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BASIC COURSE UNIT GUIDE

11

JUVENILE LAW AND PROCEDURE

This unit guide covers the following performance objectives contained in *Performance Objectives for the POST Basic Course*:

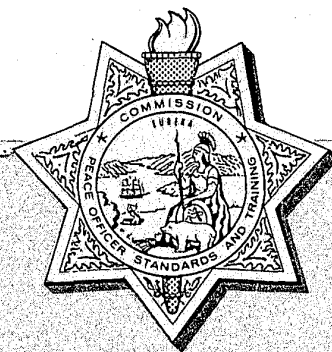
- 3.41.1 3.41.8
- 3.41.2
- 3.41.3
- 3.41.4
- 3.41.5

Revised July 1992

14088

DEC 18 1992

ACQUISITION



THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

This unit of instruction is designed as a *guideline* for performance objective-based law enforcement basic training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators for the California Commission on Peace Officer Standards and Training.

This guide is designed to assist the instructor in developing an appropriate lesson plan to cover the performance objectives which are required as minimum content of the Basic Course.

139955

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UNIT GUIDE 11

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PERFORMANCE OBJECTIVE 3.41.1

Given a direct question, the student will identify the following purposes of the juvenile court law. (Welfare and Institutions Code Section 202)

- A. To provide for the protection of the public and each minor under the jurisdiction of the Juvenile Court
- B. To preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary
- C. To reunify families when a minor has been removed from the home by the Juvenile Court
- D. To provide the minor with care and discipline equivalent to that which should have been provided by his or her parents
- E. To affirm a parent's responsibility to financially support a minor removed from the parent's custody by the Juvenile Court

CURRICULUM

- A. Distinguish Criminal Law From Juvenile Law.
 - 1. Different Philosophies - concept of punishing offender as opposed to providing guidance to youth.
 - 2. History and Development of Juvenile Court Law.
 - a. Concepts of Parents Patria
 - b. Court of Chancery
 - c. Common Law, over 300 offenses punishable by death
 - d. 1860's States begin treating juveniles differently
 - e. First Juvenile Court in Illinois - 1899
 - f. California Juvenile Court - 1903
 - g. Court Decisions
 - 3. Modern Philosophy of Juvenile Law
 - a. The philosophy of juvenile court differs from that of the adult criminal court in several ways. The most obvious difference is the court's goal of "rehabilitation" of the child rather than punishment.
 - b. In regard to procedure, the juvenile justice system is traditionally "nonadversary" in form. The stress has been

on informality. Great discretion is granted to police and intake officers to dispose of the case at its early stages in order to divert the juvenile from the court proceedings.

NOTE: Conduct of juvenile procedures has become more adversary in nature, due to passage of AB 3121 in the 1976 Legislative session.

- c. In theory, the juvenile justice system is totally committed to "serving the best interests of the child while providing for the protection and safety of the public."

B. Source of California Juvenile Law

- 1. The majority of the laws with regard to juvenile court proceedings are in the California Welfare and Institutions Code.
- 2. Basic Philosophy, Section 202, W & I Code
 - a. Protection of public from consequences of criminal activity.
 - b. Protection and safety of minor
 - (1) Preserve and strengthen minor's family ties when possible.
 - (2) Provide care and guidance in minor's own home when possible; removing minor from parents only when necessary for child's welfare or public safety.
 - (3) When removed from home, the minor shall be given equivalent care, custody, and discipline.
 - c. To hold minor accountable for his/her actions.
- 3. Wards of Court, Section 203 W & I Code
 - a. Noncriminal proceedings
 - (1) Wardship not a conviction
 - b. Juvenile court has authority to administer punishment; it must provide for custody and welfare of the minor, however the punishment shall not be retributive.

PERFORMANCE OBJECTIVE 3.41.2

Given a direct question, the student will identify the following conditions under which a juvenile may be subject to the jurisdiction of the Juvenile Court. (Welfare and Institutions Code Sections 300, 601 and 602)

Jurisdiction may be assumed by the Juvenile Court if a person is under 18 years of age and

