

COPY

CENTRAL CALIFORNIA APPELLATE PROGRAM

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SUPREME COURT
FILED

JUL - 3 2013

Frank A. McGuire Clerk

Deputy

Attorneys for Appellant
Alonzo J.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re A.J., a Person Coming Under the Juvenile Court Law

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ALONZO J.,

Defendant and Appellant.

Case No. S206720

Third Appellate District
Case No. C068046

Sacramento County
Superior Court No. JV130980

Motion to Take Judicial Notice of Legislative History Materials

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

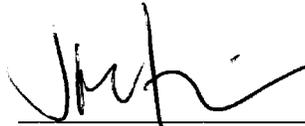
Pursuant to rule 8.252 of the California Rules of Court, and to Evidence Code sections 452 and 459, appellant, Alonzo J., through his counsel, moves this court to take judicial notice of the legislative history materials accompanying this motion.

This motion is based on the following points and authorities and the legislative history materials accompanying this motion.

DATED: June 24, 2013

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Joanne M. Kirchner
Staff Attorney

MEMORANDUM OF POINTS & AUTHORITIES

California Rules of Court, rule 8.252 provides the means for judicial notice on appeal. The rule provides in subdivision (a)(2) that the motion must state:

- (A) Why the matter to be noticed is relevant to the appeal;
- (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; and
- (C) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(Cal. Rules of Court, rule 8.252(a)(2).)

Appellant is requesting that this court take judicial notice of the legislative history of Welfare and Institutions Code section 657, as amended by Statutes 1971, chapter 1389, section 4 (Senate Bill No. 1094). (Exhibit A.) Specifically, appellant requests that this Court take judicial notice of the following three legislative committee reports: **(1)** Senate Committee on Education, Senate Policy Committee Analysis on Senate Bill No. 1094 (1971 Reg. Sess.) as introduced, p. 5 (Exhibit A, p. 30); **(2)** Senate Committee on Education, Senate Policy Committee Analysis on Senate Bill No. 1094 (1971 Reg. Sess.) as amended June 23, 1971, p. 4 (Exhibit A, p. 35); and **(3)** Assembly Committee on Criminal Justice, Bill Analysis Worksheet on Senate Bill No. 1094 (1971 Reg. Sess.) Aug. 31, 1971, p. 2 (Exhibit A, p. 40).

This court may take judicial notice of the private and official acts of the California Legislature. (Evid. Code, §§ 452, subs. (a), (c); 459, subd. (a).) This Court has

explained that “it is well established that reports of legislative committees and commissions are part of a statute’s legislative history and may be considered when the meaning of a statute is uncertain.” (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465 fn. 7.)

The legislative committee reports that appellant moves this Court to take judicial notice of are relevant to this appeal because they support appellant’s argument in his answer brief on the merits that case law construing Penal Code section 1018 should not be used to construe Welfare and Institutions Code section 657 and California Rules of Court, rule 5.778, as the respondent argues. (See RMB¹ 9-11.) Respondent discussed the legislative intent behind Welfare and Institutions Code section 657 (as amended by Statutes 1971, chapter 1389, section 4 (Senate Bill No. 1094)) generally but did not cite any source for this information. (See RMB 6-7.) Appellant has located the legislative history for Welfare and Institutions Code section 657 (as amended by Statutes 1971, chapter 1389, section 4 (Senate Bill No. 1094)) and the committee reports cited above explain the Legislature’s intent when it amended Welfare and Institutions Code section 657 to allow a minor to admit allegations in a Welfare and Institutions Code section 602 petition with the consent of counsel.

Although this legislative history was not presented to the trial court and does not relate to proceedings that occurred after the judgment that is the subject of this appeal,

¹ “RMB” refers to respondent’s opening brief on the merits.

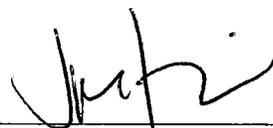
appellant respectfully requests that this court take judicial notice of the legislative history for Welfare and Institutions Code section 657 (as amended by Statutes 1971, chapter 1389, section 4 (Senate Bill No. 1094), attached as exhibit A, as it relates to the question presented by this case and the arguments presented by appellant and respondent in the briefing for this case.

Dated: June 24, 2013

Respectfully submitted,

CENTRAL CALIFORNIA
APPELLATE PROGRAM

George Bond
Executive Director



Joanne M. Kirchner
Staff Attorney

Attorneys for Appellant

DECLARATION OF SERVICE

Case No. S206720

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my business address is 2407 J Street, Suite 301, Sacramento, CA 95816.

On June 24, 2013, I served the attached

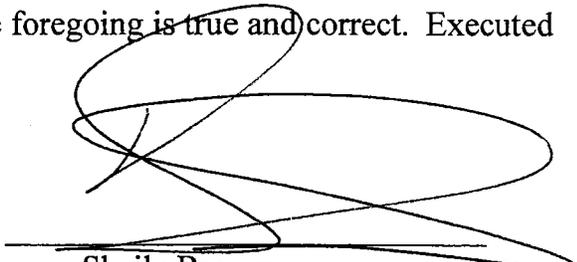
**MOTION TO TAKE FOR JUDICIAL NOTICE OF
LEGISLATIVE HISTORY MATERIALS**

by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Alonzo J.
2691 River Plaza Drive, Apt. B344
Sacramento, CA 95833

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 24, 2013, at Sacramento, California.



Sheila Brown



Legislative Research & Intent LLC

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Legislative History of

CALIFORNIA WELFARE & INSTITUTIONS CODE § 657

As Amended By
Statutes of 1971, Chapter 1389, § 4
Senate Bill 1094 – Gregorio

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Authentication of the Records and Table of Contents

Legislative History Research Report Regarding:
CALIFORNIA WELFARE & INSTITUTIONS CODE § 657
As Amended By Statutes of 1971, Chapter 1389, § 4, SB 1094 – Gregorio

I, Lisa Hampton, declare that this report includes:

- *Historical documents relating to the above legislation.* These documents were obtained by the staff of Legislative Research & Intent LLC and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

Since 1983 LRI has specialized in the historical research surrounding the adoption, amendment and/or repeal of California statutes, regulations and constitutional provisions pursuant to California Code of Civil Procedure § 1859 which states in pertinent part: "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible" Our research and expert witness services have assisted the courts in understanding and applying the underlying purpose of enactments in countless cases, such as *Redlands Community Hospital v. New England Mutual Life Insurance Co*, 23 Cal. App.4th 899 at 906 (1994). LRI also provides similar research for other states and at the federal level. (Formerly Legislative Research Institute and Legislative Research, Incorporated.)

- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed April 9, 2013, in Sacramento, California.

Lisa Hampton, Research Director

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General Enactment History

Legislative Research & Intent LLC hereby certifies that the accompanying record/s is/are true and correct copies of the original/s obtained from one or more official, public sources in California unless another source is indicated, with the following exceptions : In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, for ease of reference, paging and relevant identification have been inserted.

Introduced by Senator Gregorio

April 13, 1971

REFERRED TO COMMITTEE ON EDUCATION

An act to add Section 13013 to the Education Code, and to amend Sections 625, 628, 634, 657, 702 of, and to add Sections 702.3, and 1801.5 to, the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as introduced, Gregorio (Ed.). Minors.
Amends and adds various secs., Ed.C., and W. & I.C.
Makes various changes in procedures relating to minors under juvenile court law as well as minors taken out of school by peace officers.
Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13013 is added to the Education Code,
2 to read:
3 13013. When a principal or other school official releases a
4 minor pupil of such school to a peace officer for the purpose of
5 removing the minor from the school premises, such school of-
6 ficial shall take immediate steps to notify the parent, guardian,
7 or responsible relative of the minor regarding the release of the
8 minor to such officer, and regarding the place to which the
9 minor is reportedly being taken.
10 SEC. 2. Section 625 of the Welfare and Institutions Code is
11 amended to read:
12 625. A peace officer may, without a warrant, take into tem-
13 porary custody a minor:
14 (a) Who is under the age of 18 years when such officer has
15 reasonable cause for believing that such minor is a person
16 described in Sections 600, 601, or 602, or
17 (b) Who is a ward or dependent child of the juvenile court
18 or concerning whom an order has been made under Section
19 636 or 702, when such officer has reasonable cause for believ-
20 ing that person has violated an order of the juvenile court
21 or has escaped from any commitment ordered by the juvenile
22 court, or

1 (c) Who is under the age of 21 years and who is found in
2 any street or public place suffering from any sickness or in-
3 jury which requires care, medical treatment, hospitalization,
4 or other remedial care.

5 In any case where a minor is taken into temporary custody
6 on the ground that there is reasonable cause for believing that
7 such minor is a person described in Section 601 or 602, or that
8 he has violated an order of the juvenile court or escaped from
9 any commitment ordered by the juvenile court, the officer shall
10 advise such minor that anything he says can be used against
11 him *in a court of law and can cause him to be removed from*
12 *his home* and shall advise him of his constitutional rights, in-
13 cluding his right to remain silent, his right to have counsel
14 present during any interrogation, and his right to have counsel
15 appointed if he is unable to afford counsel.

16 SEC. 3. Section 628 of the Welfare and Institutions Code
17 is amended to read:

18 628. Upon delivery to the probation officer of a minor who
19 has been taken into temporary custody under the provisions
20 of this article, the probation officer shall immediately investi-
21 gate the circumstances of the minor and the facts surround-
22 ing his being taken into custody and shall immediately re-
23 lease such minor to the custody of his parent, guardian, or
24 responsible relative unless one or more of the following condi-
25 tions exist:

26 (a) The minor is in need of proper and effective parental
27 care or control and has no parent, guardian, or responsible rela-
28 tive; or has no parent, guardian, or responsible relative will-
29 ing to exercise or capable of exercising such care or control;
30 or has no parent, guardian, or responsible relative actually ex-
31 ercising such care or control.

32 (b) The minor is destitute or is not provided with the ne-
33 cessities of life or is not provided with a home or suitable place
34 of abode.

35 (c) The minor is provided with a home which is an unfit
36 place for him by reason of neglect, cruelty, or depravity of
37 either of his parents, or of his guardian or other person in
38 whose custody or care he is.

39 (d) Continued detention of the minor is a matter of im-
40 mediate and urgent necessity for the protection of *the minor*
41 *or the person or property of another.*

42 (e) The minor is likely to flee the jurisdiction of the court.

43 (f) The minor has violated an order of the juvenile court.

44 (g) The minor is physically dangerous to the public because
45 of a mental or physical deficiency, disorder or abnormality.

46 SEC. 4. Section 634 of the Welfare and Institutions Code
47 is amended to read:

48 634. ~~When it appears to the court that the minor or his~~
49 ~~parent or guardian desires counsel but is unable to afford and~~
50 ~~cannot for that reason employ counsel, the court may appoint~~
51 ~~counsel. In a any case in which the minor is alleged to be a~~
52 ~~person described in Section 601 or 602, he shall be represented~~

1 *by counsel and the court shall appoint counsel for the minor*
2 *if he appears at the hearing without counsel, whether he the*
3 *minor is unable to afford counsel, or not, unless there is an*
4 *intelligent waiver of the right of counsel by the minor, and,*
5 *in the absence of such waiver, if If the parent or guardian of*
6 *the minor does not furnish such counsel and the court deter-*
7 *mines that the parent or guardian has the ability to pay for*
8 *counsel, for the minor, the court shall appoint counsel for the*
9 *minor at the expense of the parent or guardian. In any case*
10 *in which it appears to the court that there is such a conflict*
11 *of interest between a parent or guardian and child that one*
12 *attorney could not properly represent both, the court may ap-*
13 *point counsel, in addition to counsel already employed by a*
14 *parent or guardian or appointed by the court to represent*
15 *the minor or parent or guardian. In a county where there is no*
16 *public defender the The court may shall fix the compensation*
17 *to be paid by the county for service of such appointed coun-*
18 *sel, other than the public defender.*

19 Sec. 5. Section 657 of the Welfare and Institutions Code
20 is amended to read:

21 657. Upon the filing of the petition, the clerk of the juve-
22 nile court shall set the same for hearing within 30 days, except
23 that in the case of a minor detained in custody at the time of
24 the filing of the petition, the petition must be set for hearing
25 within 15 judicial days from the date of the order of the
26 court directing such detention.

27 *At the detention hearing, or any time thereafter, a minor who*
28 *is alleged to come within the provisions of Section 601 or 602,*
29 *may, with the consent of counsel, admit in court the allega-*
30 *tions of the petition and waive the jurisdictional hearing.*

31 Sec. 6. Section 702 of the Welfare and Institutions Code
32 is amended to read:

33 702. After hearing such evidence, the court shall make a
34 finding, noted in the minutes of the court, whether or not the
35 minor is a person described by Sections 600, 601, or 602. If it
36 finds that the minor is not such a person, it shall order that the
37 petition be dismissed and the minor be discharged from any
38 detention or restriction theretofore ordered. If the court finds
39 that the minor is such a person, it shall make and enter its
40 findings and order accordingly and shall then proceed to hear
41 evidence on the question of the proper disposition to be made
42 of the minor. Prior to doing so, it may continue the hearing,
43 if necessary, to receive the social study of the probation officer
44 or to receive other evidence on its own motion or the motion
45 of a parent or guardian for not to exceed 10 judicial days if
46 the minor is detained during such continuance, and if the
47 minor is not detained, it may continue the hearing to a date
48 not later than 30 days after the date of filing of the petition.
49 The court may, for good cause shown continue the hearing
50 for an additional 15 days, if the minor is not detained. The
51 court may make such order for detention of the minor or his
52 release from detention, during the period of the continuance,

1 as is appropriate, *but all orders to detain must be based upon*
2 *an application of the criteria set forth in Section 635.*

3 SEC. 7. Section 702.3 is added to the Welfare and Institu-
4 tions Code, to read:

5 702.3. At the time the court makes its dispositional order,
6 the referee or judge shall determine that the minor, and, if
7 present, his parent or guardian, understands the nature and
8 effect of such order, and is aware of his or their rights and
9 privileges then permitted by law, including the right to such
10 further proceedings as may be appropriate to the case.

11 SEC. 8. Section 1801.5 is added to the Welfare and Institu-
12 tions Code, to read:

13 1801.5. If the person is ordered returned to the Youth Au-
14 thority following a hearing by the court, he, or his parent or
15 guardian on his behalf, may, within 10 days after the making
16 of such order, file a written demand that the question of
17 whether he is physically dangerous to the public be tried by a
18 jury in the superior court of the county in which he was com-
19 mitted. Thereupon, the court shall cause a jury to be summoned
20 and to be in attendance at a date stated, not less than four
21 days nor more than 30 days from the date of the demand for a
22 jury trial. The court shall submit to the jury the question:
23 Is the person physically dangerous to the public because of his
24 mental or physical deficiency, disorder, or abnormality? The
25 court's previous order entered pursuant to Section 1801 shall
26 not be read to the jury, nor alluded to in such trial. The trial
27 shall be had as provided by law for the trial of felony cases.

AMENDED IN SENATE JUNE 23, 1971

SENATE BILL

No. 1094

Introduced by Senator Gregorio

April 13, 1971

REFERRED TO COMMITTEE ON EDUCATION

An act to add Section 13013 to the Education Code, and to amend Sections 625, 628, 634, 657, 702, and to add Sections 702.2, and SECTION 1801.5 to, the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

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5 removing the minor from the school premises, such school of-
6 ficial shall take immediate steps to notify the parent, guardian,
7 or responsible relative of the minor regarding the release of the
8 minor to such officer, and regarding the place to which the
9 minor is reportedly being taken.

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11 amended to read:

12 625. A peace officer may, without a warrant, take into tem-
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15 reasonable cause for believing that such minor is a person
16 described in Sections 600, 601, or 602, or

17 (b) Who is a ward or dependent child of the juvenile court
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19 636 or 702, when such officer has reasonable cause for believ-
20 ing that person has violated an order of the juvenile court
21 or has escaped from any commitment ordered by the juvenile
22 court, or

1 (c) Who is under the age of 21 years and who is found in
2 any street or public place suffering from any sickness or in-
3 jury which requires care, medical treatment, hospitalization,
4 or other remedial care.

5 In any case where a minor is taken into temporary custody
6 on the ground that there is reasonable cause for believing that
7 such minor is a person described in Section 601 or 602, or that
8 he has violated an order of the juvenile court or escaped from
9 any commitment ordered by the juvenile court, the officer shall
10 advise such minor that anything he says can be used against
11 him in a court of law and can cause him to be removed from
12 his home and shall advise him of his constitutional rights, in-
13 cluding his right to remain silent, his right to have counsel
14 present during any interrogation, and his right to have counsel
15 appointed if he is unable to afford counsel.

16 Sec. 3. Section 628 of the Welfare and Institutions Code
17 is amended to read:

18 628. Upon delivery to the probation officer of a minor who
19 has been taken into temporary custody under the provisions
20 of this article, the probation officer shall immediately investi-
21 gate the circumstances of the minor and the facts surround-
22 ing his being taken into custody and shall immediately re-
23 lease such minor to the custody of his parent, guardian, or
24 responsible relative unless one or more of the following condi-
25 tions exist:

26 (a) The minor is in need of proper and effective parental
27 care or control and has no parent, guardian, or responsible rel-
28 ative; or has no parent, guardian, or responsible relative will-
29 ing to exercise or capable of exercising such care or control;
30 or has no parent, guardian, or responsible relative actually ex-
31 ercising such care or control.

32 (b) The minor is destitute or is not provided with the ne-
33 cessities of life or is not provided with a home or suitable place
34 of abode.

35 (c) The minor is provided with a home which is an unfit
36 place for him by reason of neglect, cruelty, or depravity of
37 either of his parents, or of his guardian or other person in
38 whose custody or care he is.

