

1-1967

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Recommended Citation

Harold De Graw, *1967 Juvenile Court Legislation*, 19 HASTINGS L.J. 256 (1967).

Available at: https://repository.uchastings.edu/hastings_law_journal/vol19/iss1/12

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1967 JUVENILE COURT LEGISLATION

With the Supreme Court decision of *In re Gault*¹ narrowing the procedural differences between adult courts and juvenile courts, states were confronted with a mandate to realign their juvenile court procedures. As indicated by the rash of remedial legislation in the 1967 legislative session, California, too, was not exempt from this requirement. Following is a synopsis of this new legislation. All references to code sections are to the California Welfare and Institutions Code, unless otherwise indicated.

*Welfare and Institutions Code Section 625*²

As amended, section 625 sets forth the conditions which allow a peace officer to take a minor into temporary custody without a warrant for his arrest. Where the ground for temporary custody is reasonable cause for the belief that such minor is within the jurisdiction of the juvenile court under section 601 (delinquent tendencies) or section 602 (delinquency), or that he has violated an order of the juvenile court, or escaped from ordered commitment, the officer must advise the minor of his constitutional rights and that anything he says may be used against him.

Changes: Before amendment, section 625 did not require advice on constitutional rights or the warning that anything the minor says may be used against him. The specified rights include his right to remain silent, to have counsel present during any interrogation, and to have counsel appointed if he cannot afford his own attorney.

*Welfare and Institutions Code Section 627.5*³

Section 627.5 creates an additional requirement that the probation officer repeat the warning and advice on constitutional rights when the minor is brought before him. Requests for counsel shall be conveyed by the probation officer to the juvenile court judge for appointment pursuant to section 634 (criteria for appointment of counsel).

Changes: There was no comparable prior section. Under the prior law the first time that advice as to the minor's right to be represented by counsel was required to be given him was at his appearance at the detention hearing, as provided in section 633.

*Welfare and Institutions Code Section 628*⁴

If certain conditions are present, the probation officer may retain custody of a minor delivered to him by the arresting officer, pending the detention hearing. One or more of the following conditions may prevent release:

- (1) immediate and urgent necessity for the protection of the person or property of another;
- (2) likelihood that the minor will flee the court's jurisdiction;

¹ 387 U.S. 1 (1967).

² Cal. Stats. 1967, ch. 1355, § 1.

³ Cal. Stats. 1967, ch. 1355, § 2.

⁴ Cal. Stats. 1967, ch. 1356, § 1.

- (3) the minor's violation of an order of the juvenile court;
- (4) lack of proper and effective care or control of the minor by his parent, guardian or a responsible relative;
- (5) deprivation of necessities of life or a suitable abode;
- (6) an unfit home for the minor; and/or
- (7) physical danger to the public due to a mental or physical deficiency, disorder or abnormality of the minor.

Changes: The prior section listed the first three conditions above and a fourth of immediate, urgent necessity for the minor's protection. This fourth condition was eliminated and replaced by specific conditions with regard to parental care or control, necessities of life, and a fit home.

Welfare and Institutional Code Section 630⁵

If the probation officer determines that the minor shall be retained in custody, he shall file a petition with the court clerk, who shall set the matter for hearing. The probation officer shall then serve the minor with a copy of the petition and notify the minor and his parent or guardian of the time and place of the detention hearing. The notice may be oral.

In the hearing the minor has a privilege against self-incrimination and the rights of confrontation by, and cross-examination of, witnesses.

Changes: Under the prior section, there was no provision for serving the minor with a copy of the petition or notice of the time and place of the detention hearing. The prior section also omitted any specification of the minor's right against self-incrimination and the rights of confrontation and cross-examination.

Welfare and Institutions Code Section 630.1⁶

Upon reasonable notification by counsel representing the minor, his parents or guardian, the court clerk is required to notify such counsel of juvenile court hearings.

Changes: There was no comparable prior section.

Welfare and Institutions Code Section 634⁷

Counsel may be appointed by the court if the minor or his parent or guardian desire but cannot afford counsel. Additional counsel may be appointed by the court where a single employed or appointed counsel cannot represent both the child and the parent or guardian because of a conflict of interests. The court must appoint counsel if the minor is alleged to come within the jurisdiction of the court under section 601 (delinquent tendencies) or section 602 (delinquency), and appears at the hearing without counsel, regardless of his ability to employ his own attorney. However, a minor is permitted to make an intelligent

⁵ Cal. Stats. 1967, ch. 1356, § 3.

⁶ Cal. Stats. 1967, ch. 507, § 1.

⁷ Cal. Stats. 1967, ch. 1356, § 4.

waiver of this right. The court may fix compensation where there is no public defender.