- A. has suffered or there is a substantial risk that the minor will suffer serious physical harm from his parents or guardian (Welfare and Institutions Code Section 300(a))
- B. has suffered or there is a substantial risk that the minor will suffer serious physical harm or illness due to the parent or guardian's inability to provide appropriate supervision, protection, food, clothing, shelter, or medical treatment (Welfare and Institutions Code Section 300(b))
- C. is suffering or is at substantial risk of suffering serious emotional damage due to the conduct of the parent or guardian, or due to the parent or guardian's inability to provide appropriate care (Welfare and Institutions Code Section 300(c))
- D. has been sexually abused or there is a substantial risk the minor will be sexually abused by his or her parent or guardian or another member of the household (Welfare and Institutions Code Section 300(d))
- E. his or her parents are incarcerated or institutionalized and cannot arrange for the care of the minor (Welfare and Institutions Code Section 300(g))
- F. habitually refuses to obey the reasonable orders or directions of his or her parents, guardian, or custodian or violates a local, age-based curfew (Welfare and Institutions Code Section 601(a))
- G. is habitually truant or habitually refuses to obey the reasonable orders of school authorities (Welfare and Institutions Code Section 601(b))
- H. violates any law or ordinance other than an age-based curfew (Welfare and Institutions Code Section 602)

CURRICULUM

A. Authority of Juvenile Court (Scope)

1. Jurisdiction

a. Dependency - Section 300 W & I Code

The court has jurisdiction in dependency matters where the parent or guardian causes or allows the following conditions:

- (1) Substantial risk of physical harm
- (2) No parental care or control
- (3) Lack of care, destitute or no suitable home
- (4) Sexual abuse

- (5) Conviction for death or child neglect
 - (6) Acts of cruelty
 - (7) Sibling abuse
 - (8) The minor has been freed for adoption from any or both parents for one year
- b. Incurrable offenders - Section 601 and 601.1 W & I Code
- (1) runaway
 - (2) beyond parental control
 - (3) curfew based solely on age
 - (4) truancy--beyond control of school
- c. Criminal Act - Section 602 W & I Code
- (1) City or county ordinances
 - (2) State law
 - (3) U. S. law
2. Age Requirements
- a. Original jurisdiction of court extends up to age 18 (Section 300 and 603 W & I Code)
- b. Court may retain jurisdiction until age 21 (Section 607 W & I Code)
- (1) Up to age 25 -- if 16 years, an offense is found (707 W & I) and committed to CYA.
- c. Juvenile may be tried as an adult at age 16 (Section 707 W & I Code)
- (1) Determination as to when a minor is to be tried as an adult is based on his fitness to be dealt with under Juvenile Court law. The evaluation of his fitness is established by the juvenile court using the following criteria:
 - (a) Degree of criminal sophistication exhibited by the minor,
 - (b) Probability that minor can be rehabilitated prior to end of juvenile court's jurisdiction,
 - (c) Previous delinquent history,

- (d) Success of previous attempts by the court to rehabilitate the minor,
- (e) Gravity of the offense.

PERFORMANCE OBJECTIVE 3.41.3

Given a word picture depicting a minor's behavior or environment, the student will identify if the conditions exist which would allow the officer to take the minor into temporary custody. These conditions are listed below. (Welfare and Institutions Code Section 305 and 625)

- A. The minor is habitually disobedient or truant
- B. The minor violates any law or ordinance
- C. The minor has violated an order of the juvenile court or has escaped from a commitment ordered by the juvenile court
- D. The minor has a history of being abused or neglected and is at immediate risk of physical or emotional harm, or sexual abuse
- E. The minor has a history of being abused or neglected and the minor is at immediate risk because of the physical environmental or a lack of adequate supervision
- F. The minor is hospitalized and release of the minor to a parent poses an immediate danger to the child's health or safety
- G. The minor is found in a street or public place suffering from any sickness or injury requiring care or treatment

CURRICULUM

- A. Authority for Arrest and Temporary Custody Section 625 of the W & I Code
 - 1. An officer may take into temporary custody, without a warrant, a juvenile who is under 18:
 - a. Comes within the jurisdiction of the court under Section 601 and 602 W & I Code;
 - (1) Includes arrests for misdemeanors not committed in the officer's presence.
 - b. Is a ward of the court and who has violated a court order or escaped from any court-ordered commitment (636 or 702 W & I Code).
 - c. Is found in a public place suffering from any sickness or injury which requires medical treatment.
- B. Authority for Dependent Children Temporary Custody. Section 305 W & I Code.
 - 1. A peace officer may without a warrant take into temporary custody a minor who:
 - a. Is a dependent child of the court, under court order per Section 320 or 356 W & I Code, when the officer has

reasonable cause to believe the minor has violated the order or has escaped from commitment;

- b. Is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.

