

RESOLUTION 02-01-2013

DIGEST

Juvenile Rights: Juvenile's Right to a Jury Trial

Adds Welfare and Institutions Code section 679.5 and amends Welfare and Institutions Code sections 701, 702 and 704 to provide a jury trial on juvenile offenses that may be used as a strike.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 03-06-2011, which was approved in principle.

Reasons:

This resolution adds Welfare and Institutions Code section 679.5 and amends Welfare and Institutions Code sections 701, 702 and 704 to provide a jury trial on juvenile offenses that may be used as a strike. This resolution should be approved in principle because it is unjust to classify delinquency proceedings as non-criminal for purposes of determining the right to a jury trial while also permitting the resulting disposition to be used as a prior felony conviction for purposes of sentence enhancement if the juvenile reoffends.

Under California's Three Strikes law, a qualifying juvenile adjudication may be used as a strike to increase the sentence of an adult offender. Yet, the federal and state Supreme Courts have declared the denial of jury trials in juvenile courts does not violate the Constitution. (*McKeiver v. Pennsylvania* (1971) 403 U.S. 528; *In re Daedler* (1924) 194 Cal. 320.) The *McKeiver* plurality opinion noted a jury is not required for accurate factfinding and thus juvenile adjudications were constitutionally fair and reliable. (*McKeiver, supra*, 403 U.S. at pp. 543, 547, 551.) This presumption denigrates the importance of that constitutional right.

In *McKeiver*, the Court found the introduction of jury trials into juvenile proceedings would interfere with the effort to deal with youthful offenders through less formal procedures and provide protective and rehabilitative proceedings. That assumption has been disproven in the more than a dozen states, including Texas, where accused delinquents have long enjoyed a right to jury trial in juvenile court. (See *In re Javier A.* (1984) 159 Cal.App.3d 913, 970, fn. 54.) While the privacy concerns of the Welfare and Institutions Code would have to be taken into account in providing jury trials in juvenile courts, they do not outweigh the importance of the protections needed when imposing the burden of a potential strike.

The plurality in *McKeiver* suggested there was a limit on the degree to which states could criminalize their juvenile delinquency proceedings. Beyond that, they implied, and the Constitution would require the accused juvenile to enjoy a right to trial by a jury. (*McKeiver, supra*, 403 U.S. at p. 551.) Since that opinion was written, California juvenile court law has been transformed by the Legislature and various propositions, piling on more and more onerous consequences when a juvenile is adjudicated to be a delinquent. California has crossed the line

suggested by the *McKeiver* plurality with respect to the use of juvenile adjudications as future strikes and the right to a jury trial should be provided.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add Welfare and Institutions Code section 679.5 and amend Welfare and Institutions Code sections 701, 702, and 704 to read as follows:

1 § 679.5

2 (a) A minor who is 16 years of age or older at the time of the commission of an offense,
3 which, upon admission or adjudication, could be used as a future felony conviction under
4 paragraph (3) of subdivision (d) of Section 667 of the Penal Code or under paragraph (3) of
5 subdivision (b) of Section 1170.12 of the Penal Code, shall be entitled to a trial by jury.

6 (b) A jury trial under this section shall proceed as provided in Chapter 7 (commencing
7 with Section 1041) and Chapter 8 (commencing with Section 1046) of Title 6 of, and Title 7
8 (commencing with Section 1065) of, Part 2 of the Penal Code.

9 (c) This section does not affect the right of a detained minor under Section 657 to a trial
10 within 15 days of the filing of the petition to declare the minor a ward of the court.

1 § 701

2 At the hearing, the court or jury as provided by Section 679.5 shall ~~first~~ consider only the
3 question whether the minor is a person described by Section 300, 601, or 602. The admission and
4 exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence
5 Code and by judicial decision. Proof beyond a reasonable doubt supported by evidence, legally
6 admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a
7 person described by Section 602, and a preponderance of evidence, legally admissible in the trial
8 of civil cases must be adduced to support a finding that the minor is a person described by
9 Section 300 or 601. When it appears that the minor has made an extrajudicial admission or
10 confession and denies the same at the hearing, the court may continue the hearing for not to
11 exceed seven days to enable the prosecuting attorney to subpoena witnesses to attend the hearing
12 to prove the allegations of the petition. If the minor is not represented by counsel at the hearing,
13 it shall be deemed that objections that could have been made to the evidence were made.