39 (d) Continued detention of the minor is a matter of im-
40 mediate and urgent necessity for the protection of the minor
41 or the person or property of another.

42 (e) The minor is likely to flee the jurisdiction of the court.

43 (f) The minor has violated an order of the juvenile court.

44 (g) The minor is physically dangerous to the public because
45 of a mental or physical deficiency, disorder or abnormality.

46 Sec. 4. Section 634 of the Welfare and Institutions Code
47 is amended to read:

48 634. In any case in which the minor is alleged to be a
49 person described in Section 601 or 602, he shall be represented
50 by counsel and the court shall appoint counsel for the minor
51 if the minor is unable to afford counsel. If the parent or guard-
52 ian of the minor does not furnish such counsel for the minor,

1 the court shall appoint counsel for the minor at the expense
2 of the parent or guardian. In any case in which it appears to
3 the court that there is such a conflict of interest between a
4 parent or guardian and child that one attorney could not prop-
5 erly represent both, the court may appoint counsel, in addition
6 to counsel already employed by a parent or guardian or ap-
7 pointed by the court to represent the minor or parent or
8 guardian. The court shall fix the compensation to be paid by
9 the county for service of such appointed counsel, other than
10 the public defender.

11 ~~Sec. 5. Section 657 of the Welfare and Institutions Code~~
12 ~~is amended to read:~~

13 ~~657. Upon the filing of the petition, the clerk of the juve-~~
14 ~~nile court shall set the same for hearing within 30 days, except~~
15 ~~that in the case of a minor detained in custody at the time of~~
16 ~~the filing of the petition, the petition must be set for hearing~~
17 ~~within 15 judicial days from the date of the order of the~~
18 ~~court directing such detention.~~

19 ~~At the detention hearing, or any time thereafter, a minor~~
20 ~~who is alleged to come within the provisions of Section 601 or~~
21 ~~602, may, with the consent of counsel, admit in court the~~
22 ~~allegations of the petition and waive the jurisdictional hearing.~~

23 ~~Sec. 6. Section 702 of the Welfare and Institutions Code~~
24 ~~is amended to read:~~

25 ~~702. After hearing such evidence, the court shall make a~~
26 ~~finding, noted in the minutes of the court, whether or not the~~
27 ~~minor is a person described by Sections 600, 601, or 602. If it~~
28 ~~finds that the minor is not such a person, it shall order that~~
29 ~~the petition be dismissed and the minor be discharged from any~~
30 ~~detention or restriction theretofore ordered. If the court finds~~
31 ~~that the minor is such a person, it shall make and enter its~~
32 ~~findings and order accordingly and shall then proceed to hear~~
33 ~~evidence on the question of the proper disposition to be made~~
34 ~~of the minor. Prior to doing so, it may continue the hearing,~~
35 ~~if necessary, to receive the social study of the probation officer~~
36 ~~or to receive other evidence on its own motion or the motion~~
37 ~~of a parent or guardian for not to exceed 10 judicial days if~~
38 ~~the minor is detained during such continuance, and if the~~
39 ~~minor is not detained, it may continue the hearing to a date~~
40 ~~not later than 30 days after the date of filing of the petition.~~
41 ~~The court may, for good cause shown continue the hearing~~
42 ~~for an additional 15 days, if the minor is not detained. The~~
43 ~~court may make such order for detention of the minor or his~~
44 ~~release from detention, during the period of the continuance,~~
45 ~~as is appropriate, but all orders to detain must be based upon~~
46 ~~an application of the criteria set forth in Section 635.~~

47 ~~Sec. 7. Section 702.3 is added to the Welfare and Institu-~~
48 ~~tions Code, to read:~~

49 ~~702.3. At the time the court makes its dispositional order,~~
50 ~~the referee or judge shall determine that the minor, and, if~~
51 ~~present, his parent or guardian, understands the nature and~~
52 ~~effect of such order, and is aware of his or their rights and~~

1 privileges then permitted by law, including the right to such
2 further proceedings as may be appropriate to the case.

3 ~~Sec. 8~~

4 *SEC. 6.* Section 1801.5 is added to the Welfare and Insti-
5 tutions Code, to read:

6 1801.5. If the person is ordered returned to the Youth Au-
7 thority following a hearing by the court, he, or his parent or
8 guardian on his behalf, may, within 10 days after the making
9 of such order, file a written demand that the question of
10 whether he is physically dangerous to the public be tried by a
11 jury in the superior court of the county in which he was com-
12 mitted. Thereupon, the court shall cause a jury to be summoned
13 and to be in attendance at a date stated, not less than four
14 days nor more than 30 days from the date of the demand for a
15 jury trial. The court shall submit to the jury the question:
16 Is the person physically dangerous to the public because of his
17 mental or physical deficiency, disorder, or abnormality? The
18 court's previous order entered pursuant to Section 1801 shall
19 not be read to the jury, nor alluded to in such trial. The trial
20 shall be had as provided by law for the trial of felony cases.

0

AMENDED IN SENATE JULY 20, 1971

AMENDED IN SENATE JUNE 23, 1971

SENATE BILL

No. 1094

Introduced by Senator Gregorio

April 13, 1971

REFERRED TO COMMITTEE ON EDUCATION

An act to add Section 13013 to the Education Code, and to amend Sections 625, 628, 634, 657 of, and to add Section 1801.5 to, the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as amended, Gregorio (Ed.). Minors.

Amends and adds various secs., Ed.C., and W. & I.C.

Makes various changes in procedures relating to minors under juvenile court law as well as minors taken out of school by peace officers.

Incorporates additional changes to Sec. 628, W. & I.C., proposed by SB 6, to be operative only if SB 6 and this bill are both chaptered, and this bill is chaptered after SB 6.

Incorporates additional changes to Sec. 634, W. & I.C., proposed by SB 462, to be operative only if SB 462 and this bill are both chaptered, and this bill is chaptered after SB 462.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13013 is added to the Education Code,
2 to read:

3 13013. When a principal or other school official releases a
4 minor pupil of such school to a peace officer for the purpose of
5 removing the minor from the school premises, such school of-
6 ficial shall take immediate steps to notify the parent, guardian,
7 or responsible relative of the minor regarding the release of the
8 minor to such officer, and regarding the place to which the
9 minor is reportedly being taken.

10 SEC. 2. Section 625 of the Welfare and Institutions Code is
11 amended to read:

12 625. A peace officer may, without a warrant, take into tem-
13 porary custody a minor.

1 (a) Who is under the age of 18 years when such officer has
2 reasonable cause for believing that such minor is a person
3 described in Sections 600, 601, or 602, or

4 (b) Who is a ward or dependent child of the juvenile court
5 or concerning whom an order has been made under Section
6 626 or 702, when such officer has reasonable cause for believ-
7 ing that person has violated an order of the juvenile court
8 or has escaped from any commitment ordered by the juvenile
9 court, or

10 (c) Who is under the age of 21 years and who is found in
11 any street or public place suffering from any sickness or in-
12 jury which requires care, medical treatment, hospitalization,
13 or other remedial care.

14 In any case where a minor is taken into temporary custody
15 on the ground that there is reasonable cause for believing that
16 such minor is a person described in Section 601 or 602, or that
17 he has violated an order of the juvenile court or escaped from
18 any commitment ordered by the juvenile court, the officer shall
19 advise such minor that anything he says can be used against
20 him in a court of law and can cause him to be removed from
21 his home and shall advise him of his constitutional rights, in-
22 cluding his right to remain silent, his right to have counsel
23 present during any interrogation, and his right to have counsel
24 appointed if he is unable to afford counsel.

25 SEC. 3.2. Section 628 of the Welfare and Institutions Code
26 is amended to read:

27 628. Upon delivery to the probation officer of a minor who
28 has been taken into temporary custody under the provisions
29 of this article, the probation officer shall immediately investi-
30 gate the circumstances of the minor and the facts surround-
31 ing his being taken into custody and shall immediately re-
32 lease such minor to the custody of his parent, guardian, or
33 responsible relative unless one or more of the following condi-
34 tions exist:

35 (a) The minor is in need of proper and effective parental
36 care or control and has no parent, guardian, or responsible rel-
37 ative; or has no parent, guardian, or responsible relative will-
38 ing to exercise or capable of exercising such care or control;
39 or has no parent, guardian, or responsible relative actually ex-
40 ercising such care or control.

41 (b) The minor is destitute or is not provided with the ne-
42 cessities of life or is not provided with a home or suitable place
43 of abode.

44 (c) The minor is provided with a home which is an unfit
45 place for him by reason of neglect, cruelty, or depravity of
46 either of his parents, or of his guardian or other person in
47 whose custody or care he is.

48 (d) Continued detention of the minor is a matter of im-
49 mediate and urgent necessity for the protection of the minor
50 or the person or property of another.

51 (e) The minor is likely to flee the jurisdiction of the court.

52 (f) The minor has violated an order of the juvenile court.

1 (g) The minor is physically dangerous to the public because
2 of a mental or physical deficiency, disorder or abnormality.

3 *SEC. 3. Section 628 of the Welfare and Institutions Code*
4 *is amended to read:*

5 628. Upon delivery to the probation officer of a minor who
6 has been taken into temporary custody under the provisions
7 of this article, the probation officer shall immediately investi-
8 gate the circumstances of the minor and the facts surround-
9 ing his being taken into custody and shall immediately release
10 ~~such~~ the minor to the custody of his parent, guardian, or
11 responsible relative unless one or more of the following con-
12 ditions exist:

13 (a) The minor is in need of proper and effective parental
14 care or control and has no parent, guardian, or responsible re-
15 lative; or has no parent, guardian, or responsible relative will-
16 ing to exercise or capable of exercising such care or control;
17 or has no parent, guardian, or responsible relative actually ex-
18 ercising such care or control.

19 (b) The minor is destitute ~~or~~, is not provided with the ne-
20 cessities of life, or is not provided with a home or suitable place
21 of abode.

22 (c) The minor is provided with a home which is an unfit
23 place for him by reason of neglect, cruelty, or depravity of
24 either of his parents, ~~or~~ ~~of~~ his guardian, or other person in
25 whose custody or care he is.

26 (d) Continued detention of the minor is a matter of ~~im-~~
27 ~~mediate~~ ~~and~~ urgent necessity for the protection of *the minor*
28 *or* the person or property of another.

29 (e) The minor is likely to flee the jurisdiction of the court.

30 (f) The minor has violated an order of the juvenile court.

31 (g) The minor is physically dangerous to the public because
32 of a mental or physical deficiency, disorder or abnormality.

33 *SEC. 4. Section 634 of the Welfare and Institutions Code*
34 *is amended to read:*

35 634. In any case in which the minor is alleged to be a
36 person described in Section 601 or 602, he shall be represented
37 by counsel and the court shall appoint counsel for the minor
38 if the minor is unable to afford counsel. If the parent or guard-
39 ian of the minor does not furnish such counsel for the minor
40 *and the court determines that the parent or guardian has the*
41 *ability to pay for counsel*, the court shall appoint counsel for
42 the minor at the expense of the parent or guardian. In any
43 case in which it appears to the court that there is such a con-
44 flict of interest between a parent or guardian and child that
45 one attorney could not properly represent both, the court
46 may appoint counsel, in addition to counsel already employed
47 by a parent or guardian or appointed by the court to represent
48 the minor or parent or guardian. The court shall fix the com-
49 pensation to be paid by the county for service of such ap-
50 pointed counsel, other than the public defender.

1 *SEC. 5. Section 634 of the Welfare and Institutions Code*
 2 *is amended to read:*

3 634. ~~When it appears to the court that the minor or his~~
 4 ~~parent or guardian desires counsel but is unable to afford and~~
 5 ~~cannot for that reason employ counsel, the court may appoint~~
 6 ~~counsel. In a any case in which the minor is alleged to be a~~
 7 ~~person described in Section 601 or 602, he shall be represented~~
 8 ~~by counsel and the court shall appoint counsel for the minor~~
 9 ~~if he appears at the hearing without counsel, whether he the~~
 10 ~~minor is unable to afford counsel. or not, unless there is an~~
 11 ~~intelligent waiver of the right of counsel by the minor; and,~~
 12 ~~in the absence of such waiver, if If the parent or guardian of~~
 13 ~~the minor does not furnish such counsel and the court deter-~~
 14 ~~mines that the parent or guardian has the ability to pay for~~
 15 ~~counsel, for the minor and the court determines that the parent~~
 16 ~~or guardian has the ability to pay for counsel, the court shall~~
 17 ~~appoint counsel at the expense of the parent or guardian. In~~
 18 ~~any case in which it appears to the court that there is such~~
 19 ~~a conflict of interest between a parent or guardian and child~~
 20 ~~that one attorney could not properly represent both, the court~~
 21 ~~may appoint counsel, in addition to counsel already employed~~
 22 ~~by a parent or guardian or appointed by the court to repre-~~
 23 ~~sent the minor or parent or guardian. However, the court is~~
 24 ~~under no duty to appoint separate counsel for the parents or~~
 25 ~~guardians of the minor in any case in which the minor is~~
 26 ~~alleged to be a person described in Section 601 or 602, unless~~
 27 ~~it appears that there is a conflict of interest between the~~
 28 ~~minor and his parents or guardians. In a county where there~~
 29 ~~is no public defender the The court may shall fix the compensa-~~
 30 ~~tion to be paid by the county for service of such appointed~~
 31 ~~counsel, other than the public defender.~~

32 ~~Sec. 5~~

33 *SEC. 6. Section 657 of the Welfare and Institutions Code*
 34 *is amended to read:*

35 657. Upon the filing of the petition, the clerk of the juve-
 36 nile court shall set the same for hearing within 30 days, except
 37 that in the case of a minor detained in custody at the time of
 38 the filing of the petition, the petition must be set for hearing
 39 within 15 judicial days from the date of the order of the
 40 court directing such detention.

41 At the detention hearing, or any time thereafter, a minor
 42 who is alleged to come within the provisions of Section 601 or
 43 602, may, with the consent of counsel, admit in court the
 44 allegations of the petition and waive the jurisdictional hearing.

45 *SEC. 67. Section 1801.5 is added to the Welfare and Insti-*
 46 *tutions Code, to read:*

47 1801.5. If the person is ordered returned to the Youth Au-
 48 thority following a hearing by the court, he, or his parent or
 49 guardian on his behalf, may, within 10 days after the making
 50 of such order, file a written demand that the question of
 51 whether he is physically dangerous to the public be tried by a

1 jury in the superior court of the county in which he was com-
2 mitted. Thereupon, the court shall cause a jury to be summoned
3 and to be in attendance at a date stated, not less than four
4 days nor more than 30 days from the date of the demand for a
5 jury trial. The court shall submit to the jury the question:
6 Is the person physically dangerous to the public because of his
7 mental or physical deficiency, disorder, or abnormality? The
8 court's previous order entered pursuant to Section 1801 shall
9 not be read to the jury, nor alluded to in such trial. The trial
10 shall be had as provided by law for the trial of ~~felony~~ cases
11 civil cases and shall require a verdict by at least three-fourths
12 of the jury .

13 *SEC. 8. It is the intent of the Legislature, if this bill and*
14 *Senate Bill No. 6 are both chaptered and amend Section 628 of*
15 *the Welfare and Institutions Code, and this bill is chaptered*
16 *after Senate Bill No. 6, that the amendments to Section 628*
17 *proposed by both bills be given effect and incorporated in*
18 *Section 628 in the form set forth in Section 3 of this act.*
19 *Therefore, Section 3 of this act shall become operative only if*
20 *this bill and Senate Bill No. 6 are both chaptered, both amend*
21 *Section 628, and Senate Bill No. 6 is chaptered before this*
22 *bill, in which case Section 2 of this act shall not become oper-*
23 *ative.*

24 *SEC. 9. It is the intent of the Legislature, if this bill and*
25 *Senate Bill No. 462 are both chaptered and amend Section 634*
26 *of the Welfare and Institutions Code, and this bill is chap-*
27 *tered after Senate Bill No. 462, that the amendments to Sec-*
28 *tion 634 proposed by both bills be given effect and incorpo-*
29 *rated in Section 634 in the form set forth in Section 5 of this*
30 *act. Therefore, Section 5 of this act shall become operative*
31 *only if this bill and Senate Bill No. 462 are both chaptered,*
32 *both amend Section 634, and Senate Bill No. 462 is chaptered*
33 *before this bill, in which case Section 4 of this act shall not*
34 *become operative.*

0

AMENDED IN ASSEMBLY OCTOBER 18, 1971

AMENDED IN SENATE JULY 20, 1971

AMENDED IN SENATE JUNE 23, 1971

SENATE BILL

No. 1094

Introduced by Senator Gregorio

April 13, 1971

REFERRED TO COMMITTEE ON EDUCATION

An act to add Section 13013 to the Education Code, and to amend Sections 628, ~~624~~, 657 of, and to add Section 1801.5 to, the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as amended, Gregorio (Ed.). Minors.

Amends and adds various secs., Ed.C., and W. & I.C.

Makes various changes in procedures relating to minors under juvenile court law as well as minors taken out of school by peace officers.

Incorporates additional changes to Sec. 628, W. & I.C., proposed by SB 6, to be operative only if SB 6 and this bill are both chaptered, and this bill is chaptered after SB 6.

Incorporates additional changes to Sec. ~~634~~, W. & I.C., proposed by SB 462, to be operative only if SB 462 and this bill are both chaptered, and this bill is chaptered after SB 462.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13013 is added to the Education Code,
2 to read:

3 13013. When a principal or other school official releases a
4 minor pupil of such school to a peace officer for the purpose of
5 removing the minor from the school premises, such school of-
6 ficial shall take immediate steps to notify the parent, guardian,
7 or responsible relative of the minor regarding the release of the
8 minor to such officer, and regarding the place to which the
9 minor is reportedly being taken.