NOTE:

W & I Section 305 is amended. Added to this is the authorization for officers to take a minor into custody in cases in which the minor is left unattended and that fact poses an immediate threat to the child's health or safety. The officer, however, first is required to attempt to contact the child's parent or guardian to determine if the parent or guardian is able to assume custody of the child. Comes within the jurisdiction of the court under Section 300 W & I Code,

PERFORMANCE OBJECTIVE 3.41.4

Given a direct question, the student will identify the conditions under which a minor must be advised of his constitutional rights (i.e., Miranda) when taken into temporary custody by a peace officer. (Welfare and Institutions Code Section 625 and 627.5)

These conditions are present when the minor is taken into temporary custody for any of the following reasons.

- A. the minor was habitually disobedient or truant
- B. the minor violated a law or ordinance
- C. the minor violated an order of the Juvenile Court
- D. the minor escaped from a commitment ordered by the Juvenile Court

CURRICULUM

A. Admonishment Requirements

1. Immediately upon being taken into custody for:

- (a) 601 or 602 W & I Code.
- (b) When minor is apprehended after escaping from a court-ordered commitment.

2. Officer shall advise minors of their constitutional rights – Miranda warning.

- (a) Minor must be advised regardless of officer intent to question minor.
- (b) Waivers do not have to be obtained unless the officer desires to question the minor.
- (c) If the minor is physically or mentally under 14 years of age, then an indepth evaluation of his/her ability to understand his/her ability to understand his/her rights must be done before an officer can accept the minor's waiver as valid.
- (d) The right to counsel being present is extended to adult family members.

PERFORMANCE OBJECTIVE 3.41.5

Given a direct question, the student will identify the following requirements pertaining to the segregation of dependent children of the court and delinquents from adult prisoners. (Welfare and Institutions Code Section 206)

- A. Dependent children of the court (Welfare and Institutions Code Section 300) may not be brought into direct contact with delinquents (Welfare and Institutions Code Sections 601 or 602)
- B. Minors (dependent children of the court and delinquents) must be separated from adult prisoners at all times. A minor may be held in temporary custody in a building which contains a jail or lockup for the confinement of adults only if the minor is under the continuous supervision of a peace officer and is not allowed to come into contact with adult prisoners

CURRICULUM

- A. Separation and Segregation of Minors
 - 1. Segregation of dependents and delinquents - Section 206 W & I Code
 - (a) Dependent minors (300 W & I) may not be brought into direct contact with delinquents (601 and 602 W & I)
 - (b) Dependent minors and delinquents must be provided with separate, segregated facilities.
 - (c) Detention of 300 W & I - shall not be placed in a detention area.
- B. Places of detention - Section 207 and 207.1 W & I Code
 - 1. Prohibits placement of minor in an adult jail or lockup unless found unfit under 707 W & I Code.
 - 2. Prohibits confinement in a hospital except for medical treatment or observation.
 - 3. Prohibits 601 W & I Code to be detained in secured facility.
 - (a) exception for secured detention - time limits
 - (1) 12 hours for warrants and warrants
 - (2) 24 hours for reuniting with local parents
 - (3) 72 hours for reuniting with out-of-county parents.

(b) separation of 601 and 602 W & I Code minors required.

4. Prohibits contact with adult prisoners - Section 208 W & I Code

(a) Prohibits contact between minor and adult prisoners when minor is housed in adult detention facilities, except supervised group therapy.

(b) Prohibits minor detained in or sentenced to state hospital to come in contact with adult sex offender, except supervised group therapy.

PERFORMANCE OBJECTIVE 3.41.8

Given a word picture depicting the possible contributing to the delinquency of a minor, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 272)

CURRICULUM

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION**

Cases

Definitions

Glossary of Terms

Civil & Education Code

CASES

KENT VS. UNITED STATES
(1966)

- I. THE ISSUE: Waiver of jurisdiction
- II. ESSENTIALS: Due process and fair treatment
- III. AMENDMENTS: Fourth, fifth, sixth, eighth, fourteenth (The big five)
- IV. FUTURE REQUIREMENTS:
 - A. Must be a hearing on waiver issue.
 - B. Child must be represented by an attorney at the hearing.
 - C. Attorney may discover court's records and reports that are used at the waiver hearing.
 - D. Judge must give reasons for waiver in writing.

