juvenile court judges take toward transfer can for convenience be termed the jurisdictional and dispositional models. The former regards transfer as a device for fixing the jurisdiction of the juvenile court. Recognizing that age—the only statutory criterion upon which juvenility is assessed—is not alone a sufficient standard for determining whether the youth will be amenable to treatment in the juvenile courts, judges adopting this approach view transfer as a device which weeds out those who are juvenile in age but not in attitude. The dispositional view denies the premise that a youth can be too mature to profit from special treatment; the statutory age limit fixes, beyond question, the class of persons who are rehabilitable. Under this view, transfer is dictated not merely by the youth’s characteristics but also by extrinsic factors. The youth must be transferred.
The standard is a hopelessly vague one: "That the minor would not be amenable to the care, treatment and training program available through the facilities of the juvenile court." The Governor's Commission noted the absence of clear standards as one of the several major problems that seriously impede the efficient administration of juvenile justice in California.\(^{271}\)

The quantitative extent of the transfer problem will be greatly increased as a result of 1967 legislation which permits transfer in any case involving a minor 16 or 17 charged with an offense which, if committed by an adult, would constitute a crime.\(^{272}\) Until that amendment, transfer was permitted only if a minor was charged with an offense which, if committed by an adult, would amount to a felony.\(^{273}\)

Standards. The 1967 amendment is of some help in providing that the probation officer must provide the court with a social report covering the minor.\(^{274}\) This provision itself will be of some benefit in bringing professional testimony to the court, but still does not provide clear-cut guidance for the court.

One helpful step would be to provide for a statutory presumption that any minor of 16 or 17 is amenable to the care, treatment and training program available through the facilities of the juvenile court. Another approach would be to provide that a case cannot be transferred to the adult court unless some attempt has been made in the past to treat the minor through the facilities of the juvenile court.

In most cases, the critical question facing the court will be whether the minor is amenable to the program of treatment available through the Youth Authority. This is particularly true in the case of murder or other crimes of great violence against the person in which removal of the minor from his own home is almost a foregone conclusion. The logical solution to this situation would be to provide that the court must, at the request of the minor, commit the minor to the Youth Authority for the purpose of having the Authority itself make the determination if the minor is amenable to their treatment program. No one can be in a better position to make that determina-

\(^{271}\) CAL. JUV. JUSTICE COMM'N—PART I, at 12.
\(^{272}\) CAL. WELF. & INST'NS CODE § 707.
\(^{274}\) "The court shall cause the probation officer to investigate and submit a report on the behavioral patterns of the person being considered for unfitness." CAL. WELF. & INST'NS CODE § 707.
tion. Only through this means can a uniform standard be established throughout the state as to which minors are not fit for committal to the Youth Authority.

Notice. Gault establishes that minors are entitled to reasonable notice in juvenile court proceedings and to an opportunity to prepare.\(^{275}\) The law is strangely silent in providing no notice to the minor, his family and counsel if the question of transfer is to be considered. By inference, some provision for notice will be created by the fact that the probation officer is required to investigate and file a social report for consideration by the court. It would be desirable to set up specific provisions for notice. Furthermore, since the concept of our juvenile court law is that the court shall act as a judicial check on the administrative system, it would appear appropriate to leave it to the probation officer to be the one to initiate the request for transfer.

The inherent risk of transfer undoubtedly will loom in the background as a threat in all juvenile court cases involving minors of 16 and 17. Counsel will be hesitant to cooperate with the probation officer out of fear that statements made by the minor later will be used against him in a criminal prosecution. One solution is to provide that transfer cannot be ordered once the jurisdictional hearing has been concluded. Another approach would be to follow the lead of Illinois\(^{276}\) and New York\(^{277}\) and to provide that no evidence developed in the juvenile court may be used in criminal proceedings upon transfer.

Double Jeopardy.

Section 707 was amended in 1965 to provide that a minor who is committed to the Youth Authority, and later returned by the Youth Authority as unamenable to treatment, could have the case against him dismissed and be transferred to the adult courts for prosecution there. This provision directly contravenes the recommendations of the Governor's Commission\(^ {278}\) and reinstates a vice that was cured in the 1961 revision of the law. It represents double jeopardy in its clearest form. This procedure was upheld in *People v. Silverstein*\(^ {279}\)

\(^{275}\) *In re Gault*, 387 U.S. 1, 33-34 (1967).


\(^{277}\) *See N.Y. Family Ct. Act § 783* (McKinney 1963).