10 Sec. 2. Section 628 of the Welfare and Institutions Code is
11 amended to read:

12 628. Upon delivery to the probation officer of a minor who
13 has been taken into temporary custody under the provisions

1 of this article, the probation officer shall immediately investi-
2 gate the circumstances of the minor and the facts surround-
3 ing his being taken into custody and shall immediately re-
4 lease such minor to the custody of his parent, guardian, or
5 responsible relative unless one or more of the following condi-
6 tions exist:

7 (a) The minor is in need of proper and effective parental
8 care or control and has no parent, guardian, or responsible re-
9 lative; or has no parent, guardian, or responsible relative will-
10 ing to exercise or capable of exercising such care or control;
11 or has no parent, guardian, or responsible relative actually ex-
12 ercising such care or control.

13 (b) The minor is destitute or is not provided with the ne-
14 cessities of life or is not provided with a home or suitable place
15 of abode.

16 (c) The minor is provided with a home which is an unfit
17 place for him by reason of neglect, cruelty, or depravity of
18 either of his parents, or of his guardian or other person in
19 whose custody or care he is.

20 (d) Continued detention of the minor is a matter of im-
21 mediate and urgent necessity for the protection of the minor
22 or the person or property of another.

23 (e) The minor is likely to flee the jurisdiction of the court.

24 (f) The minor has violated an order of the juvenile court.

25 (g) The minor is physically dangerous to the public because
26 of a mental or physical deficiency, disorder or abnormality.

27 Sec. 3. Section 628 of the Welfare and Institutions Code
28 is amended to read:

29 628. Upon delivery to the probation officer of a minor who
30 has been taken into temporary custody under the provisions
31 of this article, the probation officer shall immediately investi-
32 gate the circumstances of the minor and the facts surround-
33 ing his being taken into custody and shall immediately release
34 the minor to the custody of his parent, guardian, or respon-
35 sible relative unless one or more of the following conditions
36 exist:

37 (a) The minor is in need of proper and effective parental
38 care or control and has no parent, guardian, or responsible re-
39 lative; or has no parent, guardian, or responsible relative will-
40 ing to exercise or capable of exercising such care or control;
41 or has no parent, guardian, or responsible relative actually ex-
42 ercising such care or control.

43 (b) The minor is destitute, is not provided with the ne-
44 cessities of life, or is not provided with a home or suitable place
45 of abode.

46 (c) The minor is provided with a home which is an unfit
47 place for him by reason of neglect, cruelty, or depravity of
48 either of his parents, his guardian, or other person in whose
49 custody or care he is.

50 (d) Continued detention of the minor is a matter of urgent
51 necessity for the protection of the minor or the person or
52 property of another.

- 1 (e) The minor is likely to flee the jurisdiction of the court.
- 2 (f) The minor has violated an order of the juvenile court.
- 3 (g) The minor is physically dangerous to the public because
- 4 of a mental or physical deficiency, disorder or abnormality.

5 ~~Sec. 4. Section 634 of the Welfare and Institutions Code~~
6 ~~is amended to read:~~

7 ~~634. In any case in which the minor is alleged to be a~~
8 ~~person described in Section 601 or 602, he shall be represented~~
9 ~~by counsel and the court shall appoint counsel for the minor~~
10 ~~if the minor is unable to afford counsel. If the parent or guard-~~
11 ~~ian of the minor does not furnish such counsel for the minor~~
12 ~~and the court determines that the parent or guardian has the~~
13 ~~ability to pay for counsel, the court shall appoint counsel for~~
14 ~~the minor at the expense of the parent or guardian. In any~~
15 ~~case in which it appears to the court that there is such a con-~~
16 ~~flict of interest between a parent or guardian and child that~~
17 ~~one attorney could not properly represent both, the court~~
18 ~~may appoint counsel, in addition to counsel already employed~~
19 ~~by a parent or guardian or appointed by the court to represent~~
20 ~~the minor or parent or guardian. The court shall fix the com-~~
21 ~~ensation to be paid by the county for service of such ap-~~
22 ~~pointed counsel, other than the public defender.~~

23 ~~Sec. 5. Section 634 of the Welfare and Institutions Code~~
24 ~~is amended to read:~~

25 ~~634. In any case in which the minor is alleged to be a~~
26 ~~person described in Section 601 or 602, he shall be represented~~
27 ~~by counsel and the court shall appoint counsel for the minor~~
28 ~~if the minor is unable to afford counsel. If the parent or~~
29 ~~guardian of the minor does not furnish such counsel for the~~
30 ~~minor and the court determines that the parent or guardian~~
31 ~~has the ability to pay for counsel, the court shall appoint~~
32 ~~counsel at the expense of the parent or guardian. In any case~~
33 ~~in which it appears to the court that there is such a conflict of~~
34 ~~interest between a parent or guardian and the child that one~~
35 ~~attorney could not properly represent both, the court may ap-~~
36 ~~point counsel, in addition to counsel already employed by a~~
37 ~~parent or guardian or appointed by the court to represent~~
38 ~~the minor or parent or guardian. However, the court is under~~
39 ~~no duty to appoint separate counsel for the parents or guard-~~
40 ~~ians of the minor in any case in which the minor is alleged to~~
41 ~~be a person described in Section 601 or 602, unless it appears~~
42 ~~that there is a conflict of interest between the minor and his~~
43 ~~parents or guardians. The court shall fix the compensation to~~
44 ~~be paid by the county for service of such appointed counsel,~~
45 ~~other than the public defender.~~

46 ~~Sec. 6~~

47 ~~SEC. 4. Section 657 of the Welfare and Institutions Code~~
48 ~~is amended to read:~~

49 ~~657. Upon the filing of the petition, the clerk of the juve-~~
50 ~~nile court shall set the same for hearing within 30 days, except~~
51 ~~that in the case of a minor detained in custody at the time of~~
52 ~~the filing of the petition, the petition must be set for hearing~~

1 within 15 judicial days from the date of the order of the
2 court directing such detention.

3 At the detention hearing, or any time thereafter, a minor
4 who is alleged to come within the provisions of Section 601 or
5 602, may, with the consent of counsel, admit in court the
6 allegations of the petition and waive the jurisdictional hearing.

7 ~~See 7~~

8 *SEC. 5.* Section 1801.5 is added to the Welfare and Insti-
9 tutions Code, to read:

10 1801.5. If the person is ordered returned to the Youth Au-
11 thority following a hearing by the court, he, or his parent or
12 guardian on his behalf, may, within 10 days after the making
13 of such order, file a written demand that the question of
14 whether he is physically dangerous to the public be tried by a
15 jury in the superior court of the county in which he was com-
16 mitted. Thereupon, the court shall cause a jury to be summoned
17 and to be in attendance at a date stated, not less than four
18 days nor more than 30 days from the date of the demand for a
19 jury trial. The court shall submit to the jury the question:
20 Is the person physically dangerous to the public because of his
21 mental or physical deficiency, disorder, or abnormality? The
22 court's previous order entered pursuant to Section 1801 shall
23 not be read to the jury, nor alluded to in such trial. The trial
24 shall be had as provided by law for the trial of civil cases and
25 shall require a verdict by at least three-fourths of the jury.

26 ~~See 8~~

27 *SEC. 6.* It is the intent of the Legislature, if this bill and
28 Senate Bill No. 6 are both chaptered and amend Section 628 of
29 the Welfare and Institutions Code, and this bill is chaptered
30 after Senate Bill No. 6, that the amendments to Section 628
31 proposed by both bills be given effect and incorporated in
32 Section 628 in the form set forth in Section 3 of this act.
33 Therefore, Section 3 of this act shall become operative only if
34 this bill and Senate Bill No. 6 are both chaptered, both amend
35 Section 628, and Senate Bill No. 6 is chaptered before this
36 bill, in which case Section 2 of this act shall not become oper-
37 ative.

38 *SEC. 9.* It is the intent of the Legislature, if this bill and
39 Senate Bill No. 462 are both chaptered and amend Section 634
40 of the Welfare and Institutions Code, and this bill is chap-
41 tered after Senate Bill No. 462, that the amendments to Sec-
42 tion 634 proposed by both bills be given effect and incorpo-
43 rated in Section 634 in the form set forth in Section 5 of this
44 act. Therefore, Section 5 of this act shall become operative
45 only if this bill and Senate Bill No. 462 are both chaptered,
46 both amend Section 634, and Senate Bill No. 462 is chaptered
47 before this bill, in which case Section 4 of this act shall not
48 become operative.

O

Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1971

Constitution of 1879 as Amended

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature at the**

1971 Regular Session

and the

1971 First Extraordinary Session



Compiled by
GEORGE H. MURPHY
Legislative Counsel

82—3935

12795. Any fine collected under this article shall be paid into the school funds of the county in which the minor resides.
- SEC. 7. Section 12455 of the Education Code is repealed.
- SEC. 8. Section 12456 of the Education Code is repealed.
- SEC. 9. Section 12457 of the Education Code is repealed.
- SEC. 10. Section 12755 of the Education Code is repealed.
- SEC. 11. Section 12757 of the Education Code is repealed.
- SEC. 12. Section 12758 of the Education Code is repealed.
- SEC. 13. Section 12759 of the Education Code is repealed.

CHAPTER 1389

An act to add Section 13013 to the Education Code, and to amend Sections 628, 657 of, and to add Section 1801.5 to, the Welfare and Institutions Code, relating to minors.

[Approved by Governor November 4, 1971. Filed with Secretary of State November 4, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 13013 is added to the Education Code, to read:

13013. When a principal or other school official releases a minor pupil of such school to a peace officer for the purpose of removing the minor from the school premises, such school official shall take immediate steps to notify the parent, guardian, or responsible relative of the minor regarding the release of the minor to such officer, and regarding the place to which the minor is reportedly being taken.

SEC. 2. Section 628 of the Welfare and Institutions Code is amended to read:

628. Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release such minor to the custody of his parent, guardian, or responsible relative unless one or more of the following conditions exist:

(a) The minor is in need of proper and effective parental care or control and has no parent, guardian, or responsible relative; or has no parent, guardian, or responsible relative willing to exercise or capable of exercising such care or control; or has no parent, guardian, or responsible relative actually exercising such care or control.

(b) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.

(c) The minor is provided with a home which 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.

(d) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another.

(e) The minor is likely to flee the jurisdiction of the court.

(f) The minor has violated an order of the juvenile court.

(g) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

SEC. 3. Section 628 of the Welfare and Institutions Code is amended to read:

628. Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release the minor to the custody of his parent, guardian, or responsible relative unless one or more of the following conditions exist:

(a) The minor is in need of proper and effective parental care or control and has no parent, guardian, or responsible relative; or has no parent, guardian, or responsible relative willing to exercise or capable of exercising such care or control; or has no parent, guardian, or responsible relative actually exercising such care or control.

(b) The minor is destitute, is not provided with the necessities of life, or is not provided with a home or suitable place of abode.

(c) The minor is provided with a home which is an unfit place for him by reason of neglect, cruelty, or depravity of either of his parents, his guardian, or other person in whose custody or care he is.

(d) Continued detention of the minor is a matter of urgent necessity for the protection of the minor or the person or property of another.

(e) The minor is likely to flee the jurisdiction of the court.

(f) The minor has violated an order of the juvenile court.

(g) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

SEC. 4. Section 657 of the Welfare and Institutions Code is amended to read:

657. Upon the filing of the petition, the clerk of the juvenile court shall set the same for hearing within 30 days, except that in the case of a minor detained in custody at the time of the filing of the petition, the petition must be set for hearing within 15 judicial days from the date of the order of the court directing such detention.

At the detention hearing, or any time thereafter, a minor who is alleged to come within the provisions of Section 601 or 602, may, with the consent of counsel, admit in court the allegations of the petition and waive the jurisdictional hearing.

SEC. 5. Section 1801.5 is added to the Welfare and Institutions Code, to read:

1801.5. If the person is ordered returned to the Youth Authority following a hearing by the court, he, or his parent or guardian on his behalf, may, within 10 days after the making of such order, file a written demand that the question of whether he is physically dangerous to the public be tried by a jury in the superior court of the county in which he was committed. Thereupon, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the demand for a jury trial. The court shall submit to the jury the question: Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in such trial. The trial shall be had as provided by law for the trial of civil cases and shall require a verdict by at least three-fourths of the jury.

SEC. 6. It is the intent of the Legislature, if this bill and Senate Bill No. 6 are both chaptered and amend Section 628 of the Welfare and Institutions Code, and this bill is chaptered after Senate Bill No. 6, that the amendments to Section 628 proposed by both bills be given effect and incorporated in Section 628 in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Senate Bill No. 6 are both chaptered, both amend Section 628, and Senate Bill No. 6 is chaptered before this bill, in which case Section 2 of this act shall not become operative.

CHAPTER 1390

An act to amend Section 1547 of the Penal Code, relating to rewards.

[Approved by Governor November 4, 1971. Filed with Secretary of State November 4, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 1547 of the Penal Code is amended to read:

1547. (a) The Governor may offer a reward of not more than ten thousand dollars (\$10,000), payable out of the General Fund, for information leading to the arrest and conviction of any of the following:

(1) Any convict who has escaped from a state prison, prison camp, prison farm, or the custody of any prison officer or employee or as provided in Section 3059, 4530, or 4531.

(2) Any person who has committed, or is charged with the commission of, an offense punishable with death.

CALIFORNIA LEGISLATURE

AT SACRAMENTO
1971 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS,
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT
RESOLUTIONS AND SENATE RESOLUTIONS

CONVENED JANUARY 4, 1971
ADJOURNED SINE DIE JANUARY 3, 1972

DAYS IN SESSION _____ 199
CALENDAR DAYS _____ 365

Bill Signing Period Expires 12 O'clock Midnight January 1, 1972

Laws Become Effective March 4, 1972

Last Day for Filing Referendum March 3, 1972

LT-GOVERNOR ED REINECKE
President of the Senate

SENATOR JAMES R. MILLS
President pro Tempore

Compiled Under the Direction of

DARRYL R. WHITE
Secretary of the Senate

by
DAVID H. KNEALE
History Clerk

S B No 1093—Gregorio

An act relating to state-owned property

April 13—Read first time
 April 15—To Com on G O
 June 3—From committee Do pass, but first be re-referred to Com on FIN
 Re-referred to Com on FIN
 July 9—From committee Do pass
 July 12—Read second time To third reading
 July 16—Read third time Passed To Assembly
 July 16—In Assembly Read first time Held at desk
 July 19—To Com on TRANS
 July 29—From committee Do pass, but first be re-referred to Com on W &
 M, with recommendation To Consent Calendar Re-referred to
 Com on W & M
 Aug 12—From committee Do pass To Consent Calendar
 Sept 7—Read second time To Consent Calendar
 Sept 9—Read third time Passed To Senate
 Sept 9—In Senate To enrollment
 Sept 15—Enrolled To Governor at 2 p m
 Sept 23—Approved by Governor Chapter 757

S.B. No 1094—Gregorio

An act to add Section 13013 to the Education Code, and to amend Sections 628,
 657 of, and to add Section 18015 to, the Welfare and Institutions Code,
 relating to minors

April 13—Read first time
 April 15—To Com on ED
 April 20—Withdrawn from ED Re-referred to JUD
 June 23—From committee with author's amendments Read second time
 Amended Re-referred to committee
 July 19—From committee Do pass as amended
 July 20—Read second time Amended To third reading
 Aug 3—Read third time Passed To Assembly
 Aug 4—In Assembly Read first time To Com on CRIM J
 Oct 15—From committee Do pass as amended
 Oct 18—Read second time Amended To second reading
 Oct 19—Read second time To third reading
 Oct 21—Read third time Passed To Senate
 Oct 21—In Senate To unfinished business
 Oct 22—Senate concurs in Assembly amendment To enrollment
 Oct 28—Enrolled To Governor at 11 30 a m
 Nov 4—Approved by Governor Chapter 1389

S.B. No. 1095—Gregorio

An act to amend Section 16480 of the Vehicle Code, relating to driver's licenses

April 13—Read first time
 April 15—To Com on TRANS
 Aug 3—From committee Do pass To Consent Calendar
 Aug 4—Read second time To Consent Calendar
 Aug 6—Read third time Passed To Assembly
 Aug 9—In Assembly Read first time Held at desk
 Aug 10—To Com on TRANS
 Sept 24—From committee Do pass
 Sept 27—Read second time To third reading
 Sept 30—Read third time Passed To Senate
 Sept 30—In Senate To enrollment
 Oct 7—Enrolled To Governor at 11 30 a m
 Oct 13—Approved by Governor Chapter 1023



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SB 1094 (Gregorio)
As introduced
Education/Welfare and Institutions Codes

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JUVENILE COURT LAW

HISTORY

Source: State Bar
Prior Legislation: None
Support: Unknown
Opposition: Calif. D.A.'s & P.O.'s Ass'n.

DIGEST

Requires school officials who release a minor student to a peace officer for the purpose of removing the student from school premises to take immediate steps to notify the parent, guardian, or responsible relative of the student of the release to the peace officer and the location to which he is reportedly being taken (Sec. 13013, Ed. C.).

Expands the content of the warning which peace officers are required to give a minor being taken into temporary custody to include a warning that "...anything he says can be used against him in a court of law and can cause him to be removed from his home..." when there is reasonable cause to believe he is a "Section 601 " or "Section 602" minor or has violated an order of, or escaped from any commitment ordered by, the juvenile court. (Sec. 625, W. & I.C.)

Authorizes a probation officer to continue the detention of a minor who has been delivered into his custody, after having been taken into temporary custody, when it is a matter of immediate and urgent necessity for the protection of the minor (subd. (d), Sec. 628, W. & I.C.).

