Jury Trial for Juveniles: Equal Protection and California Commitment Proceedings

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JURY TRIAL FOR JUVENILES: EQUAL PROTECTION
AND CALIFORNIA COMMITMENT PROCEEDINGS

In California three different procedures are available to deal
with persons who, though not necessarily criminals, may present a
danger to society or to themselves. Known generally as “commit-
ment proceedings,” these procedures allow suits for involuntary commitment
of three classes of persons, (1) adults or minors who are mentally or
physically disabled, disordered, retarded, or who are narcotic addicts;¹
(2) minors who are juvenile delinquents;² and (3) adults who have
reached majority but who are not yet wholly rehabilitated from their
commitment as juveniles.³ Although there are procedural differences
among the proceedings, the general purpose is to rehabilitate the indi-
vidual and to protect society during such rehabilitation.

In the recent case of In re Gary W.,⁴ the California Supreme
Court declared that, as a matter of equal protection, the legislative
scheme which governs involuntary recommitment of adults who are not
yet rehabilitated from their commitment as juveniles was discrimina-
tory, and thus invalid, because such recommitment was allowed with-
out affording a right to trial by a jury while other similar commitment
proceedings do provide for jury trial. The California court did not
directly hold that equal protection requires a trial by jury for all commit-
ment proceedings; however, the court's reasoning regarding equal pro-
tection would appear to be equally applicable to certain other commit-
ment proceedings which do not presently provide for jury trials.⁵

A suggested argument, based primarily on the equal protection
analysis of In re Gary W., would be as follows: if the legislature in
creating statutory commitment proceedings incorporates a fundamental
right such as trial by jury into some of the proceedings, it must do so
in all similar proceedings unless it can demonstrate a compelling state
interest for not according such a right in particular proceedings. At
the present time, involuntary commitment of juveniles is one of the few
civil proceedings which still authorizes involuntary commitment with-
out affording the right of a trial by jury. Although the denial of a jury
trial in juvenile proceedings has been held not to be a denial of due

¹. CAL. WELF. & INST'NS CODE §§ 3000-200, 5000-401, 6250-825 (West 1966),
as amended, (Supp. 1971)).
². See id. §§ 500-945.
³. See id. §§ 1800-03.
⁴. 5 Cal. 3d 296, 486 P.2d 1201, 96 Cal. Rptr. 1 (1971).
⁵. See id. at 305, 486 P.2d at 1208, 96 Cal. Rptr. at 8.
process, the constitutionality of denying this right to juveniles as a matter of equal protection has not yet been decided in California.

This note will analyze the equal protection reasoning of the court in *In re Gary W.* in order to determine the extent and breadth of its holding and to determine if the above hypothesis is correct. First, however, the various California involuntary commitment statutes will be briefly discussed in order to supply the context within which the court applied the equal protection doctrine.

**Involuntary Civil Commitment in California**

California has an extensive statutory framework for the involuntary commitment of individuals through civil proceedings. Although there are many separate code provisions, each tailored to meet a particular problem, most of the sections fall into one of the three general categories previously mentioned—disordered persons, juvenile delinquents, and recommittes.

**Commitment of Persons with Mental or Physical Defects**

The largest of these groups authorizes the commitment of persons due to a particular mental or physical defect. Commitment for involuntary treatment under this category is generally authorized when the state has demonstrated the existence of a mental or physical condition which is potentially dangerous to the community or to the individual himself.  

To fully understand the nature of this type of commitment, a brief examination of the various procedures involved—which, of course, may vary somewhat for particular types of individuals—is necessary.

First, involuntary treatment may be administered to persons who are gravely disabled, or who, as a result of mental disorder or inebriation, are dangerous to themselves or to others.  

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6. These provisions include the Lanterman-Petris-Short Act, *Cal. Welf. & Inst'ns Code* §§ 5000-599 (West Supp. 1971), and other closely related legislation. *Id.* 3000-09 (West 1966), as amended, (Supp. 1971) (narcotics addicts); *id.* §§ 5150-56 (West Supp. 1971) (gravely disabled); *id.* §§ 5170-76 (inebriates); *id.* §§ 5260-68 (suicidal); *id.* §§ 6300-30 (mentally disordered sex offenders); *id.* §§ 6500-12 (mentally retarded).

7. *Id.* § 5150.

8. *Id.* § 5170.

9. Involuntary commitment procedures for these individuals may be initiated by any interested person who files a petition requesting such commitment with the superior court in the county where the individual lives. *Id.* § 5201. If the court is satisfied that the petition is valid, the person named therein is ordered to undergo a preliminary evaluation which cannot extend beyond seventy-two hours. *Id.* § 5250. If the professional staff of the agency or facility providing the preliminary evaluation finds that the individual is in need of intensive care in accordance with the requirements of the statute, the individual is committed for more extended treatment. The
Another type of disordered person who may be subject to involuntary treatment is a person who has such a predilection to commit sexual offenses that he is deemed to present a danger to the health and safety of others. Included with this class are persons who have been previously convicted of sex offenses or persons over sixteen years of age who have been adjudged wards of the juvenile court and appear to be potential sex offenders. A third type of disordered person subject to involuntary commitment for treatment is one who is addicted to narcotics or repeatedly uses narcotics, or who may be in imminent danger of becoming addicted to narcotics.

A mentally retarded person may also be subject to involuntary commitment. Any person found to be mentally retarded to the extent that he is incapable of handling his own affairs, or of being taught to do so, may be committed to a state hospital for care.

In all of the commitment proceedings involving these persons the place and duration of the commitment may vary, depending upon the type of treatment needed and the particular behavior of the individual. Generally, however, the Department of Mental Hygiene determines the length of treatment and the place of institutionalization.