\(^{278}\) "There are several cases on record where juveniles have been tried and sentenced in a criminal court for an offense upon which final judgment was previously made in the juvenile court. Such a course of action, while rare, is unfortunately permissible under the present juvenile court law. "In an adult case, this is prohibited because it would constitute placing the individual in double jeopardy. The Commission sees no valid reason why juveniles, as well, should not be protected from such proceedings." *Cal. Juv. Justice Comm'n—Part I*, at 24.

\(^{279}\) 121 Cal. App. 2d 140, 262 P.2d 656 (1953).
on the theory that juvenile court proceedings are not criminal. The validity of this rationale has been undermined by Gault, and the question should now be considered open. In any event, protection against double jeopardy is a fundamental right of adults, and in fairness should be extended to juveniles by revision of this section.

Article 9—Judgments and Orders

Dismissal of the Petition

The judge should be given the power to determine at the conclusion of the dispositional hearing that the best interests of the minor will be served by dismissing the petition “in the interests of justice.” This dispositional alternative already is used by many juvenile courts in California. The power of the court to use it ought to be made explicit.

In addition, following the model of other states, dispositional alternation could be expanded to permit reduction of the offense charged or continuance of the dispositional hearing for a period of months, with dismissal if the minor appears to have been rehabilitated in the interim.

Commitment to Juvenile Hall

The Governor’s Commission did not include committal to the juvenile hall as one of the dispositional alternatives available to the court. The legislature, however, provided that until the 91st day after final adjournment of the 1965 regular session of the legislature “if there is no county juvenile home, ranch, camp, or forestry camp within the county, the court may commit the minor to the county juvenile hall for a period not to exceed three months.” In 1965 this exemption was extended for another 2-year period. In 1967 it was made permanent and the 3-month limitation was removed.

Juvenile halls are not designed or equipped to provide a program of rehabilitation for minors. They are designed only for short-term

\[\text{\textsuperscript{280}}\text{ Cf. ILL. REV. STAT. ch. 37, § 704-7 (1965), which provides for continuance under supervision. The New York Family Court Act permits the court to suspend judgment for not more than one year subject to conditions which the court may impose. All these mechanisms recognize that it is desirable to avoid having the minor obtain a juvenile court record with its stigmatic effect and that not all children require supervision.}

\[\text{\textsuperscript{281}}\text{ See Note, Rights and Rehabilitation in the Juvenile Courts, 67 COLUM. L. REV. 231, 291-92 (1967).}

\[\text{\textsuperscript{282}}\text{ CAL. JUV. JUSTICE COMMT’N—PART II, at 78 (draft law, § 730).}

\[\text{\textsuperscript{283}}\text{ Cal. Stats. 1963, ch. 1367, § 1, at 2906 (formerly Cal. Welf. & Inst’ns Code § 730).}

\[\text{\textsuperscript{284}}\text{ Cal. Stats. 1965, ch. 1889, § 1, at 4358-59 (formerly Cal. Welf. & Inst’ns Code § 730).}

\[\text{\textsuperscript{285}}\text{ CAL. WELF. & INST’NS CODE § 730.}
custody of the minors pending hearings. The legislature has recognized this by generally prohibiting their use for post-hearing detention. The only excuse for the continuance of the exemption is that rural counties apparently have been unwilling or unable to spend money to build necessary facilities. The exemption has been perpetuated; it should be repealed.

It also should be noted that the language "no county juvenile home . . . within the county" is latently ambiguous. One populous metropolitan county, for example, maintains an extensive juvenile ranch in an adjoining county. Is such a county included in the exemption? Logically it should not be, and clarification is required.

**Coercion Towards Youth Authority Placement**

Existing law provides strong financial motivation towards Youth Authority placement. Such placement costs the county only $25 per minor per month, while the subsidy for local facilities is far less than the cost of erecting or operating them. This often results in a Youth Authority placement where a local placement would be more in order.

The Youth Authority already has established a program whereby counties are offered financial incentives not to commit to the Youth Authority. This program should be expanded to create an operating subsidy for county facilities, while increasing the rate the county must pay the state to such an extent as to make Youth Authority commitments financially unattractive.