(More)

SB 1094 (Gregorio)
Page Two

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Requires that a minor be represented by counsel in "Section 601" or "Section 602" proceedings and eliminates the right of a minor to intelligently waive his right to such counsel. Requires the court to appoint counsel for the minor at the expense of the parent or guardian if they do not furnish counsel to the minor, and eliminates the requirement that the court determine the ability of the parent or guardian to pay prior to appointing counsel for the minor at their expense. Requires, rather than permits, the court to fix the compensation to be paid by a county for counsel, other than the Public Defender, appointed when a conflict of interest between a parent or guardian and minor requires the presence of additional counsel. (Sec. 634, W. & I.C.)

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Permits a minor, at the detention hearing or anytime thereafter, to admit, in court, with the consent of counsel, the allegations of a "Section 601" or "Section 602" petition and waive the jurisdictional hearing (Sec. 657, W. & I.C.).

Requires that an order of detention, during a continuance following a finding that the minor is a person described by "Section 603, 601, or 602" and prior to the dispositional hearing, be based on the following criteria: the minor has violated a juvenile court order or escaped from commitment by such court, detention is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another, or the minor is likely to flee the jurisdiction of the court. (Sec. 702, W. & I.C.).

Requires a referee or judge, at the time a dispositional order is made, to determine that the minor, and, if present, his parent or guardian understand the nature and effect of the order and are aware of their legal rights and privileges, including the

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SB 1094 (Gregorio)
Page Three

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right to further proceedings where appropriate to the case (Sec. 702.3, W. & I.C.).

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Provides that a person (or his parent or guardian acting in his behalf) ordered returned to the Youth Authority (under provisions of law authorizing continued detention of dangerous persons) may, within 10 days of such an order, file a written demand that the question of his physical danger to the public be tried by a jury in the superior court of the county in which he was committed. Requires the court to assemble a jury, not less than 4 nor more than 30 days following such demand, to determine whether the minor is physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality. Prohibits the use of the prior court order of continued detention and requires the trial to be conducted pursuant to the law applicable to felony actions (Sec. 1801.5, W. & I.C.).

PURPOSE

Require school officials to notify parents when a student is released to the custody of a peace officer.

Enlarge the warning administered at the time a minor is taken into temporary custody to include the fact that statements made by him may be used against him in a court of law and could result in his removal from home.

Authorize the detention of a minor when it is deemed necessary for his own protection.

Require that a minor be represented by counsel in a "Section 601" or "Section 602" proceeding by requiring the presence of counsel for the minor in such proceedings and prohibiting the waiver of the right by the minor.

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amended

SB 1094 (Gregorio)
Page Four

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Permit a minor, with consent of counsel, to admit to the allegations of a "Section 601" or "Section 602" petition and waive the jurisdictional hearing of such petition.

~~Specify the grounds whereby a minor may be ordered detained prior to a dispositional hearing following a jurisdictional hearing in which the minor is made a ward or dependent child of the court.~~

~~Require courts, at the time a dispositional order is made, to insure that the parties to the action are informed and are aware of the effect of the order and of their right to further review where applicable.~~

Establish a procedure for jury determination of whether a person (otherwise eligible for release from the Youth Authority), because of mental or physical deficiency, disorder, or abnormality, constitutes a physical danger to the public, thereby requiring his continued detention by the Youth Authority.

COMMENT

1. Existing law permits school officials to release a minor student to a peace officer without obtaining the prior consent of the minor's parent or guardian (34 Ops. Atty. Gen. 93). This bill would require such officials to immediately notify parents following such a release.
2. The bill requires expanded Miranda warnings for juveniles to insure they are appraised of the consequences that may follow an election to waive the right to remain silent. This type of expanded warning was recommended by the court in In Re M (1969), 75 Cal. Rptr. 1.

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3. Existing law permits a minor to be held following a detention hearing where it is deemed to be a matter of immediate and urgent necessity for the protection of minor, this bill adds such ground for detaining a minor at the time he is delivered to a probation officer after having been placed in temporary custody.

4. The amendment to Section 634 of the Welfare and Institutions Code may result in potential problems. Repeal of the first sentence may result in the denial of counsel to a minor in a "Section 600" proceeding. Existing law permits the court to appoint counsel where representation is desired but cannot be afforded. This discretion is removed by this bill in its present form.

The bill mandates the appointment of counsel for a minor, at the expense of the parent or guardian, in "Section 601" or "Section 602" proceedings where counsel has not otherwise been provided for the minor. This bill eliminates the requirement that the court determine whether the parent or guardian has the ability to pay for counsel, yet imposes the expense for representation on such persons.

5. It is contended that the provision authorizing a minor, with consent of counsel, to admit to a "Section 601" or "Section 602" petition and waive the jurisdictional hearing will result (in proper cases) in savings of time and minimization of the detention of the minor.

Existing law requires that a jurisdictional hearing take place within 15 days following the detention hearing where the minor is ordered detained. It is with respect to this 15 day period that reduction of the detention period would take place.

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6. The amendment to Section 702 of the Welfare and Institutions Code will have the effect of establishing uniform criteria for the determination of detention or release of a minor, regardless of the stage in the juvenile court proceedings at which the determination is made. 1
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7. Existing law permits continued detention of wards in custody of the Youth Authority for successive 2 year periods where the ward is found to be "physically dangerous to the public" (Sec. 1802, W. & I.C.).

(2)
If the provisions of this bill which require jury determination of the "danger" question are adopted, an increased use of "Section 1780" petitions may result to transfer persons, deemed "dangerous to the public," to state prison by the Youth Authority. Should the jury provisions of this bill also apply to such proceedings?

(A)
8. This bill and SB 6, which has been passed by this committee, both amend Section 528 of the Welfare and Institutions Code. If this bill is passed, it should be "double-joined" to remove any conflict.

(A)
9. This bill and SB 462, which has been passed by this committee, both amend Section 534 of the Welfare and Institutions Code. If this bill is passed, it should be "double-joined" to remove any conflict.

SB 1094 (Gregorio)
As Amended June 23
Education/Welfare and Institutions Codes

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JUVENILE COURT LAW

HISTORY

Source: State Bar

Prior Legislation: None

Support: Unknown

Opposition: Calif. D.A.'s & P.O.'s Ass'n.

DIGEST

Requires school officials who release a minor student to a peace officer for the purpose of removing the student from school premises to take immediate steps to notify the parent, guardian, or responsible relative of the student of the release to the peace officer and the location to which he is reportedly being taken (Sec. 13013, Ed. C.).

Expands the content of the warning which peace officers are required to give a minor being taken into temporary custody to include a warning that "...anything he says can be used against him in a court of law and can cause him to be removed from his home..." when there is reasonable cause to believe he is a "Section 601" or "Section 602" minor or has violated an order of, or escaped from any commitment ordered by, the juvenile court (Sec. 625, W. & I.C.).

Authorizes a probation officer to continue the detention of a minor who has been delivered into his custody, after having been taken into temporary custody, when it is a matter of immediate and urgent necessity for the protection of the minor (subl. (d), Sec. 628, W. & I.C.).

(More)

Requires that a minor be represented by counsel in "Section 601" or "Section 602" proceedings and eliminates the right of a minor to intelligently waive his right to such counsel. Requires the court to appoint counsel for the minor at the expense of the parent or guardian if they do not furnish counsel to the minor, and eliminates the requirement that the court determine the ability of the parent or guardian to pay prior to appointing counsel for the minor at their expense. Requires, rather than permits, the court to fix the compensation to be paid by a county for counsel, other than the Public Defender, appointed when a conflict of interest between a parent or guardian and minor requires the presence of additional counsel. (Sec. 634, W. & I.C.)

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Permits a minor, at the detention hearing or any time thereafter, to admit, in court, with the consent of counsel, the allegations of a "Section 601" or "Section 602" petition and waive the jurisdictional hearing (Sec. 657, W. & I.C.).

Provides that a person (or his parent or guardian acting in his behalf) ordered returned to the Youth Authority (under provisions of law authorizing continued detention of dangerous persons) may, within 10 days of such an order, file a written demand that the question of his physical danger to the public be tried by a jury in the superior court of the county in which he was committed. Requires the court to assemble a jury, not less than 4 nor more than 30 days following such demand, to determine whether the minor is physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality. Prohibits the use of the prior court order of continued detention and requires the trial to be conducted pursuant to the law applicable to felony actions. (Sec. 1801.5, W. & I.C.)

(More)

PURPOSE

Require school officials to notify parents when a student is released to the custody of a peace officer.

Enlarge the warning administered at the time a minor is taken into temporary custody to include the fact that statements made by him may be used against him in a court of law and could result in his removal from home.

Authorize the detention of a minor when it is deemed necessary for his own protection.

Require that a minor be represented by counsel in a "Section 601" or "Section 602" proceeding by requiring the presence of counsel for the minor in such proceedings and prohibiting the waiver of the right by the minor.

Permit a minor, with consent of counsel, to admit to the allegations of a "Section 601" or "Section 602" petition and waive the jurisdictional hearing of such petition.

Establish a procedure for jury determination of whether a person (otherwise eligible for release from the Youth Authority), because of mental or physical deficiency, disorder, or abnormality, constitutes a physical danger to the public, thereby requiring his continued detention by the Youth Authority.

COMMENT

1. Existing law permits school officials to release a minor student to a peace officer without obtaining the prior consent of the minor's parent or guardian (34 Ops. Atty. 93). This bill would require such officials to immediately notify parents following such a release.

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2. The bill requires expanded Miranda warnings for juveniles to insure they are appraised of the consequences that may follow an election to waive the right to remain silent. This type of expanded warning was recommended by the court in In Re M (1969), 75 Cal. Rptr. 1.
 3. Existing law permits a minor to be held following a detention hearing where it is deemed to be a matter of immediate and urgent necessity for the protection of minor. This bill adds such ground for detaining a minor at the time he is delivered to a probation officer after having been placed in temporary custody.
 4. The amendment to Section 634 of the Welfare and Institutions Code may result in potential problems. Repeal of the first sentence may result in the denial of counsel to a minor in a "Section 600" proceeding. Existing law permits the court to appoint counsel where representation is desired but cannot be afforded. This discretion is removed by this bill in its present form.

The bill mandates the appointment of counsel for a minor, at the expense of the parent or guardian, in "Section 601" or "Section 602" proceedings where counsel has not otherwise been provided for the minor. This bill eliminates the requirement that the court determine whether the parent or guardian has the ability to pay for counsel, yet imposes the expense for representation on such persons.

5. It is contended that the provision authorizing a minor, with consent of counsel, to admit to a "Section 601" or "Section 602" petition and waive the jurisdictional hearing will result (in proper cases) in savings of time and minimization of the detention of the minor.

(More)

Existing law requires that a jurisdictional hearing take place within 15 days following the detention hearing where the minor is ordered detained. It is with respect to this 15 day period that reduction of the detention period would take place.

6. Existing law permits continued detention of wards in custody of the Youth Authority for successive 2 year periods where the ward is found to be "physically dangerous to the public" (Sec. 1802, W. & I.C.).

If the provisions of this bill which require jury determination of the "danger" question are adopted, an increased use of "Section 1780" petitions may result to transfer persons, deemed "dangerous to the public," to state prison by the Youth Authority. Should the jury provisions of this bill also apply to such proceedings?

7. This bill and SB 6, which has been passed by this committee, both amend Section 628 of the Welfare and Institutions Code. If this bill is passed, it should be "double-joined" to remove any conflict.
8. This bill and SB 462, which has been passed by this committee, both amend Section 634 of the Welfare and Institutions Code. If this bill is passed, it should be "double-joined" to remove any conflict.
9. This bill and SB 1492, which is before the committee today, both add Section 1801.5 to the Welfare and Institutions Code relating to the same subject matter.

SB 1492 implements civil procedure, rather than criminal procedure, in the trial of the question of "danger."



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RECEIVED
AUG 31 1971

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE

Bill Analysis

Work Sheet

RE: Bill No. _____

SB 1094 - Prepared

Please complete this form and return it to the Assembly Committee on Criminal Justice as soon as possible.

1. Origin of the bill:

(a.) What is the source of the bill? (What person, organization or governmental entity, if any, requested introduction?)

State Bar

(b.) Has a similar bill been before either this or a previous session of the Legislature? If so, please identify the session, bill number and disposition of the bill.

1971 session { *SB 6 - Assn CJ*
SB 462 - enrollment
SB 1492 - Assembly, not assigned

(c.) Has there been an interim committee report on the bill? If so, please identify the report.

NO

2. Problem or deficiency in the present law which the bill seeks to remedy:

See attachment

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by the committee staff.

4. Hearing:

(a.) Approximate amount of time necessary for hearing.

1 hour

(b.) Names of witnesses to testify at the hearing.

Harold Bradford, State Bar

(c.) Preference for date of hearing.

SENATE BILL 1094

ANALYSIS AND DISCUSSION

Background

Senate Bill 1094 originated in 1969 Conference Resolutions 8-5, 8-8, 8-13, 8-14 and 8-16 and 1970 Conference Resolutions 2-4, 2-5, and 2-6. After study and report by the Committee on Juvenile Justice, the Board of Governors of the State Bar of California in February, 1971, placed these items on its 1971 Legislative Program.

Statement of Reasons

Senate Bill 1094 adds Section 13013 to the Education Code, adds Sections 702.3 and 1801.5 to the Welfare and Institutions Code and amends Sections 625, 628, 634, 657 and 702 of the Welfare and Institutions Code, relating to minors and proceedings in the juvenile courts.

The proposed addition of Section 13013 to the Education Code would require school officials to immediately notify the parent, guardian or responsible relative when a minor has been removed from school by a peace officer. Under present law, a school principal has the authority to release a minor pupil to a peace officer without first obtaining the consent of the child's parents (34 Ops. Atty. GEN. 93). Parents of minors have every reason to believe that during school hours their children are in school. Although the police have the duty to notify parents when they have a minor in custody (Section 627, Welfare and Institutions Code), there can be a considerable time lag between the minor's removal and the notification to the parents. Furthermore, the child may be removed solely for interrogation, without being placed in custody. Hence, the addition of Section 13013 to the Education Code would give parents the benefit of immediate notification of their child's whereabouts, even when the minor has been released to an officer for interrogation only.

~~Proposed amendment to Section 625, Welfare and Institutions Code, is designed to clarify the Miranda warnings as to the right to remain silent so that they may be more meaningful to juveniles. No juvenile can appreciate the consequences of electing to not remain silent until the consequences appear immediate; this is the reason that the amendment would require that the warning to the juvenile explicitly include the statement that the juvenile may be taken from his home as a result of his determination not to remain silent. (See: In re Butterfield, 253C.A. 2d 794 (1967)). This proposed amendment is consonant with the recommendation in In re M., 75 Cal.Rptr.1, footnote 13, (1969), that police give Miranda warnings, "in terms that reflect the language and experience of today's juveniles".~~

Proposed amendment to Section 628(d), Welfare and Institutions Code, would authorize the probation officer to retain a juvenile offender in custody, where the continued detention is a matter of immediate and urgent necessity for the protection of the minor. This amendment to Section 628(d) conforms with Section 635, Welfare and Institutions Code, which provides that the court may detain a minor for his own protection. Present provisions of Section 628, Welfare and Institutions Code, do not provide for detention of a minor, for example, when the minor is suicidal or when the minor has been threatened with bodily harm.

Proposed amendment to Section 634, Welfare and Institutions Code, would require that a minor be represented by counsel in all cases under Welfare and Institution Code Sections 601 and 602, and would prohibit waiver of counsel by minors. Under present Section 634, Welfare and Institutions Code, a minor is entitled to representation by court appointed counsel in delinquency proceedings if the minor or his parent or guardian requests and cannot afford counsel pursuant to the mandate of In Re Gault, 387 U.S. 1 (1967). However, the section presently provides that such counsel need not be appointed if "there is a knowing and intelligent waiver" by the minor of the right to counsel. The proposed amendment eliminates this exception and the difficult problems which the determination of waiver by a juvenile poses for the court by making appointment of counsel for a minor mandatory in delinquency proceedings under Sections 601 and 602, Welfare and Institutions Code. A minor who has been deemed by law to be incompetent to assess the alternatives involved in contractual situations can not clearly understand and knowingly and intelligently waive his right to counsel; a minor can not realistically appraise the court process he faces, which quite likely involve incarceration and removal from his family. The provisions that the court may appoint counsel at the expense of the parent or guardian, and that the court may in its discretion appoint counsel for a minor or his parents or guardian or both when a conflict of interests precludes one attorney from representing both are retained.

Proposed amendment to Section 657, Welfare and Institutions Code, would permit a minor with the consent of counsel to admit the allegations of a petition under Section 601 and 602, Welfare and Institutions Code, and waive the jurisdictional hearing. This amendment would allow the court and counsel to concentrate their efforts immediately on the dispositional aspects of the case in the event that the allegations in the petition are admitted. In proper cases, this amendment would result in the saving of time, avoidance of confusion and minimization of the period of detention. The rights of the minor are protected by the requirement of consent of counsel.

The proposed amendment to Section 702, Welfare and Institutions Code, would require the juvenile court, when detaining a minor prior to the court's disposition of the case to base such detention on the statutory grounds set forth in Section 635, Welfare and Institutions Code. This amendment is designed, therefore, to provide uniform criteria for the determination of detention or release of a minor, regardless of the stage in the juvenile court proceedings at which such determination is to be made.

The addition of Section 702.3 to the Welfare and Institutions Code would require the judge or referee to determine that a minor, and if present, his parent or guardian, understand the nature and effect of such order and their rights and privileges. The necessity for the addition of this section arises from the fact that minors and their parents or guardians are unfortunately too often unaware of certain rights, such as the right to appeal from the final order of the judge, or in the case of a hearing before a referee, the right to seek a rehearing before a judge.

The addition of Section 1801.5 to the Welfare and Institutions Code would permit a jury trial on the issue of whether a minor is physically dangerous to the public, for purposes of extended control by the Youth Authority. Present law allows continued incarceration of wards of the Youth Authority for successive two or five year periods if the ward is found by the court to be "physically dangerous to the public". Despite the seriousness of this finding and the prospect of a life-time confinement, there is no provision for trial by jury on this question. (See: In re Valenzuela, 275 C.A.2d 483, (1969)).

