

Date of Meeting: July 24-25, 1959  
Date of Memo: July 23, 1959

Memorandum No. 7

Subject: Study No. 48 - Right to Counsel in Juvenile  
Court Proceedings

Attached is a preliminary draft of a recommendation of the Commission relating to the right to counsel in juvenile court proceedings. It seems to me that to have such a recommendation before us for discussion might be helpful in focusing both the issues relating to the right to counsel and the Commission's views concerning them.

This recommendation and the draft statutes appended to it do not take account of the fact that the research consultant has recommended and the Commission may in turn recommend that rather substantial changes be made in the Welfare and Institutions Code to limit the use of the term "ward of the juvenile court" to delinquent minors. Rather, the appended material is drafted on the assumption that all existing sections of the Welfare and Institutions Code will remain as they are today. This has been done, not on the assumption that such a recommendation will not be made, but because it was desired to advance the Commission's work on right to counsel at the July meeting despite the fact that the research consultant's other recommendations have not yet been discussed. If the Commission should later decide to recommend to the Legislature the changes

in existing code sections proposed by the research consultant, the attached material would, of course, have to be modified accordingly.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

7/23/59

RECOMMENDATION OF CALIFORNIA LAW

REVISION COMMISSION

relating to

The Right to Counsel in Juvenile Court Proceedings

The Problem

Section 700 of the Juvenile Court Law gives the superior court, sitting as the juvenile court, jurisdiction over persons under the age of 21 years who are in need of care and treatment either because of the unfortunate condition in which they find themselves or because of their antisocial tendencies. When, after a hearing, a person is found to come within the provisions of Section 700 the juvenile court may either admonish him and dismiss the petition or adjudge him a ward of the juvenile court and make an order for such care as may be necessary. Such an order may, among other things, deprive the person's parents of custody over him, commit him to various persons or institutions for care, or both.

Juvenile court proceedings are not considered to be criminal proceedings even when the person involved is charged with having violated the law and is committed to a detention home or (as is possible in the case of a ward 18 years of age or older) to the county jail. Rather, the theory is that the state, acting through the juvenile court, steps in to fulfill a parental role -- that is, to obtain an understanding

of the juvenile and his problems and to prescribe such treatment, ranging from medical care and education to discipline, as appears to be necessary under the circumstances.

Because of its beneficent and paternalistic character the juvenile court has operated rather differently from other courts. The juvenile court judge is regarded as being concerned with diagnosing a problem of social maladjustment and finding an individualized solution for it rather than branding the minor a criminal and punishing him. It has seemed to many juvenile court judges and to others interested in its function to contribute to this process for the court to proceed informally, to ignore such established principles of criminal procedure as confrontation of witnesses and the privilege against self-incrimination, to rely on extrajudicial reports of the court's staff which would be regarded as hearsay and thus inadmissible in other court proceedings, and to act in the absence of counsel to represent the person who is the subject of the inquiry. Such procedure has been rationalized in numerous judicial opinions simply on the ground that the proceeding is not criminal in nature.

While it is true that a juvenile proceeding is not a criminal trial, the fact is that the judgment of a juvenile court may have very substantial consequences for the individual concerned. He may be deprived of his liberty, both in the sense of being taken away from his parents and in the sense of being delivered to the custody of an individual or an institution. Moreover, such an order may be entered upon a finding that the juvenile has been guilty of socially proscribed conduct, ranging from a violation of a statute or ordinance to being a truant or a vagrant, leading an idle,

dissolute, lewd or immoral life, drinking intoxicating liquors, visiting public poolrooms, or habitually smoking cigarettes. The adverse effects of an erroneous finding of this character and of an order making a minor a ward of the juvenile court may be substantial, both immediately and in the stigma which may attach to the individual in later life.

In recent years there has been increasing concern as to whether a judgment so substantially restrictive of the liberty of the individual and otherwise adverse to his interest should be made in a proceeding in which he is not afforded a hearing which meets the standards of procedural due process which the State and Federal Constitutions have long made applicable to other judicial and quasi-judicial proceedings. One of the questions which has been most insistently raised is whether persons involved in or affected by juvenile court proceeding should not have the right to be represented by counsel and to be explicitly informed of this right. The question may also be asked whether such persons should not be furnished counsel at public expense when they cannot afford to hire counsel.

In 1957 the Legislature authorized and directed the Law Revision Commission to make a study to determine whether minors should have a right to counsel in juvenile court proceedings. As the study prepared by the Law Revision Commission's research consultant shows, the law of this State is not entirely clear with respect to whether a person who is the subject of a juvenile court proceeding has a right to be represented by counsel therein. While it seems reasonably clear that our courts would hold that a juvenile who has retained an attorney is entitled to have him participate in the hearing, there is no clear-cut statute or decision to this effect. Nor is there a statute or

decision which clearly establishes that one who is the subject of a juvenile court proceeding is entitled to be informed of his right to be represented by counsel. Finally, there is nothing in California law which suggests that a judge of the juvenile court is required or authorized to appoint counsel for a juvenile who desires but cannot afford counsel.