Because of the involuntary nature of certain of the proceedings described above, the legislature has provided persons subject to commit-
mitment with many statutory procedural protections. For example, persons subject to commitment because of a physical or mental problem are accorded a hearing "in accordance with constitutional guarantees of due process of law," which includes the right to counsel, the right to notice of the hearing, the right to subpoena witnesses, the right to cross examine witnesses, the right to appeal, and the right to trial by jury. A notable exception to the extension of rights in this group are the proceedings for the commitment of the mentally retarded who have been afforded only limited protections.

Another important aspect of the statutes which provide for the involuntary commitment of individuals with a mental or physical problem is that they are applicable to individuals of all ages. The legislature explicitly provided that any person may be committed under the above provisions—minors and adults alike are amenable to the commitment proceedings in the disordered persons group.

Commitment of Juvenile Delinquents

The second general category of commitment proceedings involves juvenile delinquents. The California legislature has enacted certain statutes through which the state may assume control of problem children. The primary responsibility, at least for the most difficult cases,
is invested in the California Youth Authority. Any person under twenty-one years of age who violates a criminal statute, may be committed to the authority after being adjudged a ward of the court. Furthermore, a juvenile who disobeys an order of the juvenile court after being adjudged a ward may also be committed to the authority.

On the surface, the commitment of persons with mental or physical conditions and the commitment of juveniles appear quite unrelated. However, the legislature has provided a procedure whereby individuals may be transferred from the juvenile court or Youth Authority to the Department of Mental Hygiene. Both the probation officer of the juvenile court and the director of the Youth Authority have been given the express power to authorize involuntary treatment for individuals under their jurisdiction. Thus, there is a direct link between the Department of Mental Hygiene, the juvenile court, and the Youth Authority.

In providing for such transfers, the legislature has manifested an intent to insure that the individual receives complete treatment throughout the period of involuntary commitment. The legislature has also provided certain statutory procedural protections to those facing possible commitment under these juvenile statutes which are quite similar to the rights granted under the commitment statutes for disordered and disabled individuals. There is one notable exception, however; the

fining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court . . . ."

20. Id. § 1000 (West 1966). The juvenile court may commit less serious cases, particularly those under section 601, to a “county juvenile home, ranch, camp, or forestry camp,” pursuant to section 730.

21. Id. § 731.

22. Id. One example would be a minor who habitually refuses to obey his parents. Another example might be a youth who is in serious danger of leading an immoral life. The proceeding to declare the minor a ward of the court is initiated by the filing of a petition by the probation officer of the juvenile court, id. § 650, or by certification from the superior court. Id. §§ 603-04. After the commitment of the juvenile to the Youth Authority, a determination is made as to the particular educational and training institution in which he will be placed for rehabilitation. Id. § 1004. The term of such commitment is limited by statute. Id. §§ 1760.7-71 (West Supp. 1971).

23. Id. § 1756.

24. Id. This special treatment can last only for the length of the commitment to the Youth Authority. When the time for discharge from the authority is near, a petition may be filed to commit this person directly to the Department of Mental Hygiene in accordance with the various statutes.

25. A juvenile is afforded the rights to counsel, to notice of hearing, to subpoena, to cross-examine and to appeal by sections 625, 630, 634, and 800 respectively. Unlike any of the other involuntary commitment proceedings, the juvenile court defendant is expressly accorded the privilege against self incrimination and must be advised of his constitutional rights at the time he is taken into custody. Id. §§ 625,
right to a jury trial is not provided under the juvenile commitment statutes.\textsuperscript{26}

Recommitment of Unrehabilitated Juveniles

The third general category of commitment statutes—recommitment of unrehabilitated juveniles who have attained the age of automatic release—is actually a proceeding within the scope of the Youth Authority. On the application of the authority, the court which originally committed the ward may order recommitment before the time of his automatic discharge.\textsuperscript{27} The court holds a supplementary hearing to determine if the release of the unrehabilitated ward would be dangerous to the community because of the particular mental or physical deficiency involved.\textsuperscript{28} The supplemental proceeding is a wholly independent proceeding initiated by the Youth Authority to consider the individual’s personal history and response to treatment.

The recommitment proceeding for such juveniles is not initiated until the youth is statutorily entitled to automatic discharge from commitment—for juveniles, this occurs at age twenty-one.\textsuperscript{29} Only individuals who have attained their majority are amenable to the recommitment proceedings; this is true whether the ward was directly committed from a juvenile court adjudication or was transferred after a superior court conviction.\textsuperscript{30} The legislature treats the recommitment proceedings very much like the juvenile court proceedings with respect to the extension of procedural protections,\textsuperscript{31} and, as in the juvenile proceedings, there is no statutory right to trial by jury. The validity of such recommitment proceedings without the right of jury trial was the issue before the court in \textit{In re Gary W.}

\textsuperscript{702.5} (West 1966), \textit{as amended}, (Supp. 1971). The primary reason for according these rights to juveniles is that most of the findings of fact made by the judge may lead to a determination of quasi-criminal guilt therefore necessitating some of the fundamental protections of a criminal proceeding.

26. It was the validity of the omission of the right to a jury trial in supplemental proceedings that was in issue in \textit{In re Gary W.}

27. \textit{Id.} § 1802 (West 1966).

28. \textit{Id.} § 1800. Recommitment of the individual for further rehabilitation is limited to two years by statute; however, at the expiration of the two year period the authority may again apply to the court for additional recommitment. \textit{Id.} § 1802. These applications may be renewed at two year intervals until such time as the ward is not deemed dangerous to the public. \textit{Id.}

29. \textit{Id.} § 1769.