In contrast, however, commitment procedures governing mentally disordered sex offenders (Welfare and Institutions Code, Section 6318), narcotics addicts (Welfare and Institutions Code, Section 3108) and mentally ill persons (Welfare and Institutions Code, Section 5303) provide for trial by jury. This distinction raises a serious question as to the validity of the present California law with regard to the Fourteenth Amendment's Equal Protection clause. (See: Baxstrom v. Herold, 383 U.S. 107 (1966)).

This proposed section is modeled after the narcotics addiction statute (Welfare and Institutions Code, Section 3108). Further, this suggested statutory addition conforms with recent case law concerning the revocation of probation (See: People v. Smith, 12 C.A. 3d 621 (1970)).

BILL DIGEST

ASSEMBLY COMMITTEE ON
CRIMINAL JUSTICE

Bill: SB 1094

Hearing Date: 10/12/71

AUTHOR: Gregorio

SUBJECT: Juvenile Court Law

BILL DESCRIPTION:

This bill contains ^{four} ~~five completely~~ unrelated provisions affecting juveniles and the juvenile court law.

Removal of a Minor From School: The first section of the bill requires school officials to immediately notify a minor's parents when they release the minor to the custody of a peace officer.

Detention of a Minor: Under existing law, a minor can be detained in custody by a probation officer if the detention is a "matter of immediate and urgent necessity for the protection of the person or property of another". This bill extends this provision to include the protection of the minor himself. ~~(An identical provision was contained in Assembly Bill 911 - Brown, which has passed out of this Committee and is presently in Senate Judiciary.)~~

Representation by Counsel: Under existing law, minors in 600 proceedings are entitled to appointed counsel if they desire but are unable to afford counsel. This bill repeals this provision.

Counsel must be appointed in 601 and 602 cases unless the minor waives that right. This bill repeals the right of a minor to waive counsel in a 601 or 602 case and provides that they must be represented by counsel.

Admission of the Allegations in a Petition: This bill provides that a minor can admit, with the consent of counsel, the allegations contained in a petition at the detention hearing. This would preclude the necessity of

(CONTINUED ON PAGE 2)

Juvenile Court Law

having a formal jurisdictional hearing at a later date.

Prolonged Detention - Youth Authority Wards:
This bill provides that Youth Authority Wards who are detained beyond their normal discharge date pursuant to a court order because they have been found dangerous to the public because of a mental disorder are entitled to a jury trial on the issue of whether they are in fact dangerous because of a mental disorder. ~~(This provision is identical to that contained in Assembly Bill 1845-Miller and Senate Bill 1492-Moscone, both of which have passed this committee.)~~

COMMENTS:

Section 4 of this bill repeals the existing language which presently entitles a 600 minor to appointed counsel if he is indigent. Was this intended by the author, and if so, why?

Section 4 of the bill also provides that a 601 or 602 minor can no longer waive counsel. In effect, they must be represented by an attorney even if they have the capacity to intelligently waive counsel and desire to do so. Why should a minor who has that capacity be precluded from waiving counsel, particularly when he realizes that the attorney appointed to represent him may be an incompetent?

Under this provision of the bill, a minor can be forced to accept representation by an attorney he does not want, does not need, and who cannot in fact really help him. Then the minor or his parents must pay for the attorney if they can afford it.



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Enrolled (Governor) Materials

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ANN M. MACKAY
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3021 STATE CAPITOL
SACRAMENTO 95814

110 STATE BUILDING
LOS ANGELES 90012

Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California
November 2, 1971

Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California

GERALD ROSS ADAMS
DAVID D. ALVES
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JIMMIE WING
DEPUTIES

REPORT ON ENROLLED BILL

S. B. 1094 GREGORIO. Amends and adds various secs.,
Ed. C. and W.& I.C., re minors.

SUMMARY: See Legislative Counsel's Digest on
attached copy of bill as adopted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

COMMENTS: This bill and S. B. 1492, which is before
the Governor, both add a Section 1801.5 to the
Welfare and Institutions Code. The Section 1801.5
of the Welfare and Institutions Code contained in
both bills is substantively identical. Thus, no
conflict will result if the Governor signs both
this bill and S.B. 1492, or if both bills otherwise
become statutes (subd. (a), Sec. 10, Art. IV, Cal.
Const.).

George H. Murphy
Legislative Counsel

By 
Carl M. Arnold
Deputy Legislative Counsel

CMA:rb

Two copies to:

Honorable Arlen Gregorio, and
Honorable George R. Moscone,
pursuant to Joint Rule 34.

AMENDED IN ASSEMBLY OCTOBER 18, 1971

AMENDED IN SENATE JULY 20, 1971

AMENDED IN SENATE JUNE 23, 1971

SENATE BILL

No. 1094

Introduced by Senator Gregorio

April 13, 1971

REFERRED TO COMMITTEE ON EDUCATION

An act to add Section 13013 to the Education Code, and to amend Sections 628, 634, 657 of, and to add Section 18015 to, the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as amended, Gregorio (Ed.). Minors.

Amends and adds various secs., Ed.C., and W. & I.C.

Makes various changes in procedures relating to minors under juvenile court law as well as minors taken out of school by peace officers.

Incorporates additional changes to Sec. 628, W. & I.C., proposed by SB 6, to be operative only if SB 6 and this bill are both chaptered, and this bill is chaptered after SB 6.

Incorporates additional changes to Sec. 634, W. & I.C., proposed by SB 462, to be operative only if SB 462 and this bill are both chaptered, and this bill is chaptered after SB 462.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13013 is added to the Education Code,
- 2 to read:
- 3 13013. When a principal or other school official releases a
- 4 minor pupil of such school to a peace officer for the purpose of
- 5 removing the minor from the school premises, such school of-
- 6 ficial shall take immediate steps to notify the parent, guardian,
- 7 or responsible relative of the minor regarding the release of the
- 8 minor to such officer, and regarding the place to which the
- 9 minor is reportedly being taken.
- 10 SEC. 2. Section 628 of the Welfare and Institutions Code is
- 11 amended to read:
- 12 628. Upon delivery to the probation officer of a minor who
- 13 has been taken into temporary custody under the provisions

| | |
|--------------------------------------|--------------------------|
| ENROLLED BILL MEMORANDUM TO GOVERNOR | DATE November 3, 1971 |
| BILL NO. SB 1094 | AUTHOR Gregorio |

Vote—Senate

Ayes— 22

Noes— 13—Bradley, Cologne, Coombs, Cusanovich, Deukmejian, Harmer, Lagomarsino, Marler, Richardson, Schrade, Stevens, Walsh and Whetmore

Vote—Assembly

Ayes—

Noes— Unanimous

SB 1094 makes various changes in procedures relating to minors under the juvenile court law as well as minors taken out of school by peace officers.

The bill was introduced at the request of the State Bar of California.

The Department of the Youth Authority recommends approval.

The Department of Education recommends approval.

Concurrence in Assembly amendments: Unanimous

| | |
|---------------------------|---|
| Recommendation APPROVE | Legislative Secretary <i>[Signature]</i> |
|---------------------------|---|

GOVERNOR'S OFFICE ENROLLED BILL REPORT REQUEST

Date * 10-26-71

Bill No. ~~AB~~ 1094
SB

Date Due _____

* Please reply within five working days of above date unless a different due date is indicated.

- EDUCATION SECTION
- LEGAL AFFAIRS SECTION
- _____

OK-1216T

The above bill has been received by this office for Governor Reagan's consideration.
An analysis of this bill, together with your recommendations will be appreciated.

LEGISLATIVE SECTION

ENROLLED BILL REPORT

| | |
|---|-------------------------------|
| AGENCY HUMAN RELATIONS | BILL NUMBER SB 1094 |
| DEPARTMENT, BOARD OR COMMISSION Youth Authority | AUTHOR Gregorio |

SUBJECT: This bill makes various changes in procedures relating to minors under the Juvenile Court Law as well as minors being taken out of school by peace officers. It would do the following: (1) require that the principal or other school official notify the parent, guardian or responsible relative when the school has released a student to a peace officer for removal from school; (2) require the principal or school official to take immediate steps to notify and advise the parent, guardian or responsible relative where the minor is being taken by the peace officer; (3) add to the criteria for the detention of a minor that the minor may be detained for his own protection as well as the protection of the property or person of another; (4) add to the Juvenile Court Law that a juvenile who is the subject of a petition may admit to the allegations in the petition at the detention hearing and waive his right to a jurisdictional hearing; and (5) provide that when a person has been declared a "dangerous person" under the provisions of the Dangerous Persons Act (Section 1800-1803, Welfare and Institutions Code), he is entitled to a jury trial if he is 18 years of age or older.

HISTORY, SPONSORSHIP & RELATED LEGISLATION: The sponsorship of this bill is unknown. Related Legislation - AB 1103, 1970 Regular Session
SB 6, SB 1492 & AB 1845, 1971 Regular Session.

ANALYSIS:

A. Specific Findings

The author has attempted to cover many areas in this one bill. The provision added to the Education Code which requires the principal or school official to notify the parents, guardian or responsible relative when a peace officer has removed a student from school gives the school official some protection. Although the present law does not require the schools to notify parents in this regard, many of the California schools do this. When the schools fail to so notify they have been subject to much criticism even though they are not required by law to do so. In addition to the criteria for which a probation officer may detain a minor, the element of "protection" of the minor aligns the probation officer's authority with that of the juvenile court. Under the present law, the juvenile court may consider, when ordering detention, the element of "for the protection of the minor." The provision that the juvenile who is the subject of a petition may admit to the allegations at a detention hearing and waive the jurisdictional hearing should expedite the courts crowded calendar. Under present law, there must be three distinct separate hearings. This bill would allow the court to move directly from the detention hearing into a dispositional hearing. The provision for the jury trial for persons who are declared "dangerous persons" under the Dangerous Persons Act aligns the law with that of two recent California Supreme Court decisions. These cases are: the Harry Coley Smith Case, 5 C3 313, and the Gary W. Case, 5 C3 296. SB 1492 (Moscone) and AB 1845 (Miller) have identical provisions.

B. Fiscal Effects

There would be no fiscal impact to the State.

Sign the bill.

COMMITTEE DIRECTOR

Alan J. Breed

DATE
10/28/71

[Handwritten Signature] 10-28-71

WILSON RILES
Superintendent of Public Instruction
and Director of Education



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO, 95814

October 29, 1971

The Honorable Ronald Reagan
Governor, State of California
State Capitol
Sacramento, California 95814

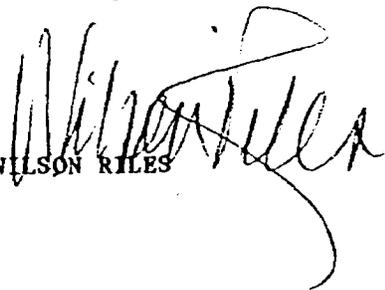
Dear Governor Reagan:

RE: SENATE BILL NO. 1094
RECOMMENDATION: APPROVE

This measure requires that the school official who releases a pupil to a peace officer for purpose of removing that pupil from school must notify the parent of such release and of the place the minor is reportedly being taken.

I recommend your approval of this bill.

Sincerely,


WILSON RILES

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San Mateo, California 94403
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Please reply to:
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Sacramento, Calif. 95814
 P. O. Box 509
San Mateo, Calif. 94403

Senator
Arlen Gregorio
Twelfth District
San Mateo County

Committees
Local Government
Vice Chairman
Education
Judiciary
Natural Resources
and Wildlife
Public Utilities and
Corporations

October 29, 1971

Honorable Ronald R. Reagan
Governor of California
State Capitol
Sacramento, California 95814

Re: Senate Bill 1094

Dear Governor Reagan:

Senate Bill 1094 was introduced at the request of the State Bar of California. It adds Section 13013 to the Education Code and amends Sections 628 and 657 of, and adds Section 1801.5 to, the Welfare and Institutions Code.

The proposed addition of Section 13013 to the Education Code would require school officials to immediately notify the parent, guardian or responsible relative when a minor had been removed from school by a peace officer. Under present law, a school principal has the authority to release a minor pupil to a peace officer without first obtaining the consent of the child's parents (34 Ops. Atty. Gen. 93). Parents of minors have every reason to believe that during school hours their children are in school. Although the police have the duty to notify parents when they have a minor in custody (Section 627, Welfare and Institutions Code) there can be a considerable time lag between the minor's removal and the notification to the parents. Furthermore, the child may be removed solely for interrogation, without being placed in custody. Hence, the addition of Section 13013 to the Education Code would give parents the benefit of immediate notification of their child's whereabouts, even when the minor has been released to an officer for interrogation only.

Proposed amendment to Section 628 (d), Welfare and Institutions Code, would authorize the probation officer to retain a juvenile offender in custody, where the continued detention is a matter of immediate and urgent necessity for the protection of the minor. This amendment to Section 628(d) conforms with Section 635, Welfare and Institutions Code, which provides that the court may detain a minor for his own protection. Present provisions of Section 628, Welfare and Institutions Code, do not provide for detention of a minor, for example, when the

Page 2
October 29, 1971
Governor Ronald Reagan

minor is suicidal or when the minor has been threatened with bodily harm.

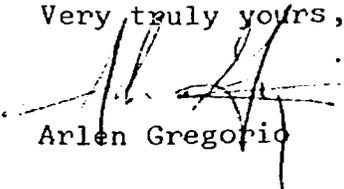
Proposed amendment to Section 657, Welfare and Institutions Code, would permit a minor with the consent of counsel to admit the allegations of a petition under Section 601 and 602, Welfare and Institutions Code, and waive the jurisdictional hearing. This amendment would allow the court and counsel to concentrate their efforts immediately on the dispositional aspects of the case in the event that the allegations in the petition are admitted. In proper cases, this amendment would result in the saving of time, avoidance of confusion and minimization of the period of detention. The rights of the minor are protected by the requirement of consent of counsel.

The addition of Section 1801.5 to the Welfare and Institutions Code would permit a jury trial on the issue of whether a minor is physically dangerous to the public, for purposes of extended control by Youth Authority. Present law allows continued incarceration of wards of the Youth Authority for successive two or five year periods if the ward is found by the court to be "physically dangerous to the public." Despite the seriousness of this finding and the prospect of a lifetime confinement, there is no provision for trial by jury on this question. (See: In re Valenzuela, 275 C.A. 2d 483, (1969)).

In contrast, however, commitment procedures governing mentally disordered sex offenders (Welfare and Institutions Code, Section 6318), narcotics addicts (Welfare and Institutions Code, Section 3108) and mentally ill persons (Welfare and Institutions Code, Section 5303) provide for trial by jury. This distinction raises a serious question as to the validity of the present California law with regard to the Fourteenth Amendment's Equal Protection clause. (See: Baxstrom v Herold, 383 U.S. 107 (1966)).

The bill was substantially amended in the Assembly to remove opposition to the bill. I know of no formal opposition to the bill in its present form. The Senate passed the measure 22-13 and the Assembly voted its approval 46-0. I respectfully request your signature on this measure.

Very truly yours,



Arlen Gregorio

AG:ph



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DISTRICT ATTORNEYS' ASSOCIATION OF CALIFORNIA
CALIFORNIA PEACE OFFICERS' ASSOCIATION

May 13, 1971

Honorable Arlen F. Gregorio
State Senate
State Capitol
Sacramento, California

RECEIVED
MAY 13 1971

Re: SB 1094

Arlen
Dear Senator Gregorio:

The Law and Legislative Committees of the California District Attorneys' and Peace Officers' Associations have considered the above-mentioned bill. The committee has voted to go on record in opposition to your bill.

If I can be of any assistance in explaining this position or if you would like to discuss the committee's objection, please do not hesitate to call upon me.

Sincerely,

D. LOWELL JENSEN, Chairman
District Attorney of Alameda County

By

Carl
Carl W. Anderson
Deputy District Attorney
800 Forum Building
Sacramento, California
Telephone 447-7212

P.S. I have discussed some of our problems with Dave Price already & will detail it for him soon. We are not so concerned about the attorney as we are about the wording of administration. Perhaps we can work something out *Carl*

October 29, 1971

C
O
P
Y
Honorable Ronald R. Reagan
Governor of California
State Capitol
Sacramento, California 95814

Re: Senate Bill 1094

Dear Governor Reagan:

Senate Bill 1094 was introduced at the request of the State Bar of California. It adds Section 13013 to the Education Code and amends Sections 628 and 657 of, and adds Section 1801.5 to, the Welfare and Institutions Code.

The proposed addition of Section 13013 to the Education Code would require school officials to immediately notify the parent, guardian or responsible relative when a minor had been removed from school by a peace officer. Under present law, a school principal has the authority to release a minor pupil to a peace officer without first obtaining the consent of the child's parents (34 Ops. Atty. Gen. 93). Parents of minors have every reason to believe that during school hours their children are in school. Although the police have the duty to notify parents when they have a minor in custody (Section 627, Welfare and Institutions Code) there can be a considerable time lag between the minor's removal and the notification to the parents. Furthermore, the child may be removed solely for interrogation, without being placed in custody. Hence, the addition of Section 13013 to the Education Code would give parents the benefit of immediate notification of their child's whereabouts, even when the minor has been released to an officer for interrogation only.

Proposed amendment to Section 628 (d), Welfare and Institutions Code, would authorize the probation officer to retain a juvenile offender in custody, where the continued detention is a matter of immediate and urgent necessity for the protection of the minor. This amendment to Section 628(d) conforms with Section 635, Welfare and Institutions Code, which provides that the court may detain a minor for his own protection. Present provisions of Section 628, Welfare and Institutions Code, do not provide for detention of a minor, for example, when the

Page 2
October 29, 1971
Governor Ronald Reagan.

minor is suicidal or when the minor has been threatened with bodily harm.