IN RE GAULT
(1967)

- I. THE ISSUE: Do Procedural due process considerations apply to juvenile proceedings that lead to commitment?
- II. ESSENTIALS: Due process demands with minimum safeguards
- III. AMENDMENTS: Fourth, fifth, sixth, eighth, fourteenth
- IV. MINIMUM SAFEGUARDS:
 - A. Notice of charges
 - B. Right to counsel
 - C. Right to confrontation, self-incrimination, cross examination

McKEIVER VS. PENNSYLVANIA

- I. THE ISSUE: Does the due process clause of the fourteenth assure the right to a jury trial?
No.
- II. RATIONALE: Trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement. There is a possibility that the jury trial will make the juvenile proceeding into a full adversary process if the formalities of the criminal adjudicative process are imposed upon the juvenile court system. There is little need for its separate existence.

IN RE WINSHIP
(1970)

- I. THE ISSUE: Is proof beyond reasonable doubt among essentials of due process?
- II. ESSENTIALS: Proof beyond reasonable doubt is required.
- III. AMENDMENTS: Fourth, fifth, sixth, eighth, fourteenth
- IV. FUTURE REQUIREMENTS: Observance of the essential standard of proof beyond a reasonable doubt.

DEFINITIONS

Preponderance of Evidence

Legally admissible in trial of civil cases to support a finding that the minor is a person described in 300-601 WIC - this doctrine not applicable in WIC 602 cases.

Traditional standard of proof required in civil cases. The trier of fact decides in favor of the side upon which is made persuasive. Although that side may have prevailed by the slightest of margins. Requires a belief that it is more probable than not that a certain result is correct. However, this doctrine can be applied in a trial where the court is determining whether a confession was obtained illegally. If the court concludes that the police are more likely to be telling the truth when they say no threats were made. The court will proceed on that factual assumption even though it has some reasonable doubt as to what actually occurred.

Proof Beyond Reasonable Doubt:

The ultimate standard of proof in the criminal process, that required to find a person guilty, is proof beyond a reasonable doubt. A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence in this case, or growing out of any reasonable or legitimate inferences drawn from evidence or the lack of evidence. It is a state of mind that would cause you to hesitate in making an important decision in your personal life. In other words, there is no uncertainty in your mind that the prosecution has presented more facts than are necessary to prove that this person is guilty. "It is better that a guilty man be mistakenly acquitted than an innocent man be mistakenly convicted."

GLOSSARY OF TERMS

C.Y.A. - California Youth Authority. State agency charged with supervising and coordinating the many functions of the State in its dealings with youth in trouble, including operation of State juvenile detention facilities.

DELINQUENT - A person described in Section 602 W.I.C. A juvenile who violates a law.

DEPENDENT - A person described in Section 300 W.I.C. A juvenile who is destitute, from an unfit home, victim of physical or sexual abuse, lacks parental supervision or is physically dangerous to the public.

DIVERSION - The alternative handling of selected offenders away from the justice system to community-based organizations as a viable delinquency prevention technique.

D.P.S.S. - Department of Public Social Services. County Welfare Department, charged with the care and housing of dependent juveniles.

INCORRIGIBLE - A juvenile who is beyond the control of his parents. One of the persons described in Section 601 W.I.C. (Status offender)

JUVENILE - A person under the age of 18.

JUVENILE DELINQUENT - Generally considered to be any juvenile whose anti-social acts come to the attention of any law enforcement agency.

MAJORITY - The status of being of full age, the age at which a person attains capacity to exercise full civil and personal rights.

1. In California, a minor becomes of full age on the day before his 18th birthday, except that he may not buy liquor until the day before his 21st birthday.

MINOR - A person who has not reached the age of majority. (25 C.C.)

PETITION - The document used to initiate proceedings in juvenile court.

STATUS OFFENDER - Non-criminal conduct unique to the status of being a minor.

PRE-DELINQUENT - A person described in Section 601 W.I.C. Incorrigible, runaway, transient, or curfew violator.

SUBJECT - Term used to describe juveniles in official crime reports.

VICTIM - Term used to describe minors in dependency (300 W.I.C.) cases.

WARD OF THE COURT - A person who has been found by the juvenile court to fall within the descriptions of Sections 601 or 602 W.I.C.

W.I.C. - California Welfare and Institutions Code.

EMANCIPATION - The legal status of being freed of parental control; having most of the rights of adulthood. California Civil Code, Sections 61 through 70.

TRAFFIC HEARING OFFICER - 255/256 W.I.C. Appointed by the presiding judge of the juvenile court; handles most traffic offenses and certain other minor offenses.