31. In the recommitment proceedings, the right to counsel, the right to notice of the hearing, the right to subpoena, the right to cross-examine and the right to appeal are expressly granted in sections 1801 and 1803 of the Welfare and Institutions Code.
Common Purpose and Intent of the Various Commitment Provisions

Thus far, the discussion has indicated certain of the identifying characteristics of the specific provisions of California's involuntary civil commitment proceedings. The various statutes were categorized into three groups to emphasize the substantive provisions of the various proceedings. Many of the minor differences in the various statutes are primarily attributable to the mechanics of a functioning civil commitment system, since each statute is tailored to meet a specific problem. However, functional differences should not be construed as a manifestation of a dissimilar intent or purpose within the context of the general commitment system. Careful examination of the various commitment statutes reveals the existence of a common legislative purpose and intent within the overall commitment system.\(^\text{32}\)

The primary purpose of all the commitment statutes appears to be the rehabilitation and care of the individual, and a secondary purpose of protecting the public from potential dangers created by such an individual. The primary purpose of the commitment proceedings involving the "imminently dangerous" person or the mentally disordered sex offender is manifested by legislative declarations of the

\[\text{[need to]}\text{ provide prompt evaluation and treatment of persons with serious mental disorders . . . [and to] guarantee and protect public safety . . . [and to] provide individualized treatment . . . for gravely disabled persons . . . .}\]

The purpose of the commitment proceedings involving narcotics offenders is phrased in terms of "control, confinement . . . education, treatment and rehabilitation."\(^\text{34}\) The civil commitment proceeding is the method utilized by the state to gain control over the individual in order to fulfill its obligations.

Similarly, the language of the statute creating the juvenile court suggests that the basic intent of the legislature was to provide rehabilitation and care for problem minors—whether they were subject to commitment proceedings or not.\(^\text{35}\) The statute refers to the need to pro-

32. See text accompanying notes 53-56 infra.
33. CAL. WELF. & INST'NS CODE § 5001 (West Supp. 1971). The legislative intent is to provide prompt evaluations and treatment of persons with serious mental disorders or impaired by chronic alcoholism, and to provide individualized treatment, supervision and placement services by a conservatorship program for gravely disabled persons. (This section includes imminently dangerous persons and mentally disordered sex offenders.)
34. Id. § 3001 (West 1966): "The narcotic detention, treatment and rehabilitation facility . . . shall be one . . . whose principal purpose shall be the receiving, control, confinement, employment, education, treatment and rehabilitation of persons under the custody of the Department of Corrections . . . who are or have been addicted to narcotics or who by reason of repeated use of narcotics are in imminent danger of becoming addicted."
35. Id. § 502.
vide "such care and guidance ... as will serve ... the welfare of the minor and the best interests of the State."\textsuperscript{36} Also, the express intent of the legislature in creating the Youth Authority was to provide an alternative to incarceration of the youth as a criminal and to protect society by substituting training and rehabilitative treatment for retributive punishment.\textsuperscript{37} Again, the emphasis is placed upon rehabilitation and care for the individual and society.

Thus, it may be seen that a common purpose pervades these statutes holding them together as a unified legislative scheme of civil commitment. However, the dual purpose of the legislative scheme—rehabilitation and the care and protection of the public—may not always be weighted equally in certain of the commitment proceedings. For example, a person incurably insane may be committed if he poses a danger to the public even though he may be getting expert care at home. On the other hand, for another insane person commitment may provide care not otherwise available and may also provide training to rehabilitate the individual. Similarly, the habitually truant minor who is committed to the Youth Authority for disobeying an order of the juvenile court, may receive more of a benefit in the way of rehabilitation and care than will the general public in terms of protection. These few examples should demonstrate that while it may be possible to point to the commitment proceedings provided by statute in a specific case and label the statute primarily as protective in nature as opposed to rehabilitative in nature, any such labeling should not obscure the dual purpose served by the overall commitment system when the statutes are considered as a whole.

The California Supreme Court in \textit{In re Gary W.} also appears to have assumed that the involuntary commitment statutes form a cohesive unit which was created by the state for the welfare of its citizens.\textsuperscript{38} This assumption forms the underlying basis of the court's equal protection argument for allowing a jury trial in the recommitment proceedings in \textit{In re Gary W.}.\textsuperscript{39} If the court was correct in its assumption—that the civil commitment proceedings are all part of the same unit—the reasoning of the court in \textit{In re Gary W.} would appear to also justify the granting of the right of a jury trial to minors involved in the civil

\textsuperscript{36} "The purpose of [the juvenile court law] is to secure for each minor under the jurisdiction of the juvenile court such care and guidance ... as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State ... ." \textit{Id.}

\textsuperscript{37} \textit{Id.} § 1700: "The purpose of [the Youth Authority] is to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of young persons found guilty of public offenses."

\textsuperscript{38} 5 Cal. 3d at 304, 486 P.2d at 1207, 96 Cal. Rptr. at 7.

\textsuperscript{39} \textit{Id.}
commitment proceedings of the juvenile court. The following discussion will review the court's reasoning in In re Gary W., and will consider such reasoning in terms of the right to jury trial for juveniles.

**In re Gary W.: The Court's Decision**

The petitioner in In re Gary W., first became involved with the juvenile court and the Youth Authority in 1959, when he was eleven years of age. At that time he appeared before the juvenile court upon allegations that he was a dependent child, received brief counseling and was subsequently released. When a second dependency petition was filed in 1960, the petitioner was declared a ward of the court and was sent to a child care center but was soon released. In 1963 the petitioner was again declared a ward of the court because he had participated in acts of sodomy with his half-sisters, and he was placed in another rehabilitation center, but was subsequently released. In 1967 when the petitioner was nineteen years of age, another petition for commitment was filed alleging that the petitioner had been involved in attempted acts of sodomy and sexual intercourse with a seven year old girl. After a hearing in the juvenile court, the petitioner was committed to the Youth Authority.

After nearly two years petitioner's case was reviewed by the authority which determined that he should not be granted a parole. Instead, the authority ordered that the petitioner undergo mental observation at a state hospital for a ninety day period. The hospital diagnosed the petitioner's problem as "female pedophilia"—love of little girls—and asserted that he posed a danger to the general public.

By this time the petitioner was approaching his twenty-first birthday which would automatically qualify him for discharge from custody. However, because of the hospital's diagnosis of "female pedophilia," the Youth Authority filed a petition for recommitment of the


"(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

"(b) Who 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 whose home is an unfit place for him by reason of neglect, cruelty, or depravity of either of his parents, or of his guardian or other person in whose custody or care he is.

"(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality."

41. See note 27 & accompanying text supra.

42. See note 50 & accompanying text supra.
petitioner for a period of two years. In the petition, the authority alleged that the release of petitioner from custody at the normal time prescribed in the statute would be "physically dangerous to the public due to his mental or physical deficiency, disorder, or abnormality." During the recommitment proceedings, the petitioner asked for a writ of habeas corpus on the ground that he was twenty-one years of age and the Youth Authority no longer had jurisdiction over him; the writ was denied by the superior court, sitting as a juvenile court, and the request of the authority to recommit the petitioner for an additional two year period was sustained. The petitioner had vigorously objected during the proceeding that he had been denied proper discovery procedures and had been denied his right to a jury trial. The petitioner appealed the recommitment order to the Court of Appeal for the Second District, where he reasserted his contentions that he had been denied his rights of discovery and jury trial. In a brief written opinion the appellate court accepted the petitioner's contentions and reversed the order of the lower courts.

The state requested a hearing by the Supreme Court of California and it was granted. In the supreme court, the petitioner contended that the involuntary commitment proceedings—codified in sections 1800 through 1803 of the Welfare and Institutions Code—constituted a denial of equal protection under the Fourteenth Amendment and a deprivation of liberty under the California Constitution. The alleged denial of equal protection was premised on the fact that certain of the commitment proceedings provided the right to jury trial while others did not. In addition, the petitioner made the following arguments before the court: (1) confinement of Youth Authority wards under the recommitment statutes constituted "cruel and unusual punishment," (2) the juvenile court order was not supported by substantial evidence,

43. See note 47 infra.
44. 5 Cal. 3d at 301, 486 P.2d at 1205, 96 Cal. Rptr. at 5 (quoting a petition of the Youth Authority).
45. In re Gary W., Crim. No. 70-507 (Ct. App., 2d Dist., filed Oct. 19, 1970). The appellate court theorized: "Were we to hold a jury trial is not constitutionally required for a commitment hearing conducted [under CAL. WELF. & INST'NS CODE §§ 1800-03 (West 1966)], it would mean that in this state a minor, who was initially committed by a juvenile court without the benefit of a trial or who was convicted of a relatively minor offense, could be held in custody for the rest of his life without ever having the right to a jury trial at any stage of his incarceration as an adult. We cannot subscribe to this regressive proposition." Id. at 4-5.
46. Throughout the California Supreme Court decision Gary W. was termed the "appellant" and that is the designation adopted by this note.
47. 5 Cal. 3d at 299, 486 P.2d at 1204, 96 Cal. Rptr. at 4; see CAL. CONST. art. I, §§ 11, 21.
and (3) he had erroneously been denied the right to pretrial discovery and to subpoena out-of-county witnesses.\(^4\)

The court summarily dismissed the “cruel and unusual punishment” argument, and noted the “demonstrably civil purposes” of the recommitment proceedings.\(^4\) The court also cited the absence of any evidence that persons committed [under the recommitment statutes] are incarcerated in penal institutions among the general prison population, or are customarily detained without treatment. . . .\(^5\)

The court refused to consider the petitioner’s arguments regarding the discovery and subpoena issues; however, it discussed the scope of these rights in the proceedings as a guide for the juvenile court to which the case was remanded.\(^5\)

The petitioner’s equal protection argument was more favorably received. It was premised on a showing that the legislature had created an extensive involuntary commitment scheme which included the recommitment proceedings.\(^5\) The petitioner argued that since the legislature had expressly incorporated the right to jury trial into many of the commitment proceedings,\(^5\) denial of a jury trial was unconstitutional unless a rational distinction could be drawn between the recommitment proceedings and the other commitment proceedings.\(^5\)

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\(^4\) 5 Cal. 3d at 299, 486 P.2d at 1204, 96 Cal. Rptr. at 4.

\(^4\) Id. at 302, 486 P.2d at 1206, 96 Cal. Rptr. at 6.

\(^5\) Id.

\(^5\) Id. at 309, 486 P.2d at 1211, 96 Cal. Rptr. at 11: Discussing the rights available in supplementary proceedings, the court noted: “[A]lthough [recommitment proceedings] are not juvenile proceedings, and are not criminal, the same discovery rights should be available to adults subject to commitment as are extended to juveniles and to defendants in criminal prosecutions. . . .