Proposed amendment to Section 657, Welfare and Institutions Code, would permit a minor with the consent of counsel to admit the allegations of a petition under Section 601 and 602, Welfare and Institutions Code, and waive the jurisdictional hearing. This amendment would allow the court and counsel to concentrate their efforts immediately on the dispositional aspects of the case in the event that the allegations in the petition are admitted. In proper cases, this amendment would result in the saving of time, avoidance of confusion and minimization of the period of detention. The rights of the minor are protected by the requirement of consent of counsel.

The addition of Section 1801.5 to the Welfare and Institutions Code would permit a jury trial on the issue of whether a minor is physically dangerous to the public, for purposes of extended control by Youth Authority. Present law allows continued incarceration of wards of the Youth Authority for successive two or five years periods if the ward is found by the court to be "physically dangerous to the public." Despite the seriousness of this finding and the prospect of a lifetime confinement, there is no provision for trial by jury on this question. (See: In re Valenzuela, 275 C.A. 2d 403, (1969)).

In contrast, however, commitment procedures governing mentally disordered sex offenders (Welfare and Institutions Code, Section 6318), narcotics addicts (Welfare and Institutions Code, Section 3108) and mentally ill persons (Welfare and Institutions Code, Section 5303) provide for trial by jury. This distinction raises a serious question as to the validity of the present California law with regard to the Fourteenth Amendment's Equal Protection clause. (See: Baxstrom v Herold, 393 U.S. 107 (1968)).

The bill was substantially amended in the Assembly to remove opposition to the bill. I know of no formal opposition to the bill in its present form. The Senate passed the measure 22-13 and the Assembly voted its approval 46-0. I respectfully request your signature on this measure.

Very truly yours,

Arlen Gregorio

AG:ph

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

Sacramento, California
November 2, 1971

Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California

REPORT ON ENROLLED BILL

S. B. 1094 GREGORIO. Amends and adds various secs.,
Ed. C. and W.& I.C., re minors.

SUMMARY: See Legislative Counsel's Digest on
attached copy of bill as adapted.

FORM: Approved.

CONSTITUTIONALITY: Approved.

TITLE: Approved.

COMMENTS: This bill and S. B. 1492, which is before
the Governor, both add a Section 1601.5 to the
Welfare and Institutions Code. The Section 1601.5
of the Welfare and Institutions Code contained in
both bills is substantively identical. Thus, no
conflict will result if the Governor signs both
this bill and S.B. 1492, or if both bills otherwise
become statutes (subd. (a), Sec. 10, Art. IV, Cal.
Const.).

George H. Murphy
Legislative Counsel

By
Carl M. Arnold
Deputy Legislative Counsel

CMA:rb

Two copies to:

Honorable Arlen Gregorio, and
Honorable George R. Moscone,
pursuant to Joint Rule 34.

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

Sacramento, California
December 10, 1971

Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California

REPORT ON ENROLLED BILL

A.B. 850

RYAN. Amends Sec. 11161.5, Pen. C.,
amends and adds various secs., W. & I.C.,
re child abuse.

SUMMARY:

See Legislative Counsel's Digest on
attached copy of bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

Both this bill and A.B. 2887, now
before the Governor, amend Section 600 of the
Welfare and Institutions Code. However, each
bill incorporates all the substantive changes
to Section 600 of the Welfare and Institutions
Code made by the other bill. A.B. 2887, now-
ever, makes additional technical, clarifying
nonsubstantive changes in subdivision (a) of
Section 600. Thus the order of their chapter-
ing is immaterial, although if this bill is
chapters first the technical changes will be
preserved.

COPY

Report on A.B. 850 - p. 2

This bill and S.B. 1094, which has already been signed by the Governor (Ch. 1389, Stats. 1971), amend Section 628 of the Welfare and Institutions Code. This bill, however, incorporates the changes to Section 628 of the Welfare and Institutions Code made by S.B. 1094 and makes additional changes thereto. Thus, if signed by the Governor, the changes to Section 628 of the Welfare and Institutions Code proposed by both this bill and S.B. 1094 (Ch. 1389, Stats. 1971) would be given effect.

This bill, S.B. 456, and S.B. 471, the latter two of which have already been signed by the Governor (Ch. 640 and Ch. 639, Stats. 1971, respectively), all amend Section 681 of the Welfare and Institutions Code. S.B. 456 (Ch. 640, Stats. 1971) incorporated the changes made in Section 681 of the Welfare and Institutions Code by S.B. 471 (Ch. 639, Stats. 1971) and this bill incorporates the changes in Section 681 of the Welfare and Institutions Code made by S.B. 456 and S.B. 471 and makes additional changes thereto. Thus, if signed by the Governor, the changes to Section 681 of the Welfare and Institutions Code proposed by this bill, S.B. 456 (Ch. 640, Stats. 1971) and S.B. 471 (Ch. 639, Stats. 1971) would be given effect.

This bill and A.B. 698, which has already been signed by the Governor (Ch. 1593, Stats. 1971), amend Section 727 of the Welfare and Institutions Code. This bill, however, incorporates the changes to Section 727 of the Welfare and Institutions Code made by A.B. 698 and makes additional changes thereto. Thus, if signed by the Governor, the changes to Section 727 of the Welfare and Institutions Code proposed by both this bill and A.B. 698 (Ch. 1593, Stats. 1971) would be given effect.

COPY

Report on A. B. 850 - p. 3

This bill and S.B. 361, which has already been signed by the Governor (Ch. 635, Stats. 1971), both amend Section 11161.5 of the Penal Code. This bill, however, incorporates the changes to Section 11161.5 of the Penal Code made by S.B. 361 and makes additional changes thereto. Thus, if signed by the Governor, the changes to Section 11161.5 of the Penal Code proposed by both this bill and S.B. 361 (Ch. 635, Stats. 1971) would be given effect.

Very truly yours,

George H. Murphy
Legislative Counsel

By
James A. Marsala
Deputy Legislative Counsel

JAM:db

Two copies to:

Honorable Leo J. Ryan,
Honorable Peter J. Schabarum,
Honorable Paul Priolo,
Honorable Gordon Cologne,
Honorable Joseph M. Kennick,
Honorable George R. Moscone, and
Honorable Arlen Gregorio,
pursuant to Joint Rule 34.

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AUTHOR'S COPY

Date
Request No.

LEGISLATIVE COUNSEL OFFICE

1074

as introduced

Greco, G.

Bill No.

Author

Requester

Minors.

General Subject

Amends and adds various parts of the
the I.C.
Makes various changes in procedures related
to minors under juvenile court law as well as allow
out of school by peace officers.

Note - Majority; Appropriation - none; Fiscal Committee

LEGISLATIVE COUNSEL

ADDITIONAL COPY

APR 7 1971

Req. #7870

An act to add Section 13013 to the Education Code, and to amend Sections 625, 628, 634, 657, 702 of, and to add Sections 702.3, and 1801.5 to, the Welfare and Institutions Code, relating to minors.

The people of the State of California do enact as follows:

Section 1. Section 13013 is added to the Education Code, to read:

13013. When a principal or other school official releases a minor pupil of such school to a peace officer for the purpose of removing the minor from the school premises, such school official shall take immediate steps to notify the parent, guardian, or responsible relative of the minor regarding the release of the minor to such officer, and regarding the place to which the minor is reportedly being taken.

Sec. 2. Section 625 of the Welfare and Institutions Code is amended to read:

625. A peace officer may, without a warrant, take into temporary custody a minor:

(a) Who is under the age of 18 years when such officer has reasonable cause for believing that such minor is a person described in Sections 600, 601, or 602, or

(b) Who is a ward or dependent child of the juvenile court or concerning whom an order has been made under Section 636 or 702, when such officer has reasonable cause for believing that person has violated an order of the juvenile court or has escaped from any commitment ordered by the juvenile court, or

(c) Who is under the age of 21 years and who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.

In any case where a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor is a person described in Section 601 or 602, or that he has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, the officer shall advise such minor that anything he says can be used against

him in a court of law and can cause him to be removed from his home and shall advise him of his constitutional rights, including his right to remain silent, his right to have counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel.

Sec. 3. Section 628 of the Welfare and Institutions Code is amended to read:

628. Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release such minor to the custody of his parent, guardian, or responsible relative unless one or more of the following conditions exist:

(a) The minor is in need of proper and effective parental care or control and has no parent, guardian, or responsible relative; or has no parent, guardian, or responsible relative willing to exercise or capable of exercising such care or control; or has no parent, guardian, or responsible relative actually exercising such care or control.

(b) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.

(c) The minor is provided with a home which 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.

(d) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the person or property of another.

(e) The minor is likely to flee the jurisdiction of the court.

(f) The minor has violated an order of the juvenile court.

(g) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

the minor or

Sec. 4. Section 634 of the Welfare and Institutions Code is amended to read:

634. When it appears to the court that the minor or his parent or guardian desires counsel but is unable to afford and cannot for that reason employ counsel, the court may appoint counsel. In a any case in which the minor is alleged to be a person described in Section 601 or 602, he shall be represented by counsel and the court shall appoint counsel for the minor if he appears at the hearing without counsel, whether he the minor is unable to afford counsel, or not, unless there is an intelligent waiver of the right of counsel by the minor, and, in the absence of such waiver, if If the parent or guardian of the minor does not furnish such counsel and the court determines that the parent or guardian has the ability to pay for counsel, for the minor, the court shall appoint counsel for the minor at the expense of the parent or guardian. In any case in which it appears to the court that there is such a conflict of interest between a parent or guardian and child that one attorney could not properly represent both, the court may appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or guardian. In a county where there is no

public defender ~~and~~ The court may shall fix the compensation to be paid by the county for service of such appointed counsel, other than the public defender.

Sec. 5. Section 657 of the Welfare and Institutions Code is amended to read:

657. Upon the filing of the petition, the clerk of the juvenile court shall set the same for hearing within 30 days, except that in the case of a minor detained in custody at the time of the filing of the petition, the petition must be set for hearing within 15 judicial days from the date of the order of the court directing such detention.

At the detention hearing, or any time thereafter, a minor who is alleged to come within the provisions of Section 601 or 602, may, with the consent of counsel, admit in court the allegations of the petition and waive the jurisdictional hearing.

Sec. 6. Section 702 of the Welfare and Institutions Code is amended to read:

702. After hearing such evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Sections 600, 601, or 602. If it finds that the minor is not such a person, it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered. If the court finds that the minor is such a person, it shall make and enter its findings and order accordingly and shall then proceed to hear evidence on the question of the proper disposition to be made of the minor. Prior to doing so, it may continue the hearing, if necessary, to receive the social study of the probation officer or to receive other evidence on its own motion or the motion of a parent or guardian for not to exceed 10 judicial days if the minor is detained during such continuance, and if the minor is not detained, it may continue the hearing to a date not later than 30 days after the date of filing of the petition. The court may, for good cause shown continue the hearing for an additional 15 days, if the minor is not detained. The court may make such order for detention of the minor or his release from detention, during the period of the continuance.

as is appropriate, but all orders to detain must be based upon an application of the criteria set forth in Section 635.

Sec. 7. Section 702.3 is added to the Welfare and Institutions Code, to read:

702.3. At the time the court makes its dispositional order, the referee or judge shall determine that the minor, and, if present, his parent or guardian, understands the nature and effect of such order, and is aware of his or their rights and privileges then permitted by law, including the right to such further proceedings as may be appropriate to the case.

Sec. 8. Section 1801.5 is added to the Welfare and Institutions Code, to read:

1801.5. If the person is ordered returned to the Youth Authority following a hearing by the court, he, or his parent or guardian on his behalf, may, within 10 days after the making of such order, file a written demand that the question of whether he is physically dangerous to the public be tried by a jury in the superior court of the county in which he was committed. Thereupon, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the demand for a jury trial. The court shall submit to the jury the questions:

Is the person physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in such trial. The trial shall be had as provided by law for the trial of felony cases.

JUN 22 1971

Req. #14513

AMENDMENTS TO SENATE BILL NO. 1094

AMENDMENT 1

In line 2 of the title of the printed bill,
strike out ", 702"

AMENDMENT 2

In lines 2 and 3 of the title strike out "Sections
702.3, and" and insert:

Section

AMENDMENT 3

On page 3, strike out lines 31 to 51, inclusive,
and on page 4, strike out lines 1 to 10, inclusive.

AMENDMENT 4

On page 3, line 11, strike out "Sec. 6" and
insert:

Sec. 6

JUL 16 1971

Doc. #10656

**AMENDMENTS TO SENATE BILL NO. 1094
AS AMENDED IN SENATE JUNE 23, 1971**

AMENDMENT 1

In Item 2 of the title of the printed bill,
as amended in Senate June 23, 1971, strike out "629."

AMENDMENT 2

On page 1, strike out lines 10 to 12, inclusive,
and on page 2, strike out lines 1 to 13, inclusive.

AMENDMENT 3

On page 2, line 16, strike out "3" and
insert:

2

AMENDMENT 4

On page 2, between lines 45 and 46, insert:

Sec. 3. Section 628 of the Welfare and Institutions Code is amended to read:

628. Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surround-

~~the~~ ing his being taken into custody and shall immediately release such minor to the custody of his parent, guardian, or responsible relative unless one or more of the following conditions exist:

(a) The minor is in need of proper and effective parental care or control and has no parent, guardian, or responsible relative; or has no parent, guardian, or responsible relative willing to exercise or capable of exercising such care or control; or has no parent, guardian, or responsible relative actually exercising such care or control.

(b) The minor is destitute ~~is not~~ provided with the necessities of life, or is not provided with a home or suitable place of abode.

(c) The minor is provided with a home which is an unfit place for him by reason of neglect, cruelty, or delinquency of either of his parents, ~~or of~~ his guardian, or other person in whose custody or care he is.

(d) Continued detention of the minor is a matter of ~~im-~~ the minor or mediate and urgent necessity for the protection of the person or property of another.

(e) The minor is likely to flee the jurisdiction of the court.

(f) The minor has violated an order of the juvenile court.

(g) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

AMENDMENT 5

On page 2, line 31, after "let the minor" insert:

and the court determines that the parent or guardian has the ability to pay for counsel

AMENDMENT 6

On page 3, between lines 10 and 11, insert:

Sec. 5. Section 634 of the Welfare and Institutions Code is amended to read:

634. When it appears to the court that the minor or his parent or guardian desires counsel but is unable to afford and cannot for that reason employ counsel, the court may appoint counsel. In a any case in which the minor is alleged to be a person described in Section 601 or 602, he shall be represented by counsel and the court shall appoint counsel for the minor if he appears at the hearing without counsel, whether he the minor is unable to afford counsel, or not, unless there is an intelligent waiver of the right of counsel by the minor; and in the absence of such waiver, if if the parent or guardian of the minor does not

furnish such counsel and the court determines that the parent or guardian has the ability to pay for counsel; for the minor and the court determines that the parent or guardian has the ability to pay for counsel, the court shall appoint counsel at the expense of the parent or guardian. In any case in which it appears to the court that there is such a conflict of interest between a parent or guardian and child that one attorney could not properly represent both, the court may appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or guardian. However, the court is under no duty to appoint separate counsel for the parents or guardians of the minor in any case in which the minor is alleged to be a person described in Section 601 or 602, unless it appears that there is a conflict of interest between the minor and his parents or guardians. In a county where there is no public defender the The court may shall fix the compensation to be paid by the county for service of such appointed counsel, other than the public defender.

AMENDMENT 7

On page 3, line 11, strike out "Sec. 5" and insert:

Sec. 6

AMENDMENT 8

On page 4, line 4, strike out "6" and insert:

AMENDMENT 9

On page 6, line 20, strike out "felony cases" and insert:

civil cases and shall require a verdict by at least three-fourths of the jury

AMENDMENT 10

On page 4, after line 20, insert:

Sec. 8. It is the intent of the Legislature, if this bill and Senate Bill No. 6 are both chaptered and amend Section 628 of the Welfare and Institutions Code, and this bill is chaptered after Senate Bill No. 6, that the amendments to Section 628 proposed by both bills be given effect and incorporated in Section 628 in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Senate Bill No. 6 are both chaptered, both amend Section 628, and Senate Bill No. 6 is chaptered before this bill, in which case Section 1 of this act shall not become operative.

Sec. 9. It is the intent of the Legislature, if this bill and Senate Bill No. 442 are both chaptered and amend section 634 of the Welfare and Institutions Code, and this bill is chaptered after Senate Bill No. 442, that the amendments to Section 634 proposed by both bills be given effect and incorporated in Section 634 in the form set forth in Section 5 of this act. Therefore, Section 5 of this act shall become operative only if this bill and Senate Bill No. 442 are both chaptered, both amend Section 634, and Senate Bill No. 442 is chaptered before this bill, in which case Section 4 of this act shall not become operative.

OCT 5 1971

*Address
desk
10/15/71*

Req. #20251

AMENDMENTS TO SENATE BILL NO. 1094
AS AMENDED IN SENATE JULY 20, 1971

AMENDMENT 1

In line 2 of the title of the printed bill, as amended in Senate July 20, 1971, strike out "634,".

AMENDMENT 2

On page 3, strike out lines 33 to 50, inclusive, on page 4, strike out lines 1 to 31, inclusive, and in line 33, strike out "Sec. 6" and insert:

Sec. 4

AMENDMENT 3

On page 4, line 45, strike out "Sec. 7" and insert:

Sec. 5

AMENDMENT 4

On page 5, line 13, strike out "Sec. 8" and insert:

Sec. 6

ARTICLE 5

On page 5, strike out lines 14 to 34, inclusive.