TRUANCY, HABITUAL TRUANCY - Section 48260 - 48262 Ed. Code. Any pupil subject to compulsory education who is absent without valid excuse more than three days; reported truant three or more times in school year is deemed habitual truant.

SCHOOL ATTENDANCE REVIEW BOARDS - (S.A.R.B.) Section 48320 Ed. Code. Coordinated school and community services providing assistance to pupils with attendance and/or behavioral problems.

CIVIL & EDUCATION CODE

25.9 Mental Health Treatment

- Minor 12 or older may consent to treatment without parents
- Parents not liable for cost of treatment unless participating

34.9 Treatment for Sexual Assault

- Minor may consent to diagnosis and treatment relating to sexual assault
- Parental approval shall be sought (but minor may be treated over parents' objection)

60 - 70 Emancipation of Minors

The California Civil Code now statutorily defines emancipation of minors and expressly enumerates the rights, liabilities, and privileges of emancipation.

The act is a ten (10) part measure. Starting with Section 61 of the Civil Code and progressing through Section 70.

- | | |
|------------|--|
| Section 61 | States the legislative intent |
| Section 62 | Defines emancipation |
| Section 63 | Enumerates the rights, privileges, and liabilities of emancipation |
| Section 64 | Outlines the petition process for Judicial Declaration of Emancipation |
| Section 65 | Rescission of Declaration |
| Section 66 | Provides protection for innocent persons who rely on misrepresentation of emancipation |
| Section 67 | Controls welfare benefits from flowing to emancipated minors |
| Section 68 | Provides governmental immunity for incorrect information of emancipation |
| Section 69 | Declaration of emancipation obtained by fraud voidable |
| Section 70 | Intent for simplified and inexpensive process |

Directing your attention first to Section 62 Civil Code, emancipation can result if any person under the age of 18:

- Enters into a valid marriage
- Is on active military duty
- Petitions the Superior Court for a declaration of emancipation (Section 64 CC). MINOR MUST BE AT LEAST 14 YEARS OF AGE, WILLINGLY LIVING SEPARATE AND APART FROM HIS PARENTS OR LEGAL GUARDIAN, WITH THE CONSENT OR ACQUIESCENCE OF THE PARENTS OR GUARDIAN, AND MANAGING HIS OWN LAWFUL FINANCIAL AFFAIRS.

If a minor fits any of the above categories, he is an emancipated minor.

Once emancipated, Section 63 would allow him the following rights, privileges, and liabilities. A minor so emancipated would be considered as being over the age of majority for the purposes of:

- A. Consenting to medical, dental, or psychiatric care
- B. Contracting
- C. Suing and being sued
- D. Parental supportal rights
- E. Control of earnings
- F. Establishing residence
- G. Buying and selling real property
- H. Application of Section 300 and 602 WIC
- I. Applying for a work permit (under 49110 Education Code)
- J. Ending all vicarious parental liability
- K. And, school enrollment

Civil Code

- 1714.1 Liability for Minor's Torts
 - Parents/Guardians liable for maximum of \$5,000 per injury
 - Liability of \$15,000/\$30,000 if injury involves minor's use of firearm (1714.3 CC)
- 4101 Marriage Consent
 - Minor under 18 requires parental approval or Superior Court order

Education Code

- 48200 Compulsory Education
 - Applies to all children between the ages of 6 and 16
- 48260 Truancy
 - Students 6 - 16 absent without excuse
- 48262 Habitual Truancy
 - Three or more unexcused absences
 - School official must set up conference with parents
- 8264 Arrest of Truants
 - Law enforcement may take suspected truants into temporary custody

48265 Disposition of Truants

- Truants may be delivered to parents, school, or location designated by school

Loitering/
Curfew Ord.

Loitering

- Obstructing passage
- No apparent business
- Loiter means, to idle, to loaf, to stand idly by, or to walk, drive, or ride about aimlessly, without lawful purpose

Curfew

- Under 18 years of age
- Loiter about any public place
- Between 10 p.m. and sunrise
- Exceptions: accompanied by parent, guardian or adult spouse

ADDITIONAL REFERENCES

California Penal Code, Legal Book Corporation, Los Angeles.

California Reporter, West Publishing Co., St. Paul, Minnesota.

California Welfare and Institutions Code, West Publishing Company,
St. Paul, Minnesota.

California Laws Relating to Youthful Offenders, California
Department of the Youth Authority, State of California Documents
Section, North Highlands, California.

POST Video Catalog, (916) 739-5373