Section 601 California Welfare and Institutions Code: A Need for a Change

Gordon E. Gonion
If the President's Commission on Law Enforcement and the Administration of Justice made one point clear, it is that the system for dealing with juvenile offenders is neither treating effectively the patterns which bring young people into the system, nor preventing the recurrence of those patterns. The enormity of the problem, just in numbers, can be seen by the fact that projections for 1975 indicate an increase of 70% in the incarceration of juvenile offenders with 83% of the nation's institutions already operating at, or in excess of, their capacity. One way to reduce the number of juveniles flowing through the criminal justice system is to restrict the input by removal of those statutes that define behavior not unlawful if committed by an adult as juvenile crime.

* Deputy Probation Officer II, San Diego County Probation Department. Working towards Master's degree in Criminal Justice at San Diego State College.

NOTE: The opinions expressed herein are those of the author and do not necessarily represent the views of the San Diego County Probation Department.

1. President's Comm'n on Law Enforcement and the Administration of Justice, Task Force Report: Corrections at 45 (1967) [herein-after cited as Corrections].

February 1972 Vol. 9 No. 2
A proposal to this effect was introduced on February 8, 1971, in the regular session of the California legislature by Assemblymen Murphy, Biddle, Miller, Vasconcellos and Crown. The bill, AB 412, amended several sections of the Penal Code, Vehicle Code, and a sweeping number of Welfare and Institutions Code provisions relating to minors. The most important provision was the repeal of Section 601 and the amendment of Section 600 of the Welfare and Institutions Code (W&I) to include the truancy provision contained in the former section. However, as the result of tremendous pressure from probation, court, and police agencies, the bill was quickly amended to keep Section 601 in the W&I Code although its wording was substantially changed. The truancy provision remained as originally proposed.

This paper will discuss only that portion of AB 412 which, prior to its amendment, would have repealed Section 601 and thereby restrict the juvenile court’s jurisdiction. Since Section 601 is typical of delinquent tendencies and incorrigibility statutes in many other states, the foregoing comments are pertinent and applicable to these laws as well.

Section 601 W&I presently reads:

Any person under the age of 21 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or any person who is a habitual truant from school within the meaning of the law of this State, or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court.

The current system of criminal justice has three major interdependent components—police, courts, and corrections—each with its

3. A.B. 412, Cal. Legis., Reg. Sess. (February 8, 1971), amended, April 15, 1971 (Assemblymen Murphy, Biddle, Miller, Vasconcellos and Brown) [hereinafter cited as AB 412 (amended)]. (The bill has been defeated in the Senate.) The amended version of § 601 read, “Any person under the age of 18 years who is beyond the control of his parent, guardian or custodian, because of his persistent and habitual refusal to obey the reasonable and proper orders or directions of such person, is within the jurisdiction of the juvenile court. . . .”
own tasks and functions. Although they are independent, they each have grave consequences for one another. In most instances, the policeman initiates the process of criminal justice through his apprehension and arrest of an individual due to a violation or suspected violation of criminal law. In the cases of a juvenile, not only is the above true, but he is also subject to apprehension and arrest because he is defined as being a person described in Section 601.

The behavior described in this section is at its best imprecise and ambiguous. To sort out only certain juveniles when the prescribed behavior is commonplace among all at one time or another, is to vitiate this section. In this respect, there is accumulating evidence that who is and who isn’t a delinquent is a matter of definition and degree, not withstanding, that the official delinquent has incurred the sanctions of the juvenile court. Studies indicate the incidence of delinquency among the adolescent population to be much greater than anticipated and that official statistics reveal only a fraction of the delinquency committed in any community. An inference to be drawn from the foregoing is that the police and

6. Comment, supra note 4; Gonzales v. Mailliard, No. 50424 (N.D. Cal., Feb. 9, 1971). A three-judge U.S. District Court found that part of a § 601 which extends jurisdiction over minors for being “in danger of leading an idle, dissolute, lewd, or immoral life” to be unconstitutional. On February 19, 1971, the California Attorney General’s office obtained an order to stay the decision pending disposition of an appeal to the U.S. Supreme Court. Their application to determine whether or not the U.S. Supreme Court will exercise jurisdiction has been docketed for the October 1971 term.