Changes: The prior section provided for appointment of counsel only if the minor was indigent and for that reason could not employ counsel. Such appointment was mandatory only if the misconduct would have been a felony if committed by an adult.

Welfare and Institutions Code Section 658⁸

The court clerk shall serve notice and a copy of the petition upon a minor if he is (1) 14 or older, or (2) 8 or older and alleged to be a person described in section 601 (delinquent tendencies) or section 602 (delinquency), and also upon all persons required to be notified by section 656(e) (all parents and guardians or in their absence the nearest residing adult relative) whose addresses become known to the clerk. If the minor is within (2) above, a copy of the petition must also go to the minor's attorney and the district attorney, if the district attorney has notified the clerk that he wishes such a copy.

Changes: The age of a minor who must be served with notice and a copy of the petition was lowered from 14 to 8 if the minor is alleged to be a person described in sections 601 or 602. The provision for extra copies of the petition for the minor's attorney and the district attorney is new.

Welfare and Institutions Code Section 660⁹

When the minor is detained, notice of the hearing and a copy of the petition to declare the minor a ward or a dependent child of the court must be served on the minor at least 5 days prior to the time set for the hearing. However, if the hearing is set at a date less than 5 days from the filing of the petition, the notice must be served at least 24 hours in advance.

If the minor is not detained, the time for service is at least 10 days prior to the time set for hearing. Personal service or service by certified mail is required on persons out of the county. A written waiver or voluntary appearance waives the requirement of service. For this section, service on the minor's attorney constitutes service on the minor's parent or guardian.

Changes: The new section extends the period by which notice must precede the hearing. The extensions are from 5 to 10 days when the minor is not detained and from 24 hours to 5 days when the minor is detained and the hearing is not within 5 days. The prior section did not provide that service on the minor's attorney would constitute service on the minor's parent or guardian.

Welfare and Institutions Code Section 664¹⁰

Subpoenas of witnesses and papers for a hearing to declare a minor a ward or dependent child of the court must be issued at the request of the district attorney, probation officer, minor or the minor's

⁸ Cal. Stats. 1967, ch. 1356, § 5.

⁹ Cal. Stats. 1967, ch. 1356, § 7.

¹⁰ Cal. Stats. 1967, ch. 507, § 2.

parent, guardian or custodian, or may be issued on the court's own motion. At the court's discretion, compensation for witnesses appearing upon subpoena may be drawn as county charges pursuant to section 68093 of the Government Code.

Changes: The prior list of those who could request subpoenas did not include the district attorney. There was no comparable prior provision for compensation of witnesses at juvenile court hearings.

Welfare and Institutions Code Section 679¹¹

All persons entitled to notice of the juvenile court hearing under section 658 are entitled to be present and represented by their own counsel or may have counsel appointed if the minor is alleged to be within the jurisdiction of the court under section 601 (delinquent tendencies) or section 602 (delinquency) and cannot afford counsel.

Changes: The section before amendment referred only to the right to be represented by counsel of their own choice without reference to appointed counsel.

Welfare and Institutions Code Section 681¹²

The district attorney may participate in the hearing to declare a minor a ward or dependent child of the court to assist in ascertaining and presenting evidence when the minor has counsel. When a minor is alleged to be within the provisions of sections 600(a) or 600(b), and the person having care and custody of the child is charged in a pending criminal prosecution for unlawful acts against the minor, the district attorney may represent the minor in the interest of the state. Any of the above actions of the district attorney must be with consent or approval of the judge.

Changes: There was no comparable prior section.

Welfare and Institutions Code Section 700¹³

The petition (to declare a minor a ward or dependent child of the court) is to be read at the hearing and explained by the judge upon request. The judge shall then ascertain whether complete information has been given on the right to counsel. If not, the judge shall advise the juvenile of this right.

The hearing may be continued for up to 7 days to appoint counsel, to give counsel time to acquaint himself with the case, or to determine the ability of a parent, guardian or adult relative to pay for counsel. Continuances as necessary may be allowed for case preparation by the minor and his parent or guardian.

Changes: The scope of advice as to the minor's right to appointed counsel has been broadened to reflect the increased circumstances in which he has a right to counsel under amended section 634 above. The prior sections made no allowance for continuances for case preparation.

¹¹ Cal. Stats. 1967, ch. 1356, § 8.

¹² Cal. Stats. 1967, ch. 1356, § 9.

¹³ Cal. Stats. 1967, ch. 1356, § 10.

Welfare and Institutions Code Section 702.5¹⁴

In any hearing to determine delinquency, the minor has a privilege against self-incrimination and has a right to confrontation by, and cross-examination of, witnesses.