#### Proposed Legislation

The Law Revision Commission believes that the right to counsel in juvenile court proceedings should be clarified and makes the following recommendations to that end:

1. A statute should be enacted providing that a person who is the subject of a juvenile court proceeding under Section 700 of the Welfare and Institutions Code has the right to be represented by counsel. Some may object to such a statute on the ground that to permit counsel to participate in juvenile court proceedings will destroy or at least impair their informal nature and turn what is now essentially a beneficent inquiry pursued solely in the juvenile's interest into an adversary proceeding in which much of the value of the juvenile court will be lost. The Commission does not share this concern. There is no reason why the participation of counsel should introduce so disruptive a note. Proceedings may continue to be informal and counsel required to conduct themselves accordingly. The Commission is convinced that the overwhelming majority of the bar will prove wholly cooperative and that any attorney who does not can be kept in check by the courts.

This is not to say, of course, that the presence of counsel will not make a difference in juvenile court proceedings; indeed, the very

purpose of enacting the statute would be to provide an opportunity for pursuit of lines of inquiry which might otherwise remain closed or be inadequately explored. When a juvenile is accused of conduct proscribed by statute and where his liberty may be substantially restricted upon a determination that he did engage in such conduct, he is surely entitled to representation by counsel in the proceeding in which the determination is made.

2. A statute should be enacted providing that when a person involved in a juvenile court proceeding is charged with a violation of law, habitual truancy from school or home, persistent disobedience of his parents, guardian or custodian, or habitually so deporting himself as to endanger the morals of himself or others the court shall inform him and, if present, his parents, guardian or custodian of the substance of the allegations in the petition, of the nature of the proceedings and that he has the right to the aid of counsel, and shall allow a reasonable time to obtain counsel if desired. These provisions are necessary to make the guarantee of the right to counsel realistic. The Commission believes, however, that it is not desirable to require the juvenile court to advise persons before it in other types of proceedings than those enumerated of their right to counsel. This is because such other juvenile court proceedings are concerned with neglected and abandoned children and often involve children of such tender years that the advice would be meaningless. Moreover, the potential findings in such a proceeding do not bear the same stigma for the child, either immediately or later.

3. A statute should be enacted providing that the parent, guardian or custodian of a person who is the subject of a juvenile court proceeding

has the right to be represented by counsel therein and to be informed by the court of such right. A parent, guardian or custodian has a substantial stake in the outcome of a juvenile court proceeding both because of his interest in the child's welfare and because he may be deprived of custody of the child. It seems desirable, therefore, to provide such protection of his interests as the aid of counsel may afford.

4. Statutory provisions should be enacted giving the parent, guardian or custodian of a person named in a juvenile court petition the right to act on his behalf in asserting a desire for counsel and in selecting counsel, unless the interest of such parent, guardian or custodian is found to be adverse to that of the juvenile. The Commission believes that the person in a parental or custodial relationship may perceive the need for counsel even though the juvenile does not and that he will ordinarily be better able than the juvenile to select competent counsel. It should be noted, however, that under the statute proposed by the Commission, infra, the parent, guardian or custodian is not given the power to decide that the juvenile shall not be represented by counsel if the juvenile desires counsel.

#### Furnishing Counsel at Public Expense

The Law Revision Commission has considered whether it should recommend that a statute be enacted providing that when a juvenile or his parent, guardian or custodian desires the aid of counsel but cannot afford to hire counsel such counsel should be furnished at public expense. The Commission has decided not to make such a recommendation, not because it believes that it would be undesirable for the State to furnish counsel in



such circumstances but because the issue is primarily fiscal rather than legal in nature and hence is not an issue as to which it would be appropriate for the Commission to advise the Legislature. There is presented in what follows, however, for such assistance as it may afford the Legislature in addressing itself to this question, an analysis of several considerations which the Commission believes are relevant to the issue.

Consideration of this question must begin, the Commission believes, with candid recognition of the fact that the enactment of the statutes recommended above, giving juveniles and their parents, guardians and custodians the right to counsel and to be advised thereof, will amount to little more than a gesture in a substantial proportion of cases if the actual aid of counsel is dependent upon their being retained by the persons involved. While the Commission knows of no statistics on the matter, the experiences of its own members and such investigation as it has been able to make suggest that only a small proportion of those involved in juvenile court proceedings are able to afford counsel. Thus, if it is desired to assure to such persons not only an abstract right to the aid of counsel but such substantial protection of their rights and interests as the effective assistance of counsel would provide, they must be furnished the aid of counsel without expense or at very little expense to themselves.