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WESLEY HILL
Superintendent of Public Instruction
and Director of Education



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
721 CAPITOL MALL, SACRAMENTO 95814

RECEIVED
JUN 14 1971

June 14, 1971

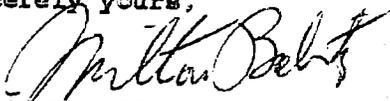
The Honorable Arlen Gregorio
Member of the Senate
Room 4089, State Capitol
Sacramento, California

Dear Senator Gregorio:

The Department of Education has studied and approves the basic concept of Senate Bill 1094.

The staff of the Department of Education is always available to discuss this or any other legislative matter with which you are concerned. If we can provide any assistance, please contact the Office of Legislative Coordination (445-0683).

Sincerely yours,


MILTON BABITZ
Chief Deputy Superintendent

MB:pa

WILSON RILES
Superintendent of Public Instruction
and Director of Education



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

October 29, 1971

The Honorable Ronald Reagan
Governor, State of California
State Capitol
Sacramento, California 95814

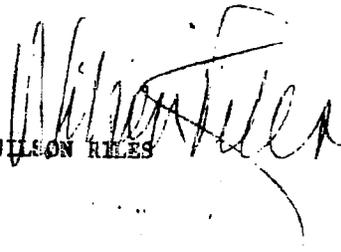
Dear Governor Reagan:

RE: SENATE BILL NO. 1094
RECOMMENDATION: APPROVE

This measure requires that the school official who releases a pupil to a peace officer for purpose of removing that pupil from school must notify the parent of such release and of the place the minor is reportedly being taken.

I recommend your approval of this bill.

Sincerely,


WILSON RILES

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BERNARD STELLA
CHIEF DEPUTY

J. GOULD
OWEN K. KUNE
RAY H. WHITAKER

KENT L. DECHAMBEAU
ERNEST K. KUNZI
STANLEY M. LOURIMORE
SHERWIN C. MACKENZIE
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PRINCIPAL DEPUTIES

ANN M. MACKAY
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SACRAMENTO 95814

110 STATE BUILDING
LOS ANGELES 90012

Legislative Counsel of California

GEORGE H. MURPHY

May 24, 1971

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JAMES L. ALVIZ
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JERRY L. BARNETT
EDWARD BERGHATSKY
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ROBERT CULLEN DUFFY
ALBERTO V. ESTEVA
LAWRENCE H. FEIN
JOHN FOSSETTE
HARVEY J. FORTNER
JOHN C. GARAHN
BRUCE C. GREGOR
BION M. GREGORY
ROBERT D. GRODKE
PHILIP T. KILDUFF
L. DOUGLAS KINNEY
VICTOR KOZIKLEKI
ALLEN R. LINK
JAMES A. MARBALA
EUGENE W. MCCABE
ROSE OLIVER
TERRY C. FOWELL, II
JAMES REICHEL
MARGUERITE ROTH
MARY SHAW
ARTHUR R. SILEN
ROY K. SIMMONS
MARY-LOU SMITH
RUSSELL L. SPARLING
JOHN T. STUDEBAKER
STAN L. WALKUP
THOMAS D. WHILLAN
DAVID E. WHITTINGTON
JIMMIE WING
DEPUTIES

Honorable Arlen Gregorio
Senate Chamber

S.B. 1094 - Conflict

Dear Senator Gregorio:

The above measure, introduced by you, which is now set for hearing in the Senate Judiciary Committee

appears to be in conflict with the following other measure(s):

- | | |
|-------------------|---------------------|
| A.B. 412 - Murphy | S.B. 324 - Dymally |
| A.B. 910 - Brown | S.B. 6 - Cologne |
| A.B. 911 - " | S.B. 462 - Kennick |
| A.B. 912 - " | S.B. 1492 - Moscone |
| A.B. 850 - Ryan | |

Enactment of these measures in their present form may give rise to a serious legal problem which probably can be avoided by appropriate amendments.

We urge you to consult our office in this regard at your earliest convenience.

Very truly yours,

George H. Murphy
Legislative Counsel

cc: Committee
named above
Each lead author
concerned

423-423 1-75 2-06 08P

BERNARD CZAPLA
CHIEF DEPUTY

J. GOULD
OWEN F. KUHN
RAY H. WHITAKER

KEAT L. DECHAMBEAU
ERNEST H. KUNZI
STANLEY M. LOURINGORS
SHERWIN C. MACKENZIE, JR.
EDWARD F. NOWAK
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Legislative Counsel of California

GEORGE H. MURPHY

September 20, 1971

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JOHN COCHRAN
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ALBERTO V. ESTEVA
LAWRENCE H. FEIN
JOHN FORBES
HARVEY J. FOSTER
BRUCE C. GREGOR
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ROBERT D. GYORKE
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VICTOR KOZIELEKI
ALLEN R. LINT
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ROSE OLIVER
TRACY O. POWELL, II
JAMES REICHEL
MARQUETTE ROTH
MARY SHAW
ROY K. SIMMONS
RUSSELL L. SPARLING
F. DAVID STEVENSON
JOHN T. STUBBSAKER
BRIAN L. WALKUP
THOMAS D. WHELAN
DAVID E. WHITTINGTON
JIMMIE WING
DEPUTIES

Honorable Arlen Gregorio
Senate Chamber

S.B. 1094 - Conflict

Dear Senator Gregorio:

The above measure, introduced by you, which is now set for hearing in the Assembly Criminal Justice Committee appears to be in conflict with the following other measure(s):

A.B. 911 - Brown
A.B. 850 - Ryan

S.B. 6 - Cologne
S.B. 462 - Kennick
S.B. 1492 - Moscone

Enactment of these measures in their present form may give rise to a serious legal problem which probably can be avoided by appropriate amendments.

We urge you to consult our office in this regard at your earliest convenience.

Very truly yours,

George H. Murphy
Legislative Counsel

cc: Committee
named above
Each lead author
concerned

2025-C-006 (001) 1 10 PM '71

SENATE BILL 1094

ANALYSIS AND DISCUSSION

Background

Senate Bill 1094 originated in 1969 Conference Resolutions 8-5, 8-8, 8-13, 8-14 and 8-16 and 1970 Conference Resolutions 2-4, 2-5, and 2-6. After study and report by the Committee on Juvenile Justice, the Board of Governors of the State Bar of California in February, 1971, placed these items on its 1971 Legislative Program.

Statement of Reasons

Senate Bill 1094 adds Section 13013 to the Education Code, adds Sections 702.3 and 1801.5 to the Welfare and Institutions Code and amends Sections 625, 628, 634, 657 and 702 of the Welfare and Institutions Code, relating to minors and proceedings in the juvenile courts.

The proposed addition of Section 13013 to the Education Code would require school officials to immediately notify the parent, guardian or responsible relative when a minor has been removed from school by a peace officer. Under present law, a school principal has the authority to release a minor pupil to a peace officer without first obtaining the consent of the child's parents (34 Ops. Atty. GEN. 93). Parents of minors have every reason to believe that during school hours their children are in school. Although the police have the duty to notify parents when they have a minor in custody (Section 627, Welfare and Institutions Code), there can be a considerable time lag between the minor's removal and the notification to the parents. Furthermore, the child may be removed solely for interrogation, without being placed in custody. Hence, the addition of Section 13013 to the Education Code would give parents the benefit of immediate notification of their child's whereabouts, even when the minor has been released to an officer for interrogation only.

Proposed amendment to Section 625, Welfare and Institutions Code, is designed to clarify the Miranda warnings as to the right to remain silent so that they may be more meaningful to juveniles. No juvenile can appreciate the consequences of electing to not remain silent until the consequences appear immediate; this is the reason that the amendment would require that the warning to the juvenile explicitly include the statement that the juvenile may be taken from his home as a result of his determination not to remain silent. (See: In re Butterfield, 253C.A. 2d 794 (1967)). This proposed amendment is consonant with the recommendation in In re M., 75 Cal.Rptr.1, footnote 13, (1969), that police give Miranda warnings, "in terms that reflect the language and experience of today's juveniles".

Proposed amendment to Section 628(d), Welfare and Institutions Code, would authorize the probation officer to retain a juvenile offender in custody, where the continued detention is a matter of immediate and urgent necessity for the protection of the minor. This amendment to Section 628(d) conforms with Section 635, Welfare and Institutions Code, which provides that the court may detain a minor for his own protection. Present provisions of Section 628, Welfare and Institutions Code, do not provide for detention of a minor, for example, when the minor is suicidal or when the minor has been threatened with bodily harm.

Proposed amendment to Section 634, Welfare and Institutions Code, would require that a minor be represented by counsel in all cases under Welfare and Institution Code Sections 601 and 602, and would prohibit waiver of counsel by minors. Under present Section 634, Welfare and Institutions Code, a minor is entitled to representation by court appointed counsel in delinquency proceedings if the minor or his parent or guardian requests and cannot afford counsel pursuant to the mandate of In Re Gault, 387 U.S. 1 (1967). However, the section presently provides that such counsel need not be appointed if "there is a knowing and intelligent waiver" by the minor of the right to counsel. The proposed amendment eliminates this exception and the difficult problems which the determination of waiver by a juvenile poses for the court by making appointment of counsel for a minor mandatory in delinquency proceedings under Sections 601 and 602, Welfare and Institutions Code. A minor who has been deemed by law to be incompetent to assess the alternatives involved in contractual situations can not clearly understand and knowingly and intelligently waive his right to counsel; a minor can not realistically appraise the court process he faces, which quite likely involve incarceration and removal from his family. The provisions that the court may appoint counsel at the expense of the parent or guardian, and that the court may in its discretion appoint counsel for a minor or his parents or guardian or both when a conflict of interests precludes one attorney from representing both are retained.

Proposed amendment to Section 657, Welfare and Institutions Code, would permit a minor with the consent of counsel to admit the allegations of a petition under Section 501 and 602, Welfare and Institutions Code, and waive the jurisdictional hearing. This amendment would allow the court and counsel to concentrate their efforts immediately on the dispositional aspects of the case in the event that the allegations in the petition are admitted. In proper cases, this amendment would result in the saving of time, avoidance of confusion and minimization of the period of detention. The rights of the minor are protected by the requirement of consent of counsel.

The proposed amendment to Section 702, Welfare and Institutions Code, would require the juvenile court, when detaining a minor prior to the court's disposition of the case to base such detention on the statutory grounds set forth in Section 635, Welfare and Institutions Code. This amendment is designed, therefore, to provide uniform criteria for the determination of detention or release of a minor, regardless of the stage in the juvenile court proceedings at which such determination is to be made.

The addition of Section 702.3 to the Welfare and Institutions Code would require the judge or referee to determine that a minor, and if present, his parent or guardian, understand the nature and effect of such order and their rights and privileges. The necessity for the addition of this section arises from the fact that minors and their parents or guardians are unfortunately too often unaware of certain rights, such as the right to appeal from the final order of the judge, or in the case of a hearing before a referee, the right to seek a rehearing before a judge.

The addition of Section 1801.5 to the Welfare and Institutions Code would permit a jury trial on the issue of whether a minor is physically dangerous to the public, for purposes of extended control by the Youth Authority. Present law allows continued incarceration of wards of the Youth Authority for successive two or five year periods if the ward is found by the court to be "physically dangerous to the public". Despite the seriousness of this finding and the prospect of a life-time confinement, there is no provision for trial by jury on this question. (See: In re Valenzuela, 275 C.A.2d 433, (1969)).

In contrast, however, commitment procedures governing mentally disordered sex offenders (Welfare and Institutions Code, Section 6318), narcotics addicts (Welfare and Institutions Code, Section 3108) and mentally ill persons (Welfare and Institutions Code, Section 5303) provide for trial by jury. This distinction raises a serious question as to the validity of the present California law with regard to the Fourteenth Amendment's Equal Protection clause. (See: Baystrom v. Herold, 383 U.S. 107 (1966)).

This proposed section is modeled after the narcotic addiction statute (Welfare and Institutions Code, Section 3108). Further, this suggested statutory addition conforms with recent case law concerning the revocation of probation (See: People v. Smith, 12 C.A. 3d 621 (1970)).



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Senate Policy Committee Materials

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June 14, 1971

The Honorable Arlen Gregorio
Member of the Senate
Room 4089, State Capitol
Sacramento, California

Dear Senator Gregorio:

The Department of Education has studied and approves the basic concept of Senate Bill 1091.

The staff of the Department of Education is always available to discuss this or any other legislative matter with which you are concerned. If we can provide any assistance, please contact the Office of Legislative Coordination (445-0693).

Sincerely yours,

MILTON BARITZ
Chief Deputy Superintendent

MB:pa

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Senate Committee on Education - 1971

| | <u>Date Heard</u> | <u>Date Reheard</u> | <u>Date Reheard</u> |
|----------------------|-------------------|---------------------|---------------------|
| Author's amendments | _____ | _____ | _____ |
| Committee amendments | _____ | _____ | _____ |
| Rerefer to committee | _____ | _____ | _____ |
| To Finance | _____ | _____ | _____ |
| To Consent | _____ | _____ | _____ |
| To Floor | _____ | _____ | _____ |
| Holdover | _____ | _____ | _____ |
| Hold in committee | _____ | _____ | _____ |
| Under submission | _____ | _____ | _____ |
| Interim study | _____ | _____ | _____ |
| Other _____ | _____ | _____ | _____ |

Witnesses

*Withdrawn
from Senate Ed. on April 20, 1971
Referred to Judiciary*



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FROM THE OFFICE OF SENATOR ARLEN GREGORIO
Room 4089, State Capitol
Sacramento, California 95814

Contact: Steve Woodcock
Phone: (916) 445-0870

FOR IMMEDIATE RELEASE: April 16, 1971

JUVENILE JUSTICE

State Senator Arlen Gregorio (D-San Mateo) introduced a bill Tuesday aimed at bringing California juvenile justice into concurrence with United States Supreme Court mandates.

The Senator described the measure, which is sponsored by the State Bar, as "an effort to assure for minors fair and equitable law enforcement and legal proceedings."

Senator Gregorio commented, "The recent trend of Court decisions has been toward affording juveniles the same legal opportunities given adults. But at the same time we must recognize the special needs of juvenile justice and young offenders. My bill is designed to fulfill both these purposes."

Basically, Senate Bill 1094 would

✓ --Require school officials to notify parents when a student at school is released to the custody of police

✓ --Bring procedure for advising a minor of his rights up to standards required for adults

✓ --Enable detention of minors for their own protection, such as when under the influence of drugs

✓ --Require that minors be represented by legal counsel either of their own choosing or appointed by the Court, and specify the minor may not waive the right to counsel

✓ --Allow a minor, upon consent of counsel, to plead guilty as charged.

#####

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SENATE BILL 1094

ANALYSIS AND DISCUSSION

Background

Senate Bill 1094 originated in 1969 Conference Resolutions 8-5, 8-8, 8-13, 8-14 and 8-16 and 1970 Conference Resolutions 2-4, 2-5, and 2-6. After study and report by the Committee on Juvenile Justice, the Board of Governors of the State Bar of California in February, 1971, placed these items on its 1971 Legislative Program.

Statement of Reasons

Senate Bill 1094 adds Section 13013 to the Education Code, adds Sections 702.3 and 1801.5 to the Welfare and Institutions Code and amends Sections 625, 628, 634, 657 and 702 of the Welfare and Institutions Code, relating to minors and proceedings in the juvenile courts.

The proposed addition of Section 13013 to the Education Code would require school officials to immediately notify the parent, guardian or responsible relative when a minor has been removed from school by a peace officer. Under present law, a school principal has the authority to release a minor pupil to a peace officer without first obtaining the consent of the child's parents (34 Ops. Atty. GEN. 93). Parents of minors have every reason to believe that during school hours their children are in school. Although the police have the duty to notify parents when they have a minor in custody (Section 627, Welfare and Institutions Code), there can be a considerable time lag between the minor's removal and the notification to the parents. Furthermore, the child may be removed solely for interrogation, without being placed in custody. Hence, the addition of Section 13013 to the Education Code would give parents the benefit of immediate notification of their child's whereabouts, even when the minor has been released to an officer for interrogation only.

Proposed amendment to Section 625, Welfare and Institutions Code, is designed to clarify the Miranda warnings as to the right to remain silent so that they may be more meaningful to juveniles. No juvenile can appreciate the consequences of electing to not remain silent until the consequences appear immediate; this is the reason that the amendment would require that the warning to the juvenile explicitly include the statement that the juvenile may be taken from his home as a result of his determination not to remain silent. (See: In re Butterfield, 253C.A. 2d 794 (1967)). This proposed amendment is consonant with the recommendation in In re M., 75 Cal.Rptr.1, footnote 13, (1969), that police give Miranda warnings, "in terms that reflect the language and experience of today's juveniles".

Proposed amendment to Section 628(d), Welfare and Institutions Code, would authorize the probation officer to retain a juvenile offender in custody, where the continued detention is a matter of immediate and urgent necessity for the protection of the minor. This amendment to Section 628(d) conforms with Section 635, Welfare and Institutions Code, which provides that the court may detain a minor for his own protection. Present provisions of Section 628, Welfare and Institutions Code, do not provide for detention of a minor, for example, when the minor is suicidal or when the minor has been threatened with bodily harm.

Proposed amendment to Section 634, Welfare and Institutions Code, would require that a minor be represented by counsel in all cases under Welfare and Institution Code Sections 601 and 602, and would prohibit waiver of counsel by minors. Under present Section 634, Welfare and Institutions Code, a minor is entitled to representation by court appointed counsel in delinquency proceedings if the minor or his parent or guardian requests and cannot afford counsel pursuant to the mandate of In Re Gault, 387 U.S. 1 (1967). However, the section presently provides that such counsel need not be appointed if "there is a knowing and intelligent waiver" by the minor of the right to counsel. The proposed amendment eliminates this exception and the difficult problems which the determination of waiver by a juvenile poses for the court by making appointment of counsel for a minor mandatory in delinquency proceedings under Sections 601 and 602, Welfare and Institutions Code. A minor who has been deemed by law to be incompetent to assess the alternatives involved in contractual situations can not clearly understand and knowingly and intelligently waive his right to counsel; a minor can not realistically appraise the court process he faces, which quite likely involve incarceration and removal from his family. The provisions that the court may appoint counsel at the expense of the parent or guardian, and that the court may in its discretion appoint counsel for a minor or his parents or guardian or both when a conflict of interests precludes one attorney from representing both are retained.