Changes: There was no comparable prior section.

Welfare and Institutions Code Section 705¹⁵

If before or during the hearing on a petition to adjudge the minor a ward or dependent of the court, the court believes the minor to be mentally ill or is in doubt as to the mental health of such minor, the minor may be sent temporarily for observation and recommendation to the psychopathic ward of the county hospital or a hospital whose services have been approved and/or contracted for by the county department of health.

Changes: Under the prior law, the court could send a mentally ill minor or one of doubtful mental health only to the county hospital.

Welfare and Institutions Code Section 707¹⁶

Upon a finding by the juvenile court that the minor was 16 or older at the time of the commission of an offense, and that the minor is not a fit and proper subject to be dealt with under the Juvenile Court Law, section 707 authorizes the juvenile court judge to direct the local prosecuting officer to begin or resume prosecution of the minor under the criminal law. The probation officer is to investigate and submit a report on the minor's behavioral patterns before the determination of fitness is made. Neither the offense nor the minor's denial of the facts or conclusions in the petition is, in itself, sufficient to support a finding of unfitness.

Changes: Under the prior section 707 minors over 16 but under 18 could be transferred to the criminal courts only if the offense was a felony. The felony-misdemeanor distinction has been eliminated, and all minors over 16 face the possibility of transfer. The provision for the report by the probation officer is new, as is the direction to the courts that the offense itself will be insufficient to support a finding of unfitness.

Welfare and Institutions Code Section 730¹⁷

Section 730 permits commitment of a ward of the court to a juvenile home, ranch, camp or forestry camp, or if there are no such facilities in the county, to the county juvenile hall.

When such ward is placed under the supervision or custody of the probation officer, the court may make any and all reasonable orders for his conduct. The court may further impose any reasonable conditions to enhance the ward's reformation and rehabilitation.

Changes: The prior provision was self-expiring on the 91st day after the 1967 Regular Session and provided that detention in a county

¹⁴ Cal. Stats. 1967, ch. 1356, § 11.

¹⁵ Cal. Stats. 1967, ch. 1267, § 1.

¹⁶ Cal. Stats. 1967, ch. 1357, § 1.

¹⁷ Cal. Stats. 1967, ch. 865, § 1.

juvenile hall was not to exceed 3 months. These limitations were removed in the amendment.

Welfare and Institutions Code Section 781¹⁸

Three times were established after which a minor or the county probation officer may petition the court for sealing of all juvenile records: (1) 5 years after termination of juvenile court jurisdiction, if a petition was filed for hearings to adjudge the child a dependent child or ward of the court; (2) 5 years after being cited to appear before a probation officer or after being taken before a probation officer pursuant to section 626 or before an officer of a law enforcement agency, where no petition was filed; or (3) upon the minor's attaining 21. The district attorney and county probation officer shall be notified of the hearing and may testify.

If the court finds that since such termination of jurisdiction or action pursuant to section 626 the minor has not been convicted of a felony or of any misdemeanor involving moral turpitude and that satisfactory rehabilitation has been attained, the court shall order the records sealed. Thereafter only the person who is the subject of the records may petition their inspection.

Changes: Under the prior law, a minor who was arrested but released without appearing before a probation officer or a judge could not have his arrest record sealed. This anomaly was eliminated by addition of "appearance before any officer of a law enforcement agency" in (2) above. Reaching 21 was added as an occurrence after which a petition to seal the juvenile records could be filed.

Welfare and Institutions Code Section 800¹⁹

Section 800 specifies which judgments and orders of the juvenile court are appealable. An appellant unable to afford counsel shall be provided a free copy of the transcript.

Changes: There was no prior provision for a free transcript for minors unable to afford counsel.

Welfare and Institutions Code Section 925-30, 1830-35²⁰

These sections establish the procedure under which persons committed to a facility under the jurisdiction of the Youth Authority or to a county juvenile home, ranch, camp, or forestry camp may be permitted to secure and continue outside employment. Provision is also made for disposition of earnings derived from employment and for revocation of the right of the minor to continue in that employment.

Changes: There were no comparable prior sections.

Code of Civil Procedure Section 372²¹

This section now provides in part that nothing in the Code of

¹⁸ Cal. Stats. 1967, ch. 1650, § 1.

¹⁹ Cal. Stats. 1967, ch. 1356, § 2.

²⁰ Cal. Stats. 1967, ch. 1070, §§ 1-2.

²¹ Cal. Stats. 1967, ch. 1259, § 1.

Civil Procedure, the Probate Code or the Civil Code is intended to prohibit a minor from exercising an intelligent and knowing waiver of his constitutional rights in any juvenile court proceeding.

Changes: That part of the section detailed above is new.

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