The Commission does not believe that the bar can be expected to furnish counsel to juveniles and their parents, guardians and custodians as a public service. As appears below, the volume of cases involved would probably be very substantial. While it is not unreasonable to expect the

bar to contribute some assistance to those involved in criminal or quasi-criminal proceedings, its members could hardly be expected to undertake a burden of the proportions here involved.

There is, of course, precedent for the furnishing of counsel at public expense to those who need and cannot afford it. Where public defenders' offices exist they could be given the additional assignment of representing juveniles and their parents, guardians and custodians in some or all cases, with a concomitant expansion of their staffs. The statutes providing for public compensation of private attorneys for the representation of criminal defendants could be similarly broadened. However, the expense involved would probably be substantial. As shown by the material in Appendix A to this Recommendation, there is a large volume of juvenile arrests and juvenile court proceedings in this State. If a substantial proportion of such juveniles requested counsel to be furnished at public expense, the provision of this service would be costly to the taxpayers of the State. The question whether the social value of the aid of counsel to juveniles and their parents, guardians and custodians is sufficiently great to warrant the expenditure of public funds in the amounts which would be involved is, of course, one for the Legislature to decide.

The expense involved could be limited by limiting the situations in which counsel would be furnished. For example, counsel might be furnished to juveniles but not to their parents, guardians or custodians. In addition, counsel might be furnished to juveniles only in cases where they are charged with serious misconduct - for example, with offenses over which the superior court would have original jurisdiction if an

adult were involved. Even with such limitations, however, the expense involved might be substantial. Moreover, a major difficulty would be involved in differentiating among juveniles with respect to the right to counsel in terms of the nature of the offense involved. This is because the severest restriction of individual liberty which a juvenile court may order - taking the juvenile from his parents' custody and putting him into the custody of another person or an institution - may be ordered in a case involving a relatively minor offense on the juvenile's part when other circumstances appear to the juvenile court to justify such an order. Thus, the severity of the judicial action taken does not bear the same general relationship to the gravity of the offense involved as it does in the case of adult offenders.

(#48)

APPENDIX A

The following 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 is 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

The following information relating to juvenile arrests during 1957 is 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

Proposed Statutes Dealing With the  
Right to Counsel in Juvenile Court Proceedings

The following proposed sections of the Welfare and Institutions Code are as agreed upon at the June meeting, with suggested additions and amendments (shown in strike out and underline) proposed by the staff.

Section 732. When a petition is filed alleging that a person comes within the provisions of Section ~~700.1, Section 700.2~~ ~~or Section 700.3~~ both 700 such person ~~and his~~ parent, ~~guardian or custodian~~ shall have the right to be represented by counsel in all proceedings thereunder. Such counsel shall have all of the ordinary rights and powers of an attorney representing a client, including but not limited to the right to discuss the case privately with his client, to object to the qualifications of witnesses and to questions propounded to them, and to cross examine witnesses.

Comment: Reference is made to existing Section 700 rather than proposed new Sections 700.1, 700.2 and 700.3 for the reasons stated in memorandum No. 7. The provision relating to the right of a parent, guardian or custodian to counsel is transferred to proposed new Section 732.2 for reasons stated

in the comment to that section.

732. 732.1. Subject-to-the-provisions-of  
Section-732.4. When a person who is named in a  
petition filed pursuant to Section 700 alleging that  
he comes-within-the-provisions-of-Section-700.1 has  
violated any law of this State or any ordinance of  
any city, city and county or county of this State  
defining crime or alleging that he persistently or  
habitually refuses to obey the reasonable or proper  
orders or directions of his parents, guardian or  
custodian or is beyond the control of such person  
or alleging that he is an habitual truant from  
school or home or alleging that he habitually so  
deports himself as to injure or endanger the morals  
or health of himself or others is brought before  
the court, the court shall inform him and, if  
present, his parents, guardian or custodian,  
of the substance of the allegations in the  
petition, of the nature of the proceeding, and  
that he has the right to the aid of counsel.  
The person named in the petition and, if present,  
his parent, guardian or custodian shall be asked  
if it is desired that the person named in the  
petition have the aid of counsel. If any of them  
answers in the affirmative the court must allow



a reasonable time to obtain counsel.

The rights given to parents, guardians  
and custodians by this section are subject to  
the provisions of Section 732.4.

Comment: As approved at the June meeting except that  
(1) reference is made to Section 700 rather than Section  
700.1 and language incorporating the substance of proposed  
Section 700.1 is added and (2) the cross reference to Section  
732.4 is stated in a different way.