**Article 11—Modifications of Juvenile Court Judgments and Orders**

**Sealing of Records.**

A juvenile's record may be sealed 5 years after termination of the jurisdiction of the court or at age 21, whichever first occurs. Sealing is conditioned upon a determination that a minor has not been convicted of a felony or of any misdemeanor involving moral turpitude, and that rehabilitation has been attained to the satisfaction of

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286 City and County of San Francisco.
287 **CAL. WELF. & INST'NS CODE** § 912.
288 **CAL. WELF. & INST'NS CODE** § 891 provides for state assistance not to exceed 50% of the project cost, and in no event to exceed $3,000 per bed unit.
289 **CAL. WELF. & INST'NS CODE** § 887 provides for the Youth Authority to reimburse the county in an amount of one-half the cost of maintaining the child in the facility, but in no event to exceed $95 per month per child.
291 **CAL. WELF. & INST'NS CODE** §§ 1820–27.
292 **CAL. WELF. & INST'NS CODE** § 781.
the court.\textsuperscript{293} Both the records of the court and of other public agencies are then sealed.\textsuperscript{294}

The 5-year period is much too long. Take the case of a juvenile who commits a minor offense at the age of 13 and is placed on probation. His probation may reasonably be expected to terminate in 2 years at age 15. He then must wait until age 20 for the record to be sealed. In the meantime all the practical consequences which follow a juvenile court record will be visited upon him.

The court should be given the power to order the record sealed at any time following the termination of jurisdiction. Sealing of records then could be based on an individual analysis of rehabilitation in each case. Such legislation was enacted in 1967 and signed by the Governor, but was “chaptered-out.”\textsuperscript{295} It should be enacted again in 1968.

Still further protection is needed against ingenious employers and public agencies,\textsuperscript{296} who circumvent the spirit of the law by asking, “Has any juvenile court record ever been sealed?” This can be avoided by specifically authorizing the minor to deny that any record has been sealed, or by making it unlawful to ask a minor whether juvenile court records ever have been sealed.

\textbf{Article 12—Appeals}

\textit{Notice of Right to Appeal.}

No provision is made for the court to advise the minor of his right to appeal. The minor and his family often are ignorant of this right, and have no idea how to proceed to appeal even if they are aware of that right. The Federal Rules of Criminal Procedure require the court to advise the defendant in open court of his right to appeal, and direct the clerk upon request to prepare and file a notice of appeal.\textsuperscript{297} A similar provision should be introduced into the juvenile court law.

\textbf{Review of Dispositions}

The President’s Commission points out:

While statutes, judges, and commentators still talk the language of

\textsuperscript{293} Id.

\textsuperscript{294} Id.

\textsuperscript{295} A.B. 1162 (providing for immediate sealing) and S.B. 1438 (providing for sealing after 5 years or at age 21) were both enacted by the legislature and signed by the Governor. S.B. 1438 was chaptered last in time, and therefore supersedes A.B. 1162. \textsc{Cal. Gov’t Code} § 9605; Opinion of Legislative Counsel to the Honorable Willie Brown, August 25, 1967, San Francisco, California.

\textsuperscript{296} The State Bar of California at one time used such a question in its application for admission to the Bar. \textit{Note, Rights and Rehabilitation in the Juvenile Courts}, 67 \textsc{Columbia L. Rev.} 281, 289 n.46 (1967).

\textsuperscript{297} \textsc{Fed. R. Crim. P.} 37; \textit{Standards} 78.
compassion and treatment, it has become clear that in fact the same purposes that characterize the use of the criminal law for adult offenders—retribution, condemnation, deterrence, incapacitation—are involved in the disposition of juvenile offenders too.\textsuperscript{298}

It is therefore appropriate to reconsider the roles that ought to be played by the appellate court in the juvenile court process.

The President's Commission has suggested that appellate review of legally imposed sentences should be provided in all criminal cases.\textsuperscript{299} Authority for such review already exists in 12 states and has been granted by Congress for the military courts.\textsuperscript{300} The juvenile court judge is given far greater dispositional power than the criminal court judge. Virtually no limitations exist on dispositional alternatives, and the jay-walker theoretically may be sent to the Youth Authority. While such broad power appears desirable, the unusual scope of discretion makes appellate review of dispositions all the more appropriate.

**Protecting the Identity of Juveniles in Appellate Court Proceedings**

Every effort is made to provide anonymity for the juvenile offender at the trial level. The hearings are closed to the public.\textsuperscript{301} The public is not allowed access to the court records.\textsuperscript{302}

However, under present practice in California the juvenile totally sacrifices that anonymity in order to take an appeal. His name is set forth in the published decision. Disclosure of the minor's name in the reported opinion is not a difficult problem to solve. It is presently the practice of some states to report juvenile court opinions as "Matter of Anonymous" or by using only the minor's first name.\textsuperscript{303} The author knows of no reason why the California Supreme Court by rule could not establish similar provisions in California.

VI.