... The narrow issue [in this recommitment proceedings] and the need for expeditious adjudication suggest that it is not unreasonable to require a showing of relevance and necessity as a prerequisite to a discovery order.” Id. at 309-10, 486 P.2d at 1211, 96 Cal. Rptr. at 11. Out-of-county subpoenas are available in the recommitment proceedings, and as in discovery procedures, a showing of relevance and necessity is a prerequisite to issuance of the subpoena. Gary had requested broad discovery rights including, mailing address, and professional status of all those who examined him plus the names of the Youth Authority board members present when it was decided he should be recommitted. The court concluded that in the absence of a showing of relevance and necessity, the rights of discovery should be limited. “Inasmuch as the question of whether a defendant is physically dangerous because of physical or mental abnormality can be anticipated to be a medical, psychiatric, or psychological judgment, discovery of matters going beyond the basis of the anticipated expert testimony is unnecessary.” Id. at 311, 486 P.2d at 212-13, 96 Cal. Rptr. at 12-13.

\(^5\) Id. at 304, 486 P.2d at 1207, 96 Cal. Rptr. at 7.

\(^5\) Id. at 305, 486 P.2d at 1208, 96 Cal. Rptr. at 8.

\(^5\) Id.
state, on the other hand, had argued that "the legislative classification, being neither arbitrary nor unreasonable, [could] not effect a denial of the equal protection of the laws;" however, the state failed to present any evidence to substantiate this argument.

The appellants' equal protection argument was, therefore, premised on the contention that a rational distinction must exist in order to sustain the legislative classification. However, the court applied an even more stringent test and held that the omission of the right of trial by jury was not a "mere procedural difference" in the statutes, but rather the deprivation of a fundamental right. Under this test, the state was required not only to show that there was a rational distinction in the various commitment proceedings, but also had to demonstrate a compelling state interest in such classifications. Since the state had failed to substantiate a compelling state interest, the court declared that the absence of a right of jury trial in the recommitment procedures denied the petitioner a fundamental right and constituted a violation of the equal protection clause of the Fourteenth Amendment.

Inherent in the court's decision was the acceptance of petitioner's theory that the recommitment proceedings were part of a comprehensive

56. 5 Cal. 3d at 305-07, 486 P.2d at 1208-09, 96 Cal. Rptr. at 8-9. In effect, the court has lightened the burden on the party contesting the classification on the basis that such classification is arbitrary and unreasonable by placing the burden on the state to demonstrate a compelling interest in the classification. Of course, the presumption of constitutionality of the statute still exists. The court merely requires the state to assist in the close scrutiny that is applied to a discrimination that involves a fundamental right.

57. For a good discussion of the definition of fundamental interest see Developments in the Law—Equal Protection, 82 HARV. L. REV. 1065, at 1130 (1969), where the writer explains: "It is difficult to articulate a general formula to distinguish interests regarded as 'fundamental' from other interests for purposes of the equal protection clause. . . . In some contexts, an individual suffers severe detriment when he is not treated as well as others are treated, just as in some contexts an individual may suffer severe detriment when the treatment he receives, regardless of that given to others, falls below a certain absolute standard. Thus there is an obvious analogy to formulations of 'due process' based on common perceptions of 'fundamental fairness' or 'ordered liberty' or the traditions of Anglo-American peoples. . . . Probably every interest found to be fundamental and therefore protected by the due process clause will also be fundamental under the equal protection clause, so that unequal treatment with respect to that interest would be upheld only on a very strong showing of justification."

58. 5 Cal. 3d at 306, 486 P.2d at 1209, 96 Cal. Rptr. at 9. The court explained: "Although normally any rational connection between distinctions drawn by a statute and the legitimate purpose thereof will suffice to uphold the statute's constitutionality [citation omitted] closer scrutiny is afforded a statute which affects fundamental interests or employs a suspect classification [citations omitted]. In such cases the state bears the burden of establishing both that the state has a compelling interest which justifies the law and that the distinction is necessary to further that purpose." Id.
The court rejected this argument, however, and held that the state could not meet its burden of showing a compelling state interest for denying the right of trial by jury to Youth Authority wards on the premise that other commitment proceedings contained similar discriminatory provisions.60

In support of its decision, the court cited a United States Supreme Court case, *Baxstrom v. Herold*,61 in which a mentally ill New York state prisoner was committed to an institution for the mentally disordered.62 In the commitment proceedings, which applied only to persons already incarcerated, the New York court determined that the prisoner would be committed for further care after the expiration of his prison term. The pertinent commitment statute was the only civil proceeding in New York where the issue of sanity was not submitted to a jury for consideration.63 The prisoner appealed his commitment contending he was entitled to a jury trial, and the Supreme Court concluded:

> It follows that the State, having made [a jury trial] generally available on this issue, may not, consistent with the Equal Protection Clause of the Fourteenth Amendment, arbitrarily withhold it from some.

> [T]here is no conceivable basis for distinguishing the commitment of a person who is nearing the end of a penal term from all other civil commitments.64

**Extension of Jury Trials to Juveniles through the Equal Protection Clause**

The California Supreme Court's analysis in *In re Gary W.* clearly establishes that the equal protection clause and similar California constitutional provisions require jury trials to be included as part of the recommitment proceedings of the Youth Authority.65 However, the reasoning of the court in *In re Gary W.* raises a question not discussed by the court—whether the holding of the court is to be limited only to recommitment proceedings, or whether it is also applicable to other civil commitment proceedings within the statutory commitment system so as to compel a right to trial by jury in all proceedings which involve

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59. *Id.* at 308, 486 P.2d at 1210, 96 Cal. Rptr. at 10.
60. *Id.*
62. *Id.* at 108-11.
63. *Id.*
64. *Id.* at 111-12.
65. 5 Cal. 3d at 308, 486 P.2d at 1210, 96 Cal. Rptr. at 10.
involuntary commitment. The applicability of In re Gary W. could be brought into question in a case involving the right of trial by jury for juvenile court proceedings or in a civil commitment proceeding for one who is mentally retarded. The following discussion will briefly review the effect of In re Gary W. on the question of a jury trial for juveniles. Before beginning the examination of the juvenile’s right to jury trial in light of In re Gary W., a brief history of the extension of procedural protections to minors in juvenile court proceedings may add some perspective to the discussion.

