

Memorandum No. 6

Subject: Study No. 48 - Juvenile Court Study

At the May meeting it was suggested that more information is needed as to the volume of juvenile proceedings before the Commission can determine whether counsel should be furnished to a juvenile at public expense if he cannot afford to hire counsel. With the help of Mr. Gustafson and Professor Sherry we have turned up the following information:

1. Information relating to the number of juvenile proceedings, criminal proceedings and cases involving original civil litigation filed and disposed of by the superior courts in 1957-58, taken from the summary of superior court filings and dispositions during the fiscal year ending June 30, 1958 appearing in the 17th Biennial Report of the Judicial Council dated January 5, 1959:

Type of Proceeding	Total Filings	Total Dispositions	Dispositions before trial	Dispositions after trial Uncontested Matters	Contested Matters
Juvenile, including Abandonment	42,112	50,000	3,026	26,554	20,420
Criminal	27,246	24,403	17,326	--	7,077
Original Civil Litigation	83,990	79,451	38,706	30,350	10,395

2. Information relating to juvenile arrests during 1957, taken from "Delinquency and Probation in California" published by the Bureau of

Criminal Statistics of the California Department of Justice:

Table 1
Juvenile Arrests Reported to California State Department
of Justice by Sheriffs and Police, 1957

By Type of Arrest, Sex, and Detention
Status

Type of arrest	Total	Sex		Detention status	
		Boys	Girls	Detained	Not detained
Total	238,376	203,814	34,562	61,799	176,577
Law violations	58,502	52,599	5,903	24,464	34,038
Delinquent tendencies . .	86,476	68,122	18,354	26,176	60,300
Dependency	10,662	6,786	3,876	4,747	5,815
Traffic	82,736	76,307	6,429	6,412	76,324

Table 2

Juvenile Arrests for Law Violations Reported to California
State Department of Justice by Sheriffs and Police, 1957

By Offense, Sex, and Detention Status

Law violation	Total	Sex		Detention status	
		Boys	Girls	Detained	Not detained
Total	58,502	52,599	5,903	24,464	34,038
Homicide	47	45	2	25	22
Robbery	1,110	1,049	61	736	374
Aggravated assault	1,476	1,392	84	855	621
Other assault	2,836	2,435	401	810	2,026
Burglary	12,357	11,917	440	6,586	5,771
Theft, except auto	22,887	19,858	3,029	6,276	16,611
Auto theft	9,608	9,196	412	5,806	3,802
Forcible rape	331	331	--	267	64
Other sex offenses	3,000	1,848	1,152	1,260	1,740
Narcotics	1,224	1,039	185	753	471
Weapons	2,405	2,353	52	637	1,768
Drunk driving	295	283	12	195	100
Hit and run	353	314	30	94	259
Arson	573	539	34	164	409

Table 3

Juvenile Arrests for Delinquent Tendencies Reported to
California State Department of Justice by Sheriffs and
Police, 1957

By Type of Delinquent Tendencies, Sex and
Detention Status

Delinquent tendency	Total	Sex		Detention status	
		Boys	Girls	Detained	Not detained
Total	86,476	68,122	18,354	26,176	60,300
Malicious mischief	13,947	13,117	830	1,667	12,280
Disturbing the peace	8,097	6,873	1,224	1,340	6,757
Liquor	9,531	8,269	1,262	4,377	5,154
Truancy	2,301	1,594	707	441	1,860
Runaway	15,514	8,947	6,567	6,948	8,566
Incorrigible	3,387	1,727	1,660	2,080	1,307
Curfew	17,322	14,030	3,292	3,642	13,680
All other	16,377	13,565	2,812	5,681	10,696

* * *

The following provisions relating to the right to have counsel appointed
are offered for the Commission's consideration:

[new] 732.3. When a person who is named in a petition filed pursuant
to Section 700.1 which alleges that he has committed an offense
that if committed by an adult would be an offense over which the
superior court would have original jurisdiction desires and is
unable to employ counsel, the court shall assign counsel to rep-
resent him. The court shall also assign counsel to represent such
person if his parent, guardian or custodian desires that such person
have counsel but is unable to employ counsel.

OR

[new]

732.3. When a person named in a petition filed pursuant to Section 700.1 [Section 700.2 or Section 700.3] desires and is unable to employ counsel or when the parent, guardian or custodian of such person desires that he have counsel but is unable to employ counsel, the court shall assign counsel to represent him if the court finds that the rights and interests of such person cannot otherwise be adequately protected.

OR

[new]

732.3. Whenever the court finds that the rights and interests of a person named in a petition filed pursuant to Section 700.1 [,Section 700.2 or Section 700.3] cannot be adequately protected unless such person is represented by counsel and finds that such person is unable to employ counsel, the court shall assign counsel to represent him.

AND

Revise Government Code Section 27706 to read:

[Revised]

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, he shall defend, without expense to the defendant, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior court at all stages of the proceedings, including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against him upon which the public defender is conducting the defense, and shall prosecute

all appeals to a higher court or courts of any person who has been convicted, where, in his opinion, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, he shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars (\$100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, he shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon order of the court, he shall represent any person who is not financially able to employ counsel in proceedings under Chapter 4 of Part 1 of Division 6 and, under Chapter 1 of Part 1 of Division 6 and under Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code.

NOTE: Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is the Juvenile Court Law. If this amendment were made it could, of course, be limited in scope by adding language requiring the public defender to act only in cases in which a petition has been filed pursuant to Section 700.1 alleging that the person named in the petition has committed an offense that if committed by an adult would be an offense over which the superior court would have original jurisdiction.

The person named in the petition and, if present, his parent,
guardian or custodian shall be asked if he desires it is desired
that the person named in the petition have the aid of counsel
and-shall-be-allowed. If any of them answers in the affirmative
the court must allow a reasonable time to send for counsel.

732.2. If the parent, guardian or custodian of a person named in a petition alleging that he comes within the provisions of Section 700.1, Section 700.2 or Section 700.3 desires that such person have the aid of counsel, he shall be represented by counsel selected by such parent, guardian or custodian without regard to his own wish not to be represented by counsel or to select different counsel to represent him.

732.3. The aid of counsel may be waived by any person entitled thereto under the provisions of this article, provided that if no parent, guardian or custodian is present the court may not accept the waiver of the aid of counsel by a person named in a petition filed pursuant to Section 700.1 [,Section 700.2 or Section 700.3] unless the court finds that such waiver is intelligently, competently and voluntarily made. The parent, guardian or custodian of such person may waive his right to counsel without regard to his own wish to be represented by counsel.

732.4. The provisions of Sections 732.1, 732.2 and 732.3

relating to the rights of the parent, guardian or custodian are inapplicable in any case where, at the commencement of the hearing or at any time thereafter, it appears to the court that the interest of the person named in the petition is adverse to [or not in harmony with] the interest of such parent, guardian or custodian.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary