

Memorandum No. 45 (1960)

5/11/60

Subject: Study No.48 - Juvenile Court Proceedings

Attached hereto is a proposed recommendation to accompany the proposed statutes that were forwarded with Memo 27 (1960). The recommendation previously considered by the Commission dealt with the right to counsel only. That recommendation has been modified so that the recommendation now deals with both the right to counsel and the use of the term "ward" to refer to non-delinquent juveniles.

Respectfully submitted,

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Assistant Executive Secretary

May 11, 1960

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford, California

T E N T A T I V E

R E C O M M E N D A T I O N

Relating to

THE RIGHT TO COUNSEL AND THE SEPARATION OF THE
DELINQUENT FROM THE NON-DELINQUENT MINOR IN
JUVENILE COURT PROCEEDINGS*

* NOTE: This is a tentative recommendation prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

6/11/60

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to

The Right to Counsel and the Separation of the Delinquent from
the Non-Delinquent Minor in Juvenile Court Proceedings

The Problem

Section 700 of the Welfare and Institutions Code gives the superior court, sitting as the juvenile court, jurisdiction over persons under the age of 21 years who are in need of supervision or care either because of the unfortunate condition in which they find themselves or because of their antisocial tendencies. When, after a hearing, the juvenile court finds that a person comes within any of the provisions of Section 700, the court may either admonish him and dismiss the petition or adjudge him to be a ward of the juvenile court. The court may return a ward to the care of the parents under supervision by the probation officer, the court may order the ward detained in local institutions (including the county jail if the ward is over 18), or the court may commit the ward to the Youth Authority. A ward may also be taken from his parents and placed in a foster home or in an institution devoted to the care of unfortunate children.

After a juvenile has been adjudged to be a ward of the juvenile court, the juvenile court may, at any time, change

the original order, e.g., the court may order a ward who had been returned to his parents to be detained in an institution for juvenile offenders, or the court may change the nature and location of the detention previously ordered. There is no requirement that there be a hearing upon the necessity for changing the original order, for the court is regarded as the guardian of the juvenile exercising its lawful right to change the physical custody of its ward.

Even when a juvenile court proceeding is initiated because the juvenile involved has violated a criminal statute, the proceeding is not regarded as a criminal proceeding. The theory of all juvenile court proceedings is that the state, acting through the juvenile court, steps in to fill a parental role. Because of its paternalistic character, the juvenile court has operated differently from other courts. Its proceedings are not regarded as adversary proceedings in which guilt is to be established; the court is regarded as being concerned with diagnosing the juvenile's problem -- whether of social maladjustment or the lack of adequate supervision or care -- and finding an individualized solution for it. Therefore, the court proceeds informally and relies on reports of the court's staff which would be regarded as hearsay and inadmissible in other court proceedings. Because the proceeding is non-criminal, the procedural protections given an accused in a criminal case are inapplicable. There is no

right to jury trial, no right to confront witnesses, no right to be warned against self incrimination, no right not to be placed twice in jeopardy and no right to be admitted to bail. Although a juvenile that is represented by counsel may not be deprived of such representation at the original hearing, the juvenile court has no duty to inform the juvenile or his parents of their right to counsel. Moreover, if a hearing is held to determine whether an order relating to a ward should be changed, there is no right to counsel at that hearing.

In recent years, there has been increasing concern ~~as~~ to whether a judgment so substantially restrictive of the liberty of the individual should be made in a proceeding in which that individual is not represented by counsel and is unaware of his right to be so represented. There has also been increasing concern as to whether all juveniles within the jurisdiction of the juvenile court should be adjudged to be "wards." The indiscriminate use of this designation tends to foster the misconception that all wards are juveniles who have been involved in some kind of wrongdoing. Moreover, it is the indiscriminate use of this designation that has been used to justify the denial of the right to counsel upon proceedings to change an order placing a ward in the care of his parents by committing the ward to a detention facility.

Proposed Legislation

The Law Revision Commission recommends:

1. A statute should be enacted providing that a juvenile has the right to be represented by counsel in all proceedings of the juvenile court, including proceedings held to determine the necessity for modifying previous orders of the court.

2. Whenever a juvenile is brought before the juvenile court upon an allegation of misconduct, the juvenile court should be required to inform the juvenile and the parents, if present, of the juvenile's right to be represented by counsel. If counsel is desired, the juvenile should be given an opportunity to obtain counsel.

3. The parents of a juvenile who has been brought before the juvenile court should be given the right to select counsel for the juvenile unless the court finds that their interest is adverse to the interest of the juvenile. If the parents' interest is adverse, the juvenile should be permitted to select counsel. In a proper case, the court should be empowered to appoint counsel for the juvenile.

The Law Revision Commission has considered whether it should recommend that counsel be furnished to juveniles at public expense. The Commission has decided not to make such a recommendation 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.

4. The right of the parents of a juvenile who has been brought before the juvenile court to be represented by counsel should be guaranteed by statute. The juvenile court should be required to inform the parents of the nature of the proceeding and of their right to be represented. The court should be required to allow the parents a reasonable time to obtain counsel.

5. The juvenile court should adjudge a juvenile to be a "ward" only if the court's jurisdiction over the juvenile is based upon the juvenile's misconduct. If a juvenile is brought before the juvenile court merely because he lacks proper supervision or care, the court should adjudge the juvenile to be a "dependent child." The court should have no power to place a dependent child on probation, to detain a dependent child in the county jail or to commit a dependent child to the Youth Authority or to local detention facilities unless the dependent child is also adjudged to be a ward because of his misconduct.