1 § 702

2 After hearing the evidence, the court or jury as provided by Section 679.5 shall make a
3 finding, noted in the minutes of the court, whether or not the minor is a person described by
4 Section 300, 601, or 602. If ~~it~~ the court or jury finds that the minor is not such a person, ~~it~~ the
5 court shall order that the petition be dismissed and the minor be discharged from any detention or
6 restriction theretofore ordered. If the court or jury finds that the minor is such a person, ~~it~~ the
7 court shall make and enter its findings and order accordingly, and shall then proceed to hear
8 evidence on the question of the proper disposition to be made of the minor. Prior to doing so, ~~it~~ the
9 court may continue the hearing, if necessary, to receive the social study of the probation
10 officer, to refer the minor to a juvenile justice community resource program as defined in Article
11 5.2 (commencing with Section 1784) of Chapter 1 of Division 2.5, or to receive other evidence
12 on its own motion or the motion of a parent or guardian for not to exceed 10 judicial days if the
13 minor is detained during the continuance. If the minor is not detained, it may continue the

14 hearing to a date not later than 30 days after the date of filing of the petition. The court may, for
15 good cause shown continue the hearing for an additional 15 days, if the minor is not detained.
16 The court may make such order for detention of the minor or his or her release from detention,
17 during the period of the continuance, as is appropriate.

18 If the minor is found to have committed an offense which would in the case of an adult be
19 punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a
20 misdemeanor or felony.

1 § 704

2 (a) If the court or jury as provided by Section 679.5 has determined that a minor is a
3 person described by Section 602, or if the court has determined that a minor is a person described
4 by Section 601 and a supplemental petition for commitment of such minor to the Youth
5 Authority has been filed pursuant to Section 777, and such minor is otherwise eligible for
6 commitment to the Youth Authority, the court, if it concludes that a disposition of the case in the
7 best interest of the minor requires such observation and diagnosis as can be made at a diagnostic
8 and treatment center of the Youth Authority, may continue the hearing and order that such minor
9 be placed temporarily in such a center for a period not to exceed 90 days, with the further
10 provision in such order that the Director of the Youth Authority report to the court its diagnosis
11 and recommendations concerning the minor within the 90-day period.

12 (b) The Director of Youth Authority shall, within the 90 days, cause the minor to be
13 observed and examined and shall forward to the court his diagnosis and recommendation
14 concerning such minor's future care, supervision, and treatment.

15 (c) The Youth Authority shall accept such person if there is in effect a contract made
16 pursuant to Section 1752.1 and if it believes that the person can be materially benefited by such
17 diagnostic and treatment services, and if the Director of the Youth Authority certifies that staff
18 and institutions are available. No such person shall be transported to any facility under the
19 jurisdiction of the Youth Authority until the director has notified the referring court of the place
20 to which said person is to be transported and the time at which he can be received.

21 (d) The probation officer of the county in which an order is made placing a minor in a
22 diagnostic and treatment center pursuant to this section, or any other peace officer designated by
23 the court, shall execute the order placing such minor in the center or returning him there from to
24 the court. The expense of such probation officer or other peace officer incurred in executing such
25 order is a charge upon the county in which the court is situated.

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

PROPONENT: Alameda County Bar Association

STATEMENT OF REASONS

The Problem: Juvenile delinquency court proceedings are quasi-criminal. In fact, the focus of juvenile court is rehabilitation, not retribution. The court uses the services of the Probation Department, mental health service providers, social service providers, and other service providers (mentors, teachers, youth programs, etc.) to rehabilitate youth. Juveniles not having the right to a trial by jury is a substantial difference between defending allegations in juvenile court and adult court. However, a consequence of juvenile delinquency proceedings which can carry

over into a person's life as an adult is a finding that the juvenile committed a strike offense; this finding, made by one judge without a trial by jury, can later be used pursuant to California's Three Strikes law. If a juvenile must deal with the same consequences as an adult, namely suffering a strike conviction, the juvenile should have the same right to a trial by jury afforded adults.

This Solution: This Resolution would entitle any minor, 16 years of age or older at the time of the alleged commission of an offense that could be used as a future felony conviction under California's Three Strikes Law, to a trial by jury.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

Adds provisions to existing law to give juveniles the right to a jury trial in specified circumstances; modifies existing statutory language to account for the option between a court finding and a finding by a jury.

AUTHOR AND/OR PERMANENT CONTACT: Autumn Paine, Law Office of Autumn R. Paine, 385 Grand Avenue Suite 200, Oakland, CA 94610; (510) 8321911; autumn@oaklanddefense.com.

RESPONSIBLE FLOOR DELEGATE: Autumn Paine