7. President’s Comm’n on Law Enforcement and Admin. of Justice, The Challenge of Crime in a Free Society at 170 (1967) [hereinafter cited as President’s Comm’n]. It has been estimated that 90% of the young people, before they reach the age of 18, have committed a delinquent act that could have resulted in juvenile court action. Since few are caught, it is assumed that most turn out to be good citizens; See, Glaser, Criminology and Public Policy, 6 The Am. Sociologist 30 (1971). See also, A. Stinchcombe, Rebellion in a High School (1964) [hereinafter cited as Stinchcombe].

8. Possibly, delinquent behavior does not become a serious social problem unless and until society takes some action regarding it. H. Becker, Outsiders, 9 (1963), and R. Cloward & L. Ohlin, Delinquency & Opportunity 4–7 (1960).

9. See Empey & Erickson, Hidden Delinquency & Social Status, 44 Social Forces 546 (1966); Nye, Short & Olson, Socioeconomic Status and Delinquent Behavior, 63 Am. J. of Soc. 381 (1958); Murphy, Shirley and Witmer, The Incidence of Hidden Delinquency, 16 Am. J. of Orthopsychiatry 686 (1946); A. Porterfield, Youth in Trouble (1946); Short and Nye, Extent of Unrecorded Juvenile Delinquency: Tentative Conclusions, 49 J. Crim. L.C. & P.S. 296 (1958); Stinchcombe, supra note 7; Vaz, Middle Class Adolescents: Self Reported Delinquency and Youth Culture Activities, 2 Canadian Rev. of Soc. & Anthropology 52 (1965).
juvenile court processing, rather than the behavior itself, helps to fix and perpetuate the delinquency.

Tannenbaum, thirty-three years ago in his book *Crime and the Community*, advanced a similar version of this position in what he called the "dramatization of evil."\(^\text{10}\) In other words, the unintended consequence of a juvenile's first contact with police, instead of being simply an unpleasant experience which points up the advantages of a law-abiding life, may initiate a process that brings the juvenile back to official attention.\(^\text{11}\) This is said in another way in the California's Assembly Interim Committee on Criminal Procedure's Report. "Perhaps the most serious result of trying to cope with non-criminal behavioral problems through the courts, probation departments, and penal or quasi-penal institutions is that we might well be producing in children exactly those qualities that we are so desperately trying to avoid."\(^\text{12}\) This statement is supported in *The Challenge of Crime in a Free Society*\(^\text{13}\) and in *The Throwaway Children*. "[Y]oungsters are trapped in a spiral of delinquency that leads to further branding by society and its courts. Their young lives spin in the vortex of a self-fulfilling prophecy: We are what you say we are—the throwaway children."\(^\text{14}\)

The obvious implication here is that the vagueness and subjective quality of this section leaves the definition of delinquent behavior so broad that official action oftentimes has the opposite effect than was intended. Part of the definitional difficulty is because

Juvenile Delinquency is not a simple term. It means different things to different individuals, and it means different things to different groups. It has meant different things in the same group at different times. . . . In popular usage, the term juvenile delinquency is used to describe a large number of disapproved behaviors of children and youth. In this sense, almost anything that the youth does that others do not like is called juvenile delinquency.\(^\text{15}\)

---

13. *President's Comm'n, supra note 7, at 218.
These varied interpretations and definitions can be expected in our diverse society, but they can have unfortunate consequences when this conflict is built into our juvenile law and sets up a chain reaction that becomes the basis for depriving minors of their freedom.

What we are really talking about, then, is the use of discretion and its impact on the lives of the juveniles to whom it is applied. As Section 601 now stands, it allows almost anyone in a position of authority over a minor to become the moral arbitrator of behavior considered to be non-criminal in nature with the support of criminal sanctions and the threat of institutionalization. The stigmatizing effect in the application of this section is the prodromal element for setting the tone of future encounters. This has grave implications for the minor as well as for all components of the criminal justice system, for his entry makes him a statistic.

The police officer has the greatest discretion. By selectively identifying, according to his own definition of delinquency, those juveniles who will receive official attention, he initiates the criminal justice process. In numbers alone the police officer's discretion in arrest and custody decisions can have a vital effect on the operation of the overall system because he mans the input to the system. In a Chicago study conducted in connection with a legal service program for youthful offenders, it was found that out of a possible five hundred arrest situations, the police had arrested one hundred persons. Of these one hundred, forty were referred to probation or court intake services with only twenty reaching the court for adjudication.

There are many variables which affect this decision making process, but it should suffice to say that the criteria is neither consistent nor oftentimes objective in its application. This sets up and initiates problems when police officers define the subjective nature of delinquency and invoke Section 601 on behalf of the minor. In other words, the presumption of potential criminal acts is used where, in fact, no violation of law can be found. The effect of...

20. President's Comm'n on Law Enforcement and Admin. of Just-
this needs examination because the juvenile's reaction to police field practices generally exacerbates the problem which, in turn, has many implications through the juvenile system. Thus, the juvenile's attitude or demeanor may determine whether or not he is processed through the justice system. As Piliavin and Brian point out, "He is a delinquent because someone in authority has defined him as one, often on the basis of the public face he has presented to officials rather than the kind of offense he has committed." And so, the "dramatization of evil" perpetuates the cycle and feeds the disorder that the system is designed to cure.

The enormity of this problem can be seen from the estimate that over half of the police arrests for juveniles in the nation are for crimes that would not be criminal if committed by an adult. These are considered "delinquent tendencies" and/or "601" offenses in California and made up 63% of all juvenile arrests in 1966. In San Diego County, this category accounted for 60.5% of all juvenile arrests by law enforcement agencies for 1969. In 1960, this category was 62.5% and has remained consistently over the 50% level during the 1960's. No analysis as to the disposition of these arrests has been made, but a study of those booked and detained at the San Diego County Juvenile Hall for the month of October 1970 reflects this problem. This study showed that out of 971 minors admitted to juvenile hall for that month, approxi-

---

22. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, TASK FORCE REPORT: THE POLICE at 178-189 (1967). The section on field interrogations, 183-86, is especially interesting as it relates to juveniles.
26. Morse and Hawkins, supra note 18, at 160.
mately half were placed there for "601" offenses. In addition, it was found that one-half of the 210 minors detained in juvenile hall by the court were originally booked for "601" offenses. If one were to judge strictly from the comparative referral and detention rates between "601" and "602" (i.e., a juvenile whose conduct would be criminal if committed by an adult) minors, the distinction between the two would be obscure. In fact, being a runaway or incorrigible will get a minor referred and detained more often than committing burglary, assault or being caught in the possession of drugs. When the police and the courts fail to make a distinction among the seriousness of offenses, it is likely that juveniles will view themselves as delinquents and respond to this self perception, regardless of the type of offense committed.

As it relates to the "601" minor, the selection of juveniles facing the discretionary decisions of probation officers and judges is a relatively biased sample that has already been determined through the police officer's concept of juvenile delinquency. Even here there is disparity as to how these cases should be handled. The same variables which pre-dispose the police officer's determination such as individual interpretations, personal attitudes, and various community and organizational pressures, operate at this stage as well. Yona Cohn, in her study of the Bronx (N.Y.) Children Court, revealed that the kind of delinquent act, when classified ac-

29. That this trend continues is supported by the comment of the probation department's research analyst, George Watson, that 50% of the San Diego County Juvenile Hall's floating population is composed of children committing 601 offenses. San Diego Union, May 16, 1971, sec. B at 4, col. 2. 30. Ariesohn, supra note 28, at 12-13; Sumner, Locking Them Up, 17 CRIME & DELIN. 173-75 (1971) [hereinafter cited as Sumner]. This study also found a 50% detention rate for both prior offense (602 offenses) and prior delinquency adjudication (601 offenses) categories. In a high detention rate county, one that detained over one-third of the children referred, children classified as runaways and incorrigibles, also had a higher rate of detention over other types of offenses. Although not surprising, there was a relationship with prior record, prior offense, prior delinquency adjudication, and probation status. However, the difference in detention rate between the high-rate and low-rate detention counties was apparent. A crucial finding in the differences among decision-makers raises the question of whether or not decision-makers are making appropriate judgments; Downey, Why Children Are in Jail, 17 CHILDREN 22 (1970). The Children's Bureau obtained data on the specific offenses of 9,177 children covering 264 counties in 18 states. Less than 4% of the children in jail were detained for "offenses against persons", such as assault or robbery. On the other hand, slightly over 41% consisted of acts that would not have been violations of law if committed by adults—curfew, running away, truancy, ungovernability, and possession or drinking of alcoholic beverages.

cording to whether it was committed against life or property, against sexual taboos, or against parents, was a significant factor in the probation officer's recommendation to the court.\textsuperscript{33} It was found that one-eighth of all children committing delinquencies against life or property were recommended for institutionalization, but that one-half of these committing delinquent acts against parents were so recommended. Another interesting result was that those children committing delinquent acts against life or property stood about an eight to one better chance of getting probation or being discharged from the court's jurisdiction than those committing acts against parents.

The further along the "601" offender is in the court processes, the less likely he will be able to extricate himself.\textsuperscript{34} The view that a mature and educated judge, knowledgeable in law and human behavior, will administer justice, is illusory; it is here that the system is often at its worst instead of its best.\textsuperscript{35} A study done for the President's Commission on Law Enforcement and Adminstration of Justice revealed that half of the juvenile court judges in the United States were not college graduates; a fifth had never attended any college, and a fifth were not members of the bar.\textsuperscript{36} Over three-fourths of them spent less than a quarter of their time on juvenile matters. Hearings were little more than attenuated interviews of 10 to 15 minutes' duration\textsuperscript{37} with many being what Lemert calls "the 3-minute children's hour."\textsuperscript{38} That some of these judges operated a form of arbitrary folk law that approached a type of kangaroo court is more fact than fancy.\textsuperscript{39} From this kind of background is

\begin{footnotes}
\footnote{33. Cohn, Criteria for the Probation Officer's Recommendation to the Juvenile Court Judge, 9 CRIME & DELIN. 262 (1963).}

\footnote{34. Lerman, Child Convicts, 8 TRANS-ACTION 38 (July/Aug. 1971) [hereinafter cited as Lerman]. At the critical decision point, commitment to an institution is greater for the least serious offenders with juvenile status offenses/delinquent tendencies. Another study in New York City found that these same offenders spent more time in custodial facilities at all stages of their correctional experience than do other delinquents.}

\footnote{35. Justice on Trial, NEWSWEEK, March 8, 1971, at 18, 44-46; See Murphy, His Honor Has Problems Too, 3 CENTER 48 (1971).}

\footnote{36. President's Comm'n, supra note 7, at 217 (80).}

\footnote{37. CAL. Gov's SPECIAL STUDY Comm'n ON JUV. JUSTICE, A STUDY OF THE ADMIN. OF JUV. JUSTICE IN CAL., pt. 2, at 16 (1960). The report questioned whether the philosophy of the juvenile court could be carried out in this time.}

\footnote{38. JUV. DELIN., supra note 20, at 94.}

\footnote{39. In re Gault, 387 U.S. 1, 27 (1966); one aspect of this point is ex-}

301
added another layer of interpretation of who is a delinquent and is to be subject to the correctional system.

We have seen at this point that section 601 is highly arbitrary and discriminatory and has serious implications in the matter of personal growth and freedom for those it was designed to help. It may be pertinent, then, to ask about the purpose of the juvenile court law as it pertains to this section. Section 502 W&I Code states this purpose below:

502. Purpose of chapter. The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for his custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes.40

It is obvious that the chapter has been "liberally construed" only in the archaic tradition of the juvenile court which acts as the benevolent parent in helping the young people toward a better and self-fulfilling life. Assumptions made have been that since the court was good and just, how a juvenile got to court or the fact he was there at all, was of little consequence because the informal and welfare orientation of the court was there to serve the child making due process and legal safeguards unnecessary.41 Although due process is becoming a part of the juvenile court proceedings, its implementation is slow and oftentimes circumvented even though decisions have been rendered in favor of it by case law. The minor's dilemma led former Justice Abe Fortas to comment in Kent v. United States42 that the child received the worst of both possible worlds, getting neither the legal protections provided adults nor the solicitous care and regenerative treatment postulated for children. It seems a paradox that a nation so obsessed with the protection of children should treat so casually the official machinery and rules it has set up to effect this protection.

41. Commonwealth v. Fisher, 213 Pa. 48, 53-54, 62 A. 198, 200 (1905); In In re Gault, Justice Fortas stated, "Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure." 387 U.S. at 18 (1966).
42. 383 U.S. 541 (1966).
The fact is that section 601 was written to encompass non-delinquents because the humanitarian philosophy of the juvenile court made it the sine qua non for all minors in need of help. Under these conditions it was not unusual for the juvenile court to impose on this kind of child the presumed benefits of its administrations. However, it is these youths, who are legally processed alike, consigned to identical facilities, and provided the same treatment as others who commit criminal acts, who really do receive the "worst of both worlds" in our attempt to treat the need and not the deed. To lose sight of this matter is to confuse rhetoric with reality. Although this myth of the benevolent nature of the juvenile court may offer the comforts of traditions, it distorts the problem so it cannot be faced and dealt with realistically. Thus, the response to juvenile delinquency, and especially the "601" minor, appears to be based more upon an elaborate system of "mistaken assumptions, unwarranted conclusions, and profitable hypocrisy" than a real understanding of the problem.

After seventy years, the juvenile court is still far from becoming what the reformers had envisioned, and it has not significantly re habilitated youths, had an impact on juvenile misconduct, or brought justice and compassion to the young offender. It has not come close to meeting the real purpose of the law and it seems unlikely that elimination of section 601 will cause any less harm than continuing its existence on the false assumption that it benefits the child. The committee's report stated

there is no significant evidence that section 601 has been effective in turning runaways, truants, promiscuous girls or other incorrigibles into the kind of children whose behavior patterns satisfy adult expectations. There is even less evidence that section 601 has produced happier, healthier children who go on to become better adults because of their court, probationary, or institutional experiences.

Fortunately, most young people, including the greater percentage of those committing delinquent acts, are able to pass into adulthood without serious damage to themselves or others. And until such

44. Glen, supra note 21, at 439.
46. President's Comm'n, supra note 7, at 216.
47. Committee, supra note 12, at 7-8.
time as the effectiveness of our intervention under section 601 can be supported, it seems prudent to follow a course that Edwin Lemert calls "judicious nonintervention" for, in many cases, official non-action is as beneficial as official action. A study prepared for the Department of Health, Education and Welfare said it in a different way.

First, it is not at all clear that doing something is better than doing nothing, or that doing one thing is better than doing another. Indeed, we are finally beginning to understand that any intervention has the possibility of harm as well as help, and it is conceivable that the actions of even the well-meaning helpers do as much harm as good.

A corollary to this and possibly a paradox are two studies indicating a positive relationship of police professionalism and the humanistic approaches of judges to severity of restrictions and sanctions. These studies suggest that the more professional the police department, the higher are its arrests for juveniles; and for judges, the severity of sanctions was related to the degree that they used a social welfare ideology in their decisions.

The problems of growing up should not be legally defined as delinquency, nor should they even be permitted to constitute cause for invoking the jurisdiction of the juvenile court. In fact, if one is really concerned about rehabilitation and feels that the child needs the benefit of the juvenile court, a petition can be filed under section 600 in the W&I Code. Although precedent has oriented section 600 toward younger minors who are mistreated or abused, and sec-

49. Rector, Statement before the U.S. Senate Subcommittee to Investigate Juvenile Delinquency, 16 Crime & Delin. 94 (1970); Stinchcombe, supra note 7, at 178; Rubin, Illusions of Treatment in Sentences and Civil Commitments, 16 Crime & Delin. 79 (1970). The theme throughout is that there is a right not to be treated when commitment to an institution or placement on probation is based on the myth of treatment. Many times both the person and society would be better off by leaving him alone.
51. Wilson, The Police and the Delinquent in Two Cities, in Controlling Delinquents 9 (S. Wheeler ed. 1968); Wheeler, Bonacich, Cramer and Zola, Agents of Delinquency Control: A Comparative Analysis, in Controlling Delinquents (S. Wheeler ed. 1968). The interpretations of why this is so is beyond the scope of this paper, however, one interpretation why this may be true for judges and others with a social welfare ideology is acknowledged in Sol Rubin's article, Illusions of Treatment in Sentences and Civil Commitments. He comments, "The greater punitive-nness of the treatment-oriented people is not an accident of law or an unfortunate by-product of the struggle for better treatment services. It is a direct result of their view that institutionalization, if used for treatment, is good." 16 Crime and Delin. 87 (1970).
52. STinchcombe, supra note 7, at 170-85.
tion 601 toward older minors who, through their own actions, have demonstrated a need for help, such use is the result of established practice rather than legal restraint.53 This section under AB 412 will read as follows:

600. Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court:

(a) Who is in need of proper and effective parental care or control and (1) has no parent or guardian, (2) has no parent or guardian willing to exercise or capable of exercising such care or control, or (3) has no parent or guardian actually exercising such care or control.

(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, or 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.

(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

(d) Who is a habitual truant from school within the meaning of any law of this state.54

Most minors handled under section 601 could have been processed under section 600(a) because it could be said that their parents are either unwilling or unable to control them.55 The latter seems to be more in line with reality for, as Martin Gold points out, most parents of delinquent teenagers are not irresponsible and neglectful, at least not toward delinquency, and are concerned about their children's behavior; just ineffective in controlling it.56 This is what section 600(a) is saying and what many probation officers believe even though they prefer to deal with the problem under section 601. To perpetuate the credence that this section is a "parental fault section" is doing an injustice and disservice to those the law was designed to help. By using section 600(a) for those minors previously processed under section 601, it will demonstrate our true concern rather than promote an exercise in euphemism by subjecting them to a negative process of image

53. COMMITTEE, supra note 12, at 9.
54. AB 412 (amended) supra note 3, at 7. It is the author's feeling that the truancy provision should also be repealed.
55. This does not mean that all of these kinds of cases should be processed, only that they could be processed if necessary.
development and a series of "social degradation ceremonies" typi-
cal of any facility designed for control. Perhaps, if the public could
believe that crime and delinquency is not just a "contest between
good and evil," they could begin to deal with these problems in an
arena of openness and understanding rather than control and pun-
ishment. 

This latter position, control and punishment, is fairly well en-
trenched in both our criminal and juvenile procedures. Intervention
under the guise of treatment is an illusion which expiates our
guilt through the concept of justice. As Conrad points out, society
tolerates treatment because "[t]he prevailing theme of the culture
is still punishment; treatment is allowed to coexist because it fills
in time and eases many management problems." Although treat-
ment has been accepted as an essential element in the rehabilitation
process, it is still mired in many areas at the philosophical level
struggling for more ways to innovate and implement its methods.
Keve points out the difficulty of bringing about change is that gen-
erations have lived and died, comfortable in their belief that
crime is a simple evil to be controlled and deterred by simple rules
of punishment. This strongly entrenched heritage, though now re-
pudiated by new knowledge, is still dear to the emotional self,
and so a new generation will not easily do an about-face, to turn
its back on time-honored beliefs and happily embrace a new for-
mula for dealing with its antisocial members.

Control, then, as it is expressed through the utilization of juvenile
hall in support of section 601, appears to be more of an attempt to
impose upon minors our own moral judgments and values consid-
ered nugatory by the minors themselves (and others) than on help-
ing them with their problems. We must concentrate on changing
behavior, not punishing it, and that means focusing on the causes
and pressures for the behavior rather than the consequences of the
act itself. Enough has been said in the literature to illustrate that
coercion is unnecessary and contributes little toward ultimate cor-
rection. However, many persons feel that without this threat, pro-

57. Garfinkel, Conditions of Successful Degradation Ceremonies, 61
Amer. J. Soc. 420 (1956); Goffman, Characteristics of Total Institutions
in Criminal Law 429 (Donnelly, Goldstin, & Schwartz, eds. 1962).
58. See also, J. LOFLAND, DEVIANCE AND IDENTITY 301-07 (1969). Lof-
land points out that control and punishment is necessary for the or-
derly functioning of society, but one must be aware of the paradoxes
that this creates. However, working to transcend these dilemmas is still
the best way to a just and authentic social order.
bation would be ineffective, even though probation has been found only to be "less bad" than incarceration and not an end in itself. And, perhaps, it is because juvenile hall is available that those persons dealing with minors are able to "cop out" to the system, and do not have to evaluate their own decision-making processes and/or find other solutions.

The very fact that the President's Crime Commission proposed and came out so strongly for the establishment of Youth Service Bureaus gives substance to the charge that the official machinery and officialdom of the juvenile court is not appropriate for a minor except in the most severe case. This is not to say that there are not youngsters who need to be confined and who are impossible to control, but surely there are alternatives to processing many more than needed so a few can be controlled. Obviously, elimination

---

62. But cf. Duxbury, Youth Service Bureaus in California: A Progress Report 55 (Dept' of Youth Authority 1971). The antithesis to this attitude is the fact that the Youth Service Bureau in San Diego County has found that 59 out of 70 youths returned to the YSB for a second or subsequent visit even though no sanctions or threat of sanctions were imposed. This trend is encouraging and consistent with the idea of the YSB.

63. Downs, Wanted: A Balanced System of Justice, 15 Crime & Delin. 200 (1969); See Scarpitti and Stephenson, A Study of Probation Effectiveness, J. Crim. L.C. & F.S. 361-69 (1968); Garabedian & Gibbons comment that the high success rate for the boys in this study probably can be attributed to their being self-correctors and not that probation per se is responsible for their possible adjustment. Becoming Delin., supra note 16, at 182.

64. So important is this decision-making area that the California Department of Corrections' Research Division has reoriented their activities and emphasis for the next several years from the offender to decision-making practices. In their 1970 Annual Research Review, the following statement is made at 15:

The department has accumulated a large number of studies over a period of many years documenting the ineffectiveness in reducing recidivism of programs designed to change the behavior of the offender. We have more recently accumulated a smaller body of evidence which clearly indicates that rates of return to prison can be reduced significantly by studying and altering decision-making practices. . . . Our focus is, then, upon correctional operatives and decision-makers rather than upon offenders. . . .

Cohn, Contemporary Correctional Practice: Science or Ar, 34 Federal Probation 21 (1970); See also Sumner, supra note 30, at 175.

65. But cf. Position of the Los Angeles County Probation Dept., Removal of § 601 from the Welf. and Inst'n Code 7-10 (1971) [hereinafter cited as L. A. County]. Although they oppose elimination of § 601 at this time, some of their alternatives and recommendations regarding 601 cases are excellent.

66. Sheridan, supra note 32, at 28.
of section 601 does not mean all juvenile problems will be eliminated as well, but removal of this section would free the system for more urgent matters and help speed the development of more humane and judicial alternatives to many of these problems.67

The Committee felt that the use of fear and coercion (control and punishment) as a substitute for inadequate resources or rehabilitative capability was self-defeating.68 It was not felt that those in charge would examine their own effectiveness as long as the ability to incarcerate minors was still available.69 The lack of attention given to alternatives will continue, for as long as section 601 remains, neither the community nor the court needs to look responsibly for solutions. Judge Bazelon, Chief Judge of the United States Court of Appeals for the District of Columbia, recently stated

The situation is truly ironic. The argument for retaining beyond control and truancy jurisdiction is that juvenile courts have to act in such cases because ‘if we don’t act, no one else will.’ I submit that precisely the opposite is the case: because you do act, no one else does. Schools and public agencies refer their problem cases to you because you have jurisdiction, because you exercise it, and because you hold out promises that you can provide solutions.70

The situation was dramatized by one author who criticized the American people for being content to regard juvenile courts as sanitation departments whose job it is to keep the community clean by picking the undesirable kids off the streets. “No one pays too close attention to how a sanitation department does its job as long as it does it reasonably well. But when the storage bins overflow and the waste disposal system clogs, people begin to notice. Initially, it occurs to us that maybe we ought to build bigger bins, install up-to-date equipment. But when the jamming and the breakdowns persist, it is time to take a long, hard look at the system itself.”71

A good hard look was taken by the President’s Crime Commission

67. For alternatives see L. A. County, supra note 65; Lerman, supra note 34, at 39-44; E. Lemert, Instead of Court-Diversion in Juvenile Justice, Public Health Service Publication No. 2127 (1971); Gold & Winter, A Selective Review of Community-Based Programs for Preventing Delinquency (1961); Morse & Hawkins, supra note 18, at 150-72; Corrections, supra note 1, at 38-44; President’s Comm’n, supra note 7, at 220-38; L. Empey, Alternatives to Incarceration, U.S. Dept. of Health, Education & Welfare (1967); U.S. Children’s Bur., Standards for Juv. and Family Courts (USCB Pub. No. 437-1966); Rubin & Smith, The Future of the Juvenile Court, Joint Commission on Correctional Manpower & Training (1968).
68. Committee, supra note 12, at 10.
69. Id. at 10-11.
71. Richette, supra note 14, at 6.
and they offered as one of their solutions a continuation of the
movement towards narrowing the juvenile court’s jurisdiction, and
at the very least, consideration given to “complete elimination of
the court’s power over children for noncriminal conduct.”72 Others
have followed this lead including the National Council on Crime
and Delinquency.73 In California, a Special Committee on Judicial
Reform, Los Angeles Superior Court, recommended that section 601
W&I Code be eliminated. In their report of February 22, 1971, they
state:

Section 601 in effect permits irresponsible parents, overworked or
ineffective school personnel and agencies unable to effectively col-
lect evidence to establish parental neglect, to “put a record” on a
youngster who, in most cases, is not the one primarily responsible
for the activity involved. It is a section oftentimes used against
dependent and neglected children who are difficult to handle in
company with other dependent and neglected children. It is also
used as a “dealing” section to encourage a plea where a delin-
quency conviction could not be sustained. The experience of juve-
nile court judges has been that the intrusion of the court often ac-
centuates and perpetuates the family schism that is characteristic
of the 601 case.74

There is concern that the current “non-system” of criminal justice
is on the verge of collapse if continued crime and delinquency go
unabated without any change in its administration.75 And our

72. President’s Comm’n, supra note 7, at 228.
73. On October 28, 1970, the Board of Trustees, National Council on
Crime and Delinquency, came out with a policy statement recommending
in part that “Laws creating ‘crimes without victims’ should be removed
from the criminal codes. . . . The commonest examples of such so-called
laws are . . . and, among children, truancy and running away from
home—acts which, if committed by an adult, would not be considered
74. Los Angeles Superior Court, Special Committee on Judicial
Reforms, A Study of Current Problems Affecting the Administration of Ju-
stice, at 26-27, February 22, 1971, regarding the use of § 601 as a dealing
section. Approximately 70% of the 602 cases referred to probation depart-
ments throughout California and in Los Angeles County were initially
filed under § 602 but were reduced to a 601 petition in the interest of
justice or to avoid an adversary proceeding. But see, L.A. County, supra
note 65, at 3. In view of the decision rendered in In re Daniel R., 274 Cal.
App. 2d 749, 79 Cal. Rptr. 247, one wonders how many of these petitions
could have been sustained under a 602 petition and/or whether this prac-
tice is judicially sound. Also the practice of using § 601 as a “catch all”
section for unprovable offenses is contrary to the intent of the law. Cf.
75. R. Carter, A. McEachern, H. Sigurdson, Planning for Criminal and
failure in attacking the priorities to ameliorate the situation is in-
excusable when the delay appears to be for the convenience of those 
administering the system and at the expense of the minor.76 
Former Secretary of the Department of Health, Education and Wel-
fare, John W. Gardner, said:

\[\ldots\] an important thing to understand about any institution or so-
cial system, whether it is a nation or a city, a corporation or a fed-
eral agency: it doesn’t move unless you give it a solid push. 
Not a mild push—a solid jolt. If the push is not administered by 
vigorous and purposeful leaders, it will be administered eventu-
ally by an aroused citizenry or by a crisis.77

Although some see the crisis as already here, the “push” needs more 
momentum in exerting the pressures that will become the agents of 
change.

This line of thinking is not well received by many persons in 
the field of corrections or probation and seems to enlarge the hiatus 
between the “policy rulers” and the “apostles of change”. The ad-
vocates of change appear to need a special aegis to protect them 
from the organizational strategies that are united for the perpetua-
tion of the status quo. A juxtaposition of attitude is needed between 
the two in order to give a sense of balance and equilibrium to a sys-
tem marked by misrepresentation of facts and viewed with public 
indifference and confusion.

Unless the public is correctly informed of the shortcomings of the 
criminal justice system, they cannot be expected to respond to 
nEEDED changes or provide the resources necessary to deal with 
these juveniles in a more humane and just manner. Legislation 
such as AB 412 will prevent a game of verbal charades by demanding 
a commitment from all to engage in a cooperative effort towards 
operationalizing meaningful alternatives for those young people 
previously adjudicated by the juvenile court. There will be too 
much to do and no time for the profusion of rhetoric so common 
today.

Therefore, the deletion of section 601 from the W&I Code is rec-
commended, not only for its beneficial elimination of appropriate

---

76. Lerman, supra note 34, at 42; See A. Blumberg, CRIMINAL JUSTICE, 
1970; W. Chambliss, CRIME AND THE LEGAL PROCESS 84-98 (1969); See 
Furstenberg, Political Intrusion and Government Confusion: The Case of 
the National Institute of Law Enforcement and Criminal Justice, 6 THE 
Am. SOCIOLOGIST 59 (1971); see also, Mangel, How to Make a Criminal 
77. Craft, The Dilemma of the Forest Service, 76 AMERICAN FOREST 55 
(June 1970).
statistics, but as a means of effecting change within the criminal justice system on the basis of today’s knowledge and understanding. Lest we forget, we are closer to the year 2000 than 1899, and societies’ institutions and laws must adapt to the changing world about them rather than remain immobilized by the mythology of tradition.