[New]

732.2. When a petition is filed alleging  
that a person comes within the provisions of  
Section ~~700.1, Section 700.2 or Section 700.3~~  
700 the parent, guardian or custodian of such  
person shall have the right to be represented  
by counsel in all proceedings thereunder.  
Such counsel shall have all of the ordinary  
rights and powers of an attorney representing  
a client, including but not limited to the  
right to discuss the case privately with his  
client, to object to the qualifications of  
witnesses and to questions propounded to them,  
and to cross examine witnesses.

When the person named in the petition  
is brought before the court, the court shall

inform his parent, guardian or custodian of the substance of the allegations in the petition, of the nature of the proceeding, and that such parent, guardian or custodian has the right to the aid of counsel. If the parent, guardian or custodian indicates that he desires the aid of counsel, the court must allow a reasonable time to obtain counsel.

Comment: The first two sentences of this section were approved in substance at the June meeting as incorporated in Section 732. They are transferred here from Section 732 because (1) it would seem to be desirable to treat the entire subject of the right of a parent, guardian or custodian to counsel in a single section and (2) it would also seem to be desirable to require the court to advise a parent, guardian or custodian of his right to counsel in all juvenile court proceedings.

732.3. Subject to the provisions of Section 732.4, 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~~ 700 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.

Comment: As approved at the June meeting except that Section 700 is substituted for Sections 700.1, 700.2 and 700.3.

732.4. The provisions of Section 732.1 and 732.3 relating to the rights of a 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 such parent, guardian or custodian is adverse to the interest of the person named in the petition.

Comment: Considered but not formally approved at the June meeting.

Alternative New Welfare and Institutions Code  
Sections and revision of Government Code  
Section 27706, relating to furnishing counsel  
at public expense, to be submitted but not  
recommended to the Legislature

732.5. When a person who is named in a petition filed pursuant to Section 700 desires and is unable to employ counsel, the court shall assign counsel to represent 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.

When the parent, guardian or custodian of a person who is named in a petition filed pursuant to Section 700 desires and is unable to employ counsel to represent such parent, guardian or custodian, the court shall assign counsel to represent him.

OR

732.5. When a person who is named in a petition filed pursuant to Section 700 which alleges that he has committed an offense over which the superior court would have original jurisdiction desires and is unable to employ counsel, the court shall assign counsel to represent 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.

732.5. When a person named in a petition filed pursuant to Section 700 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 may not otherwise be adequately protected.

OR

732.5. Whenever the court finds that the rights and interests of a person named in a petition filed pursuant to Section 700 may not 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:

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 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.

Wtq

WELFARE AND INSTITUTIONS CODE

§700. Persons subject to jurisdiction: Generally. The jurisdiction of the juvenile court extends to any person under the age of 21 years who comes within any of the following descriptions:

(a) Who is found begging, receiving or gathering alms, or who is found in any street, road, or public place for the purpose of so doing, whether actually begging or doing so under the pretext of selling or offering for sale any article, or of singing or playing on any musical instrument, or of giving any public entertainment or accompanying or being used in aid of any person so doing.

(b) Who has no parent or guardian; or who has no parent or guardian willing to exercise or capable of exercising proper parental control; or who has no parent or guardian actually exercising such proper parental control, and who is in need of such control.

(c) Who is destitute, or who is not provided with the necessities of life by his parents, and who has no other means of obtaining such necessities.

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

(e) Who is found wandering and either has no home, no settled place of abode, no visible means of subsistence or no proper guardianship.

(f) Who is a vagrant or who frequents the company of criminals, vagrants, or prostitutes, or persons so reputed; or who is in any house of prostitution or assignation.

(g) Who habitually visits, without parent or guardian, a public billiard room or public poolroom, or a saloon or a place where any spirituous, vinous, or malt liquors are sold, bartered, exchanged, or given away.

(h) Who habitually uses intoxicating liquors or habitually uses opium, cocaine, morphine, or other similar drug without the direction of a competent physician.

(i) Who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, or custodian; or who is beyond the control of such person.

(j) Who is a habitual truant from school within the meaning of any law of this State.

(k) Who is leading, or from any cause is in danger of leading, an idle, dissolute, lewd, or immoral life.

(l) Who is insane, feeble-minded, or so far mentally deficient that his parents or guardian are unable to exercise proper parental control over him, or whose mind is so far deranged or impaired as to endanger the health, person, or property of himself or others.

(m) Who violates any law of this State or any ordinance of any town, city, or county, of this State defining crime.

(n) Who is afflicted with syphilis, gonorrhea or chancroid and is in need of medical and custodial care, or both.