**Summary of Recommendations**

A balance of power should be restored in the juvenile court complex. The court itself should act as a judicial check on an administrative system. The probation officer should be independent of the juvenile court both in appointment and removal, and should be appointed through a merit system. The juvenile justice commissioner who acts as the public eye on a court and probation complex that normally act

\textsuperscript{298} NAT'L CRIME COMM'N REPORT 80.
\textsuperscript{299} Id. at 140.
\textsuperscript{300} Id.
\textsuperscript{301} CAL. WELF. & INST'NS CODE § 676.
\textsuperscript{302} CAL. WELF. & INST'NS CODE § 827.
\textsuperscript{303} See, e.g., the Reports of the State of New York.
in camera, should be appointed by a body outside the juvenile court complex.

Temporary custody and detention is the weakest area in the California law at the present time. The probation department should operate 7 days a week in investigating cases of detained minors, and a court hearing should be required within 48 hours, non-judicial days included. Standards for detention should be clarified. Bail should be available as an ancillary alternative. The probation officer should advise the parents of the minor that the minor has been detained, and the minor should be entitled to make the same two telephone calls permitted to adults. The detention hearing should be a full evidentiary hearing, and the court should be required to make specific finding as to why it has detained the minor.

The jurisdiction of the juvenile court over minors whose parents cannot provide for them should be transferred to appropriate social agencies, leaving the juvenile court to deal only with children neglected or abused by their parents. The scope of jurisdiction over acts now classified as delinquent which do not constitute crimes should be substantially reduced. Greater use of informal dispositions from preliminary conferences should be encouraged, and these procedures should be structured towards the end of decreasing the number of formal adjudications of delinquency.

Jurisdictional and dispositional hearings should be bifurcated, and should be held on separate days if the minor so requests. Evidence which the court cannot properly consider should never be admitted at the jurisdictional hearing. The burden of proof at the jurisdictional hearing should at least be changed from “preponderance of evidence” to “clear and convincing evidence,” and the writer favors adopting the criminal law standard of “proof beyond a reasonable doubt” in delinquency cases. The right to trial by jury, hopefully to be seldom exercised, should be restored. In order to prevent any possibility of prejudice, the probation officer’s report should not be furnished to the court until after the jurisdictional phase of the hearing is completed.

Attention should be directed to evidentiary standards to be used on the dispositional hearings, and the minor afforded the opportunity to cross-examine all persons upon whose statement dispositional recommendations are made. The dispositional alternatives available to the court should be expanded in line with the concept that all steps should be taken to avoid a formal adjudication of delinquency by the court. The use of the juvenile hall as an illusory treatment resource, now permitted in counties not having juvenile homes, should be prohibited. Financial considerations which coerce towards Youth Authority placement rather than local placement, should be removed.
Revisions in the referee system are needed. The minor should have an absolute right to trial before a judge in the first instance. Provisions are needed for disqualification of referees, and the use of probation officers as part-time referees should be prohibited.

Definite standards for transfer of the cases of 16 and 17-year-old offenders should be established. Revision is required in record sealing provisions to make them effectively fulfill their purpose.

The minor always should be advised of his right to appeal, and the appellate court should be given specific power to review disposition in the juvenile court. Finally, the identity of the minor in appellate proceedings should be protected.

VII.

Conclusion

The Messianic era of the juvenile court has ended. The founders of the juvenile court system grievously erred in assuming that the lofty purposes of the juvenile court removed the need for due process of law. The ability of the juvenile court to effectively rehabilitate all juveniles was presupposed. We now know that such a belief was both unjustified and unduly optimistic, and that much of our juvenile delinquency is basically caused by societal problems with which the courts alone never can cope.

To recognize the limitations of the juvenile court system does not mean that the system itself must be abandoned. On the contrary, the challenge of the juvenile court in coming decades will be to adapt itself to its own weaknesses toward the end that maximum use can be made of its strengths. Since one of the major problems now faced by the court is the very stigma attached to juvenile court proceedings, the objectives of the court must focus upon acting as an effective source of referrals to other agencies unless and until such time as youth service bureaus are created, and in making maximum use of informal dispositions and consent decrees to avoid formal adjudication.

Many cases must and will still come before the court. The greatest source of rehabilitation the juvenile court itself can offer to the minor is to provide him with due process of law. The court must convince him that no matter how unfairly he has been treated or thinks he has been treated in the past by society, that when he finally comes before the majesty of the law, the first concern will be to scrupulously safeguard his rights at every stage of the proceedings. The storehouse of the Anglo-American legal system is full of safeguards which are premised on respect for the individual. The minor who has lost his own self-respect can begin to reclaim it through the law's respect
for him. The ultimate end of the juvenile court, both for the minor and for the protection of society, is rehabilitation. Due process of law is the first step towards that goal.