Proposed amendment to Section 657, Welfare and Institutions Code, would permit a minor with the consent of counsel to admit the allegations of a petition under Section 601 and 602, Welfare and Institutions Code, and waive the jurisdictional hearing. This amendment would allow the court and counsel to concentrate their efforts immediately on the dispositional aspects of the case in the event that the allegations in the petition are admitted. In proper cases, this amendment would result in the saving of time, avoidance of confusion and minimization of the period of detention. The rights of the minor are protected by the requirement of consent of counsel.

The proposed amendment to Section 702, Welfare and Institutions Code, would require the juvenile court, when detaining a minor prior to the court's disposition of the case to base such detention on the statutory grounds set forth in Section 635, Welfare and Institutions Code. This amendment is designed, therefore, to provide uniform criteria for the determination of detention or release of a minor, regardless of the stage in the juvenile court proceedings at which such determination is to be made.

The addition of Section 702.3 to the Welfare and Institutions Code would require the judge or referee to determine that a minor, and if present, his parent or guardian, understand the nature and effect of such order and their rights and privileges. The necessity for the addition of this section arises from the fact that minors and their parents or guardians are unfortunately too often unaware of certain rights, such as the right to appeal from the final order of the judge, or in the case of a hearing before a referee, the right to seek a rehearing before a judge.

The addition of Section 1801.5 to the Welfare and Institutions Code would permit a jury trial on the issue of whether a minor is physically dangerous to the public, for purposes of extended control by the Youth Authority. Present law allows continued incarceration of wards of the Youth Authority for successive two or five year periods if the ward is found by the court to be "physically dangerous to the public". Despite the seriousness of this finding and the prospect of a life-time confinement, there is no provision for trial by jury on this question. (See: In re Valenzuela, 275 C.A.2d 483, (1969)).

In contrast, however, commitment procedures governing mentally disordered sex offenders (Welfare and Institutions Code, Section 6318), narcotics addicts (Welfare and Institutions Code, Section 3108) and mentally ill persons (Welfare and Institutions Code, Section 5303) provide for trial by jury. This distinction raises a serious question as to the validity of the present California law with regard to the Fourteenth Amendment's Equal Protection clause. (See: Baxstrom v. Herold, 383 U.S. 107 (1966)).

This proposed section is modeled after the narcotics addiction statute (Welfare and Institutions Code, Section 3108). Further, this suggested statutory addition conforms with recent case law concerning the revocation of probation (See: People v. Smith, 12 C.A. 3d 621 (1970)).



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1970 CONFERENCE OF DELEGATES



Los Angeles, California

September 14 and 15, 1970

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REPORT OF 1970 RESOLUTIONS COMMITTEE

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RESOLUTION PROPOSED BY
THE BAR ASSOCIATION OF SAN FRANCISCO

RESOLVED that the Conference of Delegates recommends to the Board of Governors of the State Bar of California that the State Bar sponsor legislation to amend Section 634 of the Welfare and Institutions Code to read as follows:

1 Section 634. (Appointment of counsel). When it appears to the
2 court that the minor or his parent or guardian desires counsel
3 but is unable to afford and cannot for that reason employ counsel,
4 the court may appoint counsel. In any case in which the minor
5 is alleged to be a person described in Section 601 or 602, he
6 shall be represented by counsel and the court shall appoint
7 counsel for the minor if the minor ~~or his parent or guardian de-~~
8 ~~sires counsel but~~ is unable to afford ~~and cannot for that reason~~
9 ~~employ counsel; unless there is an intelligent waiver of the~~
10 ~~right of counsel by the minor~~. If the parent or guardian does
11 not furnish counsel for the minor and the court determines that
12 such parent or guardian has the ability to pay, the court shall
13 appoint counsel for the minor at the expense of the parent or
14 guardian. In any case in which it appears to the court that
15 there is such a conflict of interest between a parent or guardian
16 and child that one attorney could not properly represent both,
17 the court may appoint counsel, in addition to counsel already em-
18 ployed by a parent or guardian or appointed by the court to re-
19 present the minor or parent or guardian. ~~In a county where there~~
20 ~~is no public defender the~~ The court may shall fix the compensation
21 to be paid by the county for service of such appointed counsel,
22 other than the public defender.

(Proposed new language underlined; language to be deleted, stricken.)

STATEMENT OF REASONS

Under present Section 634 a minor is entitled to representation by court-appointed counsel in delinquency proceedings filed under W & I Code Sections 601 and 602 if the minor or his parent or guardian requests and cannot afford counsel pursuant to the mandate of In Re Gault, 387 US 1 (1967). However, the section presently provides that such counsel need not be appointed if "there is a knowing and intelligent waiver" by the minor of the right to counsel. The amended language eliminates this exception and the difficult problems which the determination of waiver by a juvenile poses for the court by making appointment of counsel for a minor mandatory in delinquency proceeding under W & I Code Sections 601 and 602. The provision that the court may in its discretion appoint counsel for a minor or his parent or guardian or both in dependency or neglect proceedings under W & I Code Section 600 is retained.

Although the California Supreme Court has decided that a minor may under the "totality of the circumstances" waive his constitutional right to remain silent and to have counsel present during interrogation by the Police, (People v. Lara, 62 Cal. Rptr. 586 (1967)) it has yet to be decided by an appellate court in the post-Gault era that a minor can knowingly and intelligently waive his right to counsel in proceedings before the Juvenile Court. On the other hand, the majority of California juvenile courts, at least in the urban areas, have already in effect adopted the proposed amendment through their practice of having a public

defender present in each juvenile hearing room who as a matter of practice represents all minors who do not appear with counsel. Thus the practical effect of the amendment would be relatively minor in most counties in terms of changing existing procedures and imposing additional costs of representation while at the same time insuring uniformly fair treatment of juveniles throughout the State.

The need for the change is exemplified by the City and County of San Francisco Juvenile Court where more than 65% of the juveniles go through hearings on delinquency petitions without counsel and where public defenders are available in only one of four hearing rooms. The proposed change is made because the experiences of the members of the Barristers Club of San Francisco, who have represented minors at the San Francisco Juvenile Court, has convinced them and is persuasive to us that the view that a juvenile can understand and knowingly and intelligently waive his right to representation does not realistically appraise the immaturity of juvenile offenders in relation to the court processes which they face. Minors who have been deemed by law to be incompetent to assess the alternatives involved in contractual and franchise situations clearly are not in a position to make decisions which are likely to involve their incarceration and removal from their families.

In conflict and other situations court appointed counsel are required in addition to the public defender. No reason appears for not compensating private appointed counsel in juvenile court as they are now compensated in comparable circumstances in criminal courts. The last sentence of the statute has been changed accordingly.

Digest: Delinquency Proceedings; Appointment of Counsel

Amends §634 of the Welfare and Institutions Code to eliminate right to waive counsel and require appointment and compensation of counsel in delinquency proceedings.

RESOLUTION PROPOSED BY
SANTA CLARA COUNTY BAR ASSOCIATION

RESOLVED that the Conference of Delegates recommends to the Board of Governors of the State Bar of California that the State Bar sponsor legislation to enact Section 1801.5 of the Welfare and Institutions Code as follows:

1 Section 1801.5 If the person is
2 ordered returned to the Youth Authority following a hearing by
3 the court, he, or his parent or guardian on his behalf, may,
4 within 10 days after the making of such order, file a written
5 demand that the question of whether he is physically dangerous
6 to the public be tried by a jury in the superior court of the
7 county in which he was committed. Thereupon, the court shall
8 cause a jury to be summoned and to be in attendance at a date
9 stated, not less than 4 days nor more than 30 days from the
10 date of the demand for a jury trial. The court shall submit to
11 the jury the question: Is the person physically dangerous to
12 the public because of his mental or physical deficiency, disorder,
13 or abnormality? The court's previous order entered pursuant to
14 Section 1801 shall not be read to the jury, nor alluded to in
15 such trial. The trial shall be had as provided by law for the
16 trial of civil cases and shall require a verdict by at least
17 three-fourths of the jury.

STATEMENT OF REASONS

The present law allows continued incarceration of Youth Authority wards for successive two or five year periods if the ward is found by the court to be "physically dangerous to the public." Despite the serious prospect of life-time confinement, there is no provision for trial by jury on this question. (See In re Valenzuela, 275 ACA 537 1969 .)

On the other hand, commitment procedures governing mentally disordered sex offenders (W&I Code Section 6318), narcotics addicts (W&I Code Section 3108) and mentally ill persons (W&I Code Section 5303) provide for trial by jury. This discrepancy raises a serious doubt concerning the constitutional validity of the current provision from the standpoint of equal protection. (See Baxstrom v. Herold, 383 U.S. 107 1966 .)

This suggested provision is modeled after the narcotics addiction statute. (W&I Code Section 3108)

Digest: Demand for Jury Trial

Amends the Welfare and Institutions Code to add a new §1801.5, to provide that the juvenile or his parent or guardian on his behalf may file a written demand to determine whether he is physically dangerous to the public.

RESOLUTION PROPOSED BY
SANTA CLARA COUNTY BAR ASSOCIATION

RESOLVED that the Conference of Delegates recommends to the Board of Governors of the State Bar of California that the State Bar sponsor legislation to amend Section 657 of the Welfare and Institutions Code as follows:

- 1 Section 657. Upon the filing of the petition, the clerk of the
- 2 juvenile court shall set the same for hearing within 30 days,
- 3 except that in the case of a minor detained in custody at
- 4 the time of the filing of the petition, the petition must be
- 5 set for hearing within 15 judicial days from the date of the
- 6 order of the court directing such detention.
- 7 Nothing in this section prevents a minor who is alleged to
- 8 be a person coming within the provisions of Section 601 or 602
- 9 from admitting the allegations of the petition at the detention
- 10 hearing for such minor, or prior to the setting of the juris-
- 11 isdictional hearing for such minor, if the admission by such minor
- 12 is made with the consent of counsel.

STATEMENT OF REASONS

This provision would allow for probation, court and counsel to concentrate their efforts immediately on the dispositional aspects of the case in the event that the petition is admitted. It would save time, avoid confusion, and minimize the period of detention. The minor's rights are protected by the requirement of consent of counsel.

Digest: Juvenile Court Proceedings; Admitting Allegations of Petition

Amends §657 of the Welfare and Institutions Code to permit a minor to admit, with consent of counsel, the allegations of a delinquency petition prior to his jurisdictional hearing.

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OPINIONS OF THE
ATTORNEY GENERAL
OF CALIFORNIA

with INDEX DIGEST

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ber 18, 1959, an industrial loan company shall have "paid-up capital *in addition to paid-up capital required by Section 18203.5* of this division in the amount of twenty-five thousand dollars (\$25,000)." (Italics added.) Paid-up capital required by Section 18203.5 is \$300,000; therefore, the conclusion is inescapable that while existing industrial loan companies may continue on in business with the minimum capital (\$100,000 or \$50,000) specified in Section 18203, if after September 18, 1959, such a company opens or commences business in a branch office, that company must increase its capital to \$325,000 to be in compliance with Section 18205.5.

"Grandfather clauses" under both California and federal law generally exempt from regulation or from increased regulation operations carried on prior to the new law. Such exemption however is applicable only to the extent of the operation then being conducted (*Gregg Cartage Co. v. U.S.*, 316 U.S. 74, 83; *Alton R. Co. v. U.S.*, 315 U.S. 15, 22; *Motor Transit Co. v. Railroad Commission*, 189 Cal. 573, 585-586; 24 Ops. Cal. Atty. Gen. 180).

Here Sections 18203 and 18205 prescribe the minimum capitalization of industrial loan companies which minimum is increased by Sections 18203.5 and 18205.5, subject to grandfather clauses. Sections 18203.5 and 18205.5 constitute a legislative determination that more capital is required in the formation of new companies, or when expanding existing companies, for the protection of the industrial loan company, its thrift certificate holders, other creditors, and the public. Since the legislation is remedial in nature, under the above cited authority, Sections 18203.5 and 18205.5 cannot be interpreted as permitting expansion by establishing branch offices after September 18, 1959, without the additional capitalization required by Section 18203.5.

In analyzing Sections 18203.5 and 18205.5 for the purpose of determining legislative intent, the fact that Section 18205.5 refers to Section 18203.5 rather than Section 18203, demonstrates a legislative intent to subject existing companies to the new capitalization requirement of \$300,000 if they expand branch office operations after September 18, 1959.

Opinion No. 59-203—August 27, 1959

SUBJECT: PEACE OFFICERS—Right of, to interview suspects or witnesses in school attendance, and liability of school officials for releasing pupil to officer for questioning both discussed.

Requested by: SENATOR, 35th DISTRICT.

Opinion by: STANLEY MOSK, Attorney General.
Raymond M. Momboisse, Deputy.

The Honorable John A. Murdy, Jr., Senator, Thirty-fifth Senatorial District, has requested the opinion of this office on the following questions which have arisen subsequent to the issuance of our opinion on the rights of a peace officer to arrest and question a juvenile in attendance at school (32 Ops. Cal. Atty. Gen. 46):

1. Do peace officers have the absolute right to interview students while in attendance at school?
2. Are the school authorities civilly liable for the release of a pupil to a police officer for questioning during school hours?

The conclusions may be summarized as follows:

1. The right of peace officers to interview suspects and witnesses is not absolute but qualified.
2. School authorities who have exercised reasonable care in ascertaining the identity and the official capacity of one representing himself to be a peace officer are not civilly liable for allowing that officer to arrest or interrogate a child in attendance at school.

ANALYSIS

It was concluded in our former opinion (32 Ops. Cal. Atty. Gen. 46) that a peace officer could arrest a juvenile in attendance at school even without prior consent of his parents, guardian, or school authorities. Once the child has been placed in custody, the police must inform the parents or guardian of the child's detention (Welf. & Inst. Code sec. 729).

If the child is in attendance at school at the time of his arrest, the peace officer should contact the principal of the school, whenever such action is not rendered impossible or impractical. The officer should identify himself, and give notice of his contemplated action to the school official, who should then fully assist the peace officer in the accomplishment of his duty.

It is not unreasonable for peace officers to seek interviews with suspects or witnesses and to call upon them at their homes or places of business in order to accomplish this purpose (*People v. Michael*, 45 Cal. 2d 751, 754). It is the duty of every good citizen when called upon by the police to give all information in his power as to persons connected with crime. This requires that all proper information be given upon request of a personal nature as affecting the one of whom inquiry is made when the circumstances are such as to warrant an officer in making inquiry (*Gisske v. Sanders*, 9 Cal. App. 13, 16). If the person is unwilling to talk with the investigator, there is no law that permits his arrest or detention by the police on that ground (*Baines v. Brady*, 122 Cal. App. 2d Supp. 957, 960), nor is authority vested in any court, official, officer or authority to seize the person of a minor and to incarcerate and detain said minor for the sole purpose of keeping said minor available for use as a witness in a criminal proceeding or any other proceeding (*In re Singer*, 134 Cal. App. 2d 547, 551).

Thus, although the police have a right to attempt to interview a witness, this right is qualified and is one which must be reasonably exercised.

On the other hand, school officials have no absolute right arbitrarily to prohibit the police from interrogating children while in school. They stand in the position of the parent while the child is in their custody and thus may allow such interrogation without first obtaining parental consent. Whenever called upon for assistance in this regard, the school official should be mindful of his duty under

section 7851 of the Education Code to endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood; and instruct them in the principles of a free government; and to train them to a true comprehension of the rights, duties, and dignity of American citizenship.

Certainly, one of the basic principles of citizenship is cooperation with the law enforcement officers of our community.

The suggested procedure in a case in which a peace officer desires to interrogate a student in attendance at school is substantially the same as in the case of an arrest of a student. The officer should contact the principal, identify himself and inform the principal of his desire to interrogate a student as part of an official police investigation. The school authority should assist the police officer in any way possible.

If it appears necessary in the course of the investigation to remove a child from school so that he may better aid the police by either identifying suspects, physical evidence, or in any other way further the investigation, the principal has the power to release the child without first obtaining the consent of the child's parents. Such power is bestowed on the principal by the provisions of 5 Administrative Code section 63, which states that a child may be released from school with the approval of the principal or in the case of emergency. An emergency exists if the immediate assistance of the child is required by the police in the detection or apprehension of a criminal.

If the school official exercises the standard of care required of an officer or employee of a public school—that is, the standard which a person of ordinary prudence charged with his duties would exercise under the same circumstances—no liability will be incurred for allowing the police to interrogate a child at school or for the release of the child to the police (*Pirkle v. Oakdale Union Grammar School District*, 40 Cal. 2d 207, 210; *Luna v. The Needles Elementary School District*, 154 Cal. App. 2d 803, 807; *Tymkowicz v. San Jose Unified School District*, 151 Cal. App. 2d 517, 521).

Ordinary care would consist of ascertaining the identity and the official capacity of the peace officer, the authority under which he acts, and in the case of the release of the child, the reason for such action.

Opinion No. 59-186—August 28, 1959

SUBJECT: UNEMPLOYMENT INSURANCE—Increased tax contribution rate applies to rating periods commencing with 1960, the first calendar year after effective date, as to employers not yet eligible for merit rating.

Requested by: DIRECTOR OF EMPLOYMENT.

Opinion by: STANLEY MOSK, Attorney General.
Walter J. Wiesner, Deputy.



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