Prior Case Law and the Due Process Argument

Since In re Gault there has been an unceasing assault upon the basic procedural foundations of juvenile court systems. In rapid succession most of the rights accorded criminal defendants have been extended to juveniles in the adjudicative phase of the proceedings where commitment was a possible consequence.

Even prior to In re Gault, however, California, unlike most states, had incorporated a comprehensive scheme of procedural protections for the juvenile into its juvenile law. Such basic protections as preliminary detention hearings, right to counsel, appointment of counsel for indigents, mandatory records of proceedings, and sealing of records had been provided in California as early as 1961. Although the juvenile has never been given a statutory right to jury trial in California, the question has been before the California courts a number of times.


66. See notes 25, 43 & accompanying text supra.
68. McKeiver v. Pennsylvania, 403 U.S. 528, 533 (1971). The Court in McKeiver listed the most significant of these rights, “the rights to appropriate notice, to counsel, to confrontation and to cross-examination and the privilege against self-incrimination. Included, also, is the standard of proof beyond a reasonable doubt.” Id.
69. See notes 42, 43 & accompanying text supra.
The courts have repeatedly relied on the theory—expounded by Justice Richards in *In re Daedler*—that the right to trial by jury is a requirement of due process only in criminal proceedings.

Under this theory, the fact that juvenile court proceedings are statutorily characterized as noncriminal in nature negates any obligation by the state under due process to afford juveniles the right to trial by jury. This so-called "civil-label" theory has been the primary stumbling block to those who have sought to extend the right to a jury trial to juvenile proceedings. For example, *In re Steven C.*, a 1970 California appellate decision, sets out the existing California law on the question of jury trial in juvenile proceedings:


The following states have statutorily extended the right to jury trial to at least some juvenile court proceedings: COLO. REV. STAT. ANN. § 37-8-2 (1963); KAN. STAT. ANN. § 38-808 (Supp. 1971); MICH. COMP. LAWS ANN. § 712A.17 (1968); MONT. REV. CODES ANN. § 10-604.1 (Supp. 1971); OKLA. STAT. ANN. tit. 10, § 1110 (Supp. 1971); S.D. COMP. LAWS § 26-8-31 (1967); TEXAS REV. CIV. STAT. art. 2338-1 (13)(b) (1971); W. VA. CODE ANN. § 49-5-6 (1966); WIS. STAT. ANN. § 48.25(2) (Supp. 1971); WYO. STAT. ANN. § 14-115.24 (Supp. 1971); D.C. CODE ENCYCL. ANN. § 16-2307 (1966).

72. 194 Cal. 320, 332, 228 P. 467, 472 (1924).

73. CAL. WELF. & INST'NS CODE § 503 (West 1966): "An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding."

74. In *re Contreras*, 109 Cal. App. 2d 787, 789-90, 241 P.2d 631, 633 (1952). The Contreras decision marked the beginning of the courts questioning the "civil label" concept of juvenile courts in California. In *Contreras* the court noted: "While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be a conviction of crime, nevertheless, for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason. Courts cannot and will not shut their eyes and ears to everyday contemporary happenings.

"It is common knowledge that such an adjudication when based upon a charge of committing an act that amounts to a felony, is a blight upon the character of and is a serious impediment to the future of such minor. . . . And further, as in this case, the minor is taken from his family, deprived of his liberty, and confined to a state institution. . . . [N]ever should it [the Juvenile Court Act] be made an instrument for the denial to a minor of a constitutional right or of a guarantee afforded by law to an adult." (emphasis added).

The recent United States Supreme Court decisions which have declared that juveniles are entitled, under the Fourteenth Amendment, to due process protection in juvenile court proceedings . . . have not extended such protection to include the right to a jury trial. . . .

In other jurisdictions a number of cases have held that a jury trial is required in juvenile proceedings. The California rule . . . is that a juvenile is not entitled to a jury trial. . . . The rationale of the California cases is that the Constitution does not require the full panoply of rights accorded adults accused of crime be extended to juveniles since to do so would introduce a strong tone of criminality in juvenile proceedings.\(^7\)

Thus, judicial precedent in California would appear to conclusively preclude a minor from successfully demanding a right to jury trial based on an analogy with rights accorded criminal defendants under due process requirements. Quite recently, the question of a minor's constitutional right to a jury trial was again brought before the United States Supreme Court in *McKeiver v. Pennsylvania.*\(^7\) In that case the contention of the petitioners was that the right to jury trial is required because the juvenile court proceedings are "substantially similar to a criminal trial."\(^8\) The Court, however, held that the standard of due process in juvenile court cases is less stringent than the due process requirements in criminal trials. The Court noted that *Duncan v. Louisiana*\(^9\) had obligated the states to provide jury trials in all criminal cases because "trial by jury in criminal cases is fundamental to the American scheme of justice."\(^8\) In juvenile court proceedings, however, the applicable due process standard is "fundamental fairness," which includes only those rights absolutely necessary to a fair trial. The Court in *McKeiver* held that the right of a jury trial is not an absolute requirement to ensure a fair trial, and the states are therefore not obligated to provide jury trials in juvenile proceedings because of the more limited standard of "fundamental fairness."\(^8\) The Court concluded that the right to a jury trial for juveniles was not constitutionally required under the due process clause.\(^8\)

**The Equal Protection Argument**

Although the Court in *McKeiver* has now apparently silenced future due process arguments as the basis for extending jury trial to juveniles, the Court noted in passing that the states had always had it

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76. *Id.* at 260-61, 88 Cal. Rptr. at 99.
77. 403 U.S. 528 (1971).
78. *Id.* at 541.
80. *Id.* at 149.
81. 403 U.S. at 543.
82. *Id.* at 545.
within their power to include such a right in their statutory provisions. When the legislature has seen fit to grant the right to jury trial in civil commitment proceedings involving certain minors, denial of a jury trial to minors in other civil commitment proceedings involves the constitutional issue of equal protection rather than due process.

In In re Gary W. the appellant established that the recommitment proceedings of the Youth Authority were a part of an overall involuntary commitment scheme. As has been previously discussed, commitment proceedings under the juvenile law are also a part of this same involuntary commitment scheme, and they have the same general purpose and intent as the other commitment statutes. Civil commitment of a juvenile to the California Youth Authority is viewed as a beneficial alternative to criminal proceedings in conformance with the stated public policy "to protect society ... by substituting for retributive punishment ... training and treatment" for the rehabilitation of young persons. The statutory language of the juvenile commitment statutes lends credence to the view that juvenile proceedings are merely another form of involuntary civil commitment:

When a minor is adjudged a ward of the court on the ground that he is a person described by section 602, the court ... may commit the minor to the Youth Authority.

Thus, the argument can certainly be made that juvenile court proceedings fall into the general statutory classification of involuntary civil proceedings which are designed primarily for rehabilitation and care of the individual committed and the protection of the public. In addition, the previous discussion of the voluntary commitment statutes pointed out that the juvenile court may commit minors to the Youth Authority without a trial by jury. The anomaly in the various commitment statutes is highlighted by the fact that a minor would be entitled to a jury trial if he were to be committed as an imminently dangerous person, inebriate, mentally disordered sex offender, gravely disabled person, narcotics addict, or a person who might be suicidal.

83. Id. at 547.
84. See notes 32-37 & accompanying text supra.
85. See notes 53-56 & accompanying text supra.
86. Id.
87. See note 53 supra.
88. CAL. WELF. & INST'NS CODE § 731 (West 1966).
89. See note 43 & accompanying text supra.
90. CAL. WELF. & INST'NS CODE § 6318 (West Supp. 1971) provides in part: "If a person ordered ... to be committed as a mentally disordered sex offender ... or any friend in his behalf, is dissatisfied with the order of the judge so committing him, he may, within 15 days after the making of such order, demand that the question of his being a mentally disordered sex offender be tried by a judge or by a jury in the Superior Court of the county in which he was so committed." (emphasis added).
Id. § 5302 provides in part: "At the time of filing a petition for post-certification
In *In re Gary W.*, the petitioner was successful because he was able to demonstrate to the court that a right to trial by jury was "generally available" in other civil involuntary commitment proceedings under California law, but had been omitted by the legislature in the case of the recommitment proceedings.\(^9\) This omission was found by the court to be a denial of equal protection.\(^9\) Similarly, minors are amenable to those particular civil commitment proceedings where the right to a jury trial is available.\(^9\) Since the legislature has omitted the right to trial by jury in juvenile court proceedings,\(^9\) the argument can be made that such an omission constitutes a denial of the equal protection of the laws to juveniles, by analogy to the arguments which were presented in *In re Gary W.*

Of course, the court in *In re Gary W.* did not decide that the legislature may never discriminate in the case of fundamental rights, but did conclude that

In such cases *the state bears the burden* of establishing both that the state has a *compelling interest* which justifies the law and that the *distinction is necessary* to further that purpose.\(^9\) Therefore, if the analogy of a juvenile proceeding and the recommitment proceeding in *In re Gary W.* is accepted by the court, the state must establish a compelling interest in maintaining a statutory classification which grants the right of jury trial to some minors while withholding it from others. In order to demonstrate this compelling interest the state may contend that the minor demanding a jury trial in juvenile court proceedings has a less significant interest to protect than the minor who is granted a jury trial in other commitment proceedings.\(^9\) The state

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\(^9\) Id. at 308, 486 P.2d at 1210, 96 Cal. Rptr. at 10.

\(^9\) Id.

\(^9\) See note 26 & accompanying text *supra*.

\(^9\) See note 43 & accompanying text *supra*.

\(^9\) 5 Cal. 3d at 306, 486 P.2d at 1209, 96 Cal. Rptr. at 9.

\(^9\) These other commitment proceedings the state would explain are not alternative propositions. Rather, they are the primary scheme for the care and treatment of persons falling within their control. The state could conclude that it is quite practical to grant to those persons in the latter category more protections than juvenile court participants, notwithstanding the fact that both categories are civil proceedings, with commitment as a possible consequence. The premise on which this conclusion is based is that the interest of the minor seeking protections in the juvenile court is less substantial than the interest of those persons in the primary commit-
might also argue that the unique and beneficial character of juvenile court proceedings is sufficient justification for the legislature to deprive a juvenile court participant of the *fundamental* right to a jury trial while granting the same right in most of the other civil commitment proceedings to which the same minor would be amenable. In all probability, therefore, the state would contend that the juvenile court participant has a lesser interest to protect relatively, and that denial of a right to jury trial would not violate equal protection under the law.

Although the concept that there are "relative interests" involved may result in the upholding of legislative classifications in ordinary equal protection cases, when *fundamental rights* are involved, this type of ment scheme, since the juvenile court system was created as a beneficial alternative to the criminal system. See R. Pound, *Interpretations of Legal History* 134-35 (1923). The juvenile court system is intended, so the argument goes, to protect the minor from the rigors of a criminal proceeding and the lasting effect of imprisonment in a penal institution. In essence the state is required to prove that the creation of the juvenile courts was for the benefit of the minor and was not constitutionally required. Therefore the minor who has received this special benefit has no real ground to insist that every protection be made available to him. Cf. Norvell v. Illinois, 373 U.S. 420, 423 (1913) ("Exact equality is no prerequisite of equal protection of the laws within the meaning of the Fourteenth Amendment."); Douglas v. California, 372 U.S. 353, 356 (1962); People v. Shipnov, 62 Cal. 2d 226, 232, 397 P.2d 993, 996, 42 Cal. Rptr. 1, 4 (1965). For an insight into society's changing attitudes towards juvenile offenders see Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104 (1909). "Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why is it not the duty of the state, instead of asking merely whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge not so much to punish, as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen." *Id.* at 107. The theory that the juvenile courts are beneficial to the minor has been seriously criticized. Mr. Justice Fortas gave the following depressing assessment of the juvenile court system: "[A minor] is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution of which he is committed is an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes a 'building with whitewashed walls, regimented routine and institutional hours. . . .' Instead of mother and father and sisters and brothers and friends and classmates, his world is people by guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness to rape and homicide." *In re Gault*, 387 U.S. 1, 17 (1966) (footnotes omitted). See also *In re Urbasek*, 38 Ill. 2d 535, 232 N.E.2d 716 (1967), where the court concluded: "When we eschew legal fictions and adopt a realistic view of the consequences that attach to a determination of delinquency and a commitment to a juvenile detention home, 'juvenile quarters' in a jail or a State institution. . . we can neither truthfully nor fairly say that such an institution is devoid of penal characteristics." *Id.* at 541, 232 N.E.2d at 719.

97. See Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949);
of justification for a discriminatory classification will not be accepted by the California courts. Admittedly, the courts have recognized that differing interests which may be involved may be a rational distinction upon which the state may enact statutes which discriminate among members of the same class. However, when fundamental rights are involved, a mere showing by the state that there is a rational distinction for the discriminatory provisions, will find a court less ready to allow the statutory classifications. The state is required to show more than a difference of relative interests to give validity to the classification and must demonstrate a "compelling interest" in order for the court to allow the classification.

**Conclusion**

The language of *In re Gary W.* would appear to provide support for the view that all commitment statutes are part of the same general scheme characterized generally as provisions "leading to the commitment of various classes of people for treatment or to protect society." Neither *In re Gary W.* nor the commitment statutes would indicate that there is any inherent distinction to be drawn between the commitment proceedings, the juvenile court proceedings or the other commitment proceedings. The broad language of the court referring to the California involuntary commitment system indicates that the court viewed all of the commitment proceedings as part of the same general legislative classification in determining whether the petitioner had been denied the equal protection of the laws.

This note has attempted to demonstrate that the decision in *In re Gary W.*, would provide a suitable framework for extending the right to jury trial to minors in the adjudicative phase of juvenile court proceedings. A brief recapitulation of the reasoning which could be used to argue for that result will be set forth below. In *In re Gary W.*, the court expressed no opinion as to the practical considerations of a jury trial in

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99. See note 96 supra.
the recommitment proceedings. Rather, the court looked to the legislature as its guide and held that since the legislature had decided that the fundamental right of a jury trial was necessary to protect a party in a commitment proceeding, this same protection must be given in all commitment proceedings. Unless the state can demonstrate a compelling interest in maintaining the discriminatory classification, the equal protection clause requires the fundamental right in question to be extended to all similar proceedings.

Many practical considerations are often advanced as reasons for keeping juries out of juvenile court proceedings. These range from the possibility of administrative confusion and unnecessary delay to the fear of the complete disintegration of the so-called informality of the system. But were not these same problems present when the right to a jury trial was incorporated into the other commitment statutes? In view of the many current attacks on the arbitrary manner in which minors are confined under the present juvenile system, it would appear improbable that the California courts will continue to accept the fiction that denial of the right to jury trial is for the benefit of the minor. Should the court accept the analogy between In re Gary W. and the juvenile commitment proceedings, the state will probably find it difficult to justify providing a jury trial to juveniles in one commitment proceeding because it is deemed necessary for his protection, and not providing a jury trial to a minor in another commitment proceeding because it is for his benefit that the right is denied. Therefore, none of the above considerations appears to qualify as a compelling state interest.

For those who have long advocated jury trials in juvenile court proceedings, In re Gary W. provides a novel approach to this much litigated question. The case seems to have reopened the door to the issue of a minor’s constitutional right to a jury trial within three weeks of the decision in McKeiver v. Pennsylvania which appeared to have conclusively closed it. If Gary W. had been a minor in a juvenile court proceeding, and the court had discussed and compared the same statutes,

101. For a discussion of the changing attitude toward the extension of jury trials to juveniles see Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup. Ct. Rev. 167. “It is probably true that some of the adult protections that the reformers sought to avoid could be introduced into the juvenile court without completely hampering its operation. The right to a jury trial is preserved in some states and the juvenile courts still function with jury trials, although, in fact, the right is usually waived. A constitutional right to public trial has rarely been invoked. If a child properly advised by parents and counsel, wishes a public trial, why should he not have it? In my view the reformers, in their desire to distinguish sharply between juvenile and criminal proceedings and in the hope that children would be processed as patients in a clinic or given social education as in school, put too much emphasis on the need for informal procedure. The child and his parents are under no illusion. They know they are in court, not in school or at a doctor’s office.” Id. at 186.
and had applied the same legal principles, the possibility exists that the right to a jury trial for juveniles would now be part of the California law. Whether a subsequent opportunity to provide juveniles with a jury trial will be presented to the court or whether the California legislature will supply this long needed relief by statute will be determined in the future.

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