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OPINION	:	No. 79-1212
	:	
of	:	<u>March 21, 1980</u>
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SUBJECT: BAIL OF JUVENILE—A juvenile traffic hearing officer may not establish a bail schedule and accept forfeiture of bail in lieu of an appearance by the juvenile.

The Honorable Christopher G. Money, District Attorney, County of San Luis Obispo, has requested an opinion on the following question:

May a juvenile traffic hearing officer establish a bail schedule and accept forfeiture of bail in lieu of an appearance by the juvenile?

CONCLUSION

A juvenile traffic hearing officer may not establish a bail schedule and accept forfeiture of bail in lieu of an appearance by the juvenile.

ANALYSIS

Sections 255–258 and 260–262 of the Welfare and Institutions Code¹ deal with the adjudication and disposition of juvenile traffic offenses by traffic hearing officers. Their enactment was a legislative response to certain findings and recommendations relating to juvenile traffic cases contained in a Report issued in 1960 by the Governor’s Special Study Commission on Juvenile Justice (hereinafter referred to as “the Report”). (*In re Kathy P.* (1979) 25 Cal. 3d 91, 99 and 99, fn. 8.) Part I of the Report was entitled “Recommendations for Changes in California’s Juvenile Court Law,” and Part II, “A Study of the Administration of Juvenile Justice in California.” Faced with a finding that juvenile court calendars would be overwhelmed by the sheer volume² of juvenile traffic cases if alternative methods of adjudicating those cases were not available (*Report*, pt. II at p. 29 quoted in *In re Kathy P.*, *supra*, 25 Cal. 3d at p. 99, fn. 8), the Commission recommended enactment of “provisions which would empower a juvenile traffic hearing officer, appointed by the court, to make final judgments in all traffic cases except those considered serious enough to warrant referral to the juvenile court.” (*Report*, pt. I, at p. 22 quoted in *In re Kathy P.*, *supra*, at p. 99) The Legislature promptly responded in 1961 by enacting sections 255–258 and 260–262 to permit traffic hearing officers to formally hear and dispose of those traffic cases.³

Section 255 of the Code provides that the judge of the juvenile court,⁴ or in counties having more than one judge of the juvenile court, the presiding judge or the senior judge if

¹ All statutory references herein are to the Welfare and Institutions Code unless otherwise stated.

² In 1960 the Report spoke of 100,000 traffic citations being issued annually to minors, on a base of 200,000 persons between 16 and 18 possessing driving licenses. (*Report*, pt. II, at p. 29.) At present we are informed. Los Angeles County alone handles 200,000 juvenile traffic violators per year.

³ Prior thereto lower court judges or probation officers were appointed as traffic referees to process juvenile traffic offenders. There was neither uniformity in practice among the state’s counties, nor prior legislative blessing to the concept. (*Report*, pt. II, at pp. 29–30.)

⁴ Section 245 of the Welfare and Institutions Code provides that each superior court exercise the jurisdiction conferred by the Arnold-Kennick Juvenile Court Law, to wit, chapter 2 of part 1 of division 2 of the Welfare and Institutions Code, and while exercising that jurisdiction, to be known and referred to as “the juvenile court.”

there is no presiding judge, may⁵ appoint one or more persons of suitable experience,⁶ to serve as traffic hearing officers. Subject to the orders of the juvenile court, the traffic hearing officer “may hear and dispose of any and all cases wherein a minor . . . , is charged with any violation of the Vehicle Code not declared to be a felony” (§ 256.)⁷ The traffic hearing officers must report their findings and orders in writing to the clerk of the juvenile court who in turn must promptly transmit an abstract thereof to the Department of Motor Vehicles. (§ 260.) Their orders are immediately effective (§ 261) subject to review by the judge of the juvenile court on motion of the minor or his parents. (§ 262.) (See also *In re Kathy P.*, *supra*, 25 Cal. 3d at pp. 96–97.)

We understand that a practice has developed in certain counties whereby juvenile traffic hearing officers have established a bail schedule and permit a minor to forfeit bail in lieu, of appearing before him or her, and we are asked if this practice is permissible. We conclude that the bail practice described has no statutory basis and contravenes both the spirit and letter of the Juvenile Court Law and it is therefore not lawful.⁸

⁵ The use of the permissive “may” (§ 15) was designed to achieve the recommended flexibility in handling juvenile traffic matters: “The commission views the juvenile court as the appropriate agency [for adjudicating juvenile traffic offenders] but recognizes the need for flexibility and local circumstances to dictate as to whether this function should be handled by probation officers, lower court judges, or by the juvenile court judge himself.” (*Report*, pt. II, p. 32.)

⁶ Traffic hearing officers may be judges of the municipal court, judges of the Justice court, probation officers, or assistant or deputy probation officers. (§ 255.) They serve at the pleasure of the appointing judge until the appointment of their successors. (*Ibid.*) They need not be attorneys. (*In re Kathy P.* (1979) 25 Cal. 3d 91, 101.)

⁷ Juvenile traffic cases are heard at special or separate sessions of court where no other matter may be heard. (§ 675.) The traffic hearing officers also have power to hear and dispose of cases involving violations of subdivision (m) of section 602 of the Penal Code (driving on private land), violations of the Fish and Game Code not declared to be a felony, violations of any of the equipment and registration provisions of the Harbors and Navigation Code, violations of city and county ordinances relating to traffic offenses, and violations of sections 126 (willfully failing to observe signs or markers) or 27126 (parking violations) of the Streets and Highways Code. (§ 256.) These powers are not discussed herein.

⁸ We also understand that in some counties where the bail procedure is practiced by the juvenile court traffic hearing officers, the Department of Motor Vehicles is not informed of the forfeiture, and we are asked if that too is permissible. Since we conclude that the establishment of a bail schedule is not legal we do not reach the second question. In any event it would seem that traffic hearing officers are required by section 261 to have all dispositions of cases made under section 258 reported to the Department of Motor Vehicles through the clerk of the juvenile court. See also Vehicle Code sections 1816 (1803) and 1805. Failure to report the offense would enable the juvenile to sustain as many moving violations as he would without a record of them—a situation which would surely foster nothing but a flagrant disregard for the Vehicle Code and a contempt

The sections of the code which deal with juvenile traffic cases before traffic hearing officers make no mention at all of the possibility of bail or the bail forfeiture procedure in that process. (§§ 256–258.) To the contrary, they, as part of the Juvenile Court Law, contemplate that greater individual consideration will be given the juvenile’s case than the bail mechanism provides.

Section 256 which defines the powers of the traffic hearing officers, does so conjunctively and provides that they may “hear and dispose” of certain juvenile traffic cases. At the outset it is apparent that the practice described in the request, i.e., the establishment of a bail schedule and attendant forfeiture of bail by the juvenile without further process—ignores the former of die conjunctive charges to the traffic hearing officer. The cases are not heard; they are merely *disposed* of. (*Cf.* 57 Ops. Cal. Atty. Gen. 619, 622 (1974).)

Section 257 which follows, provides for “a hearing before a traffic hearing officer,” to be conducted with the consent⁹ of the minor, upon an exact legible copy of the written Notice to Appear given at the time of the vehicular offense pursuant to Vehicle Code section 40500 (moving violations) or upon the Notice issued and left with the vehicle pursuant to Vehicle Code section 41103 (standing or parking violations).¹⁰ The Notices thus take the place of the Petition by which proceedings in juvenile court are usually initiated. (See §§ 311 and 332, 650 and 656; *cf.* Veh. Code, § 40513 providing for those Notices to serve in lieu of a verified complaint to which a defendant may plead.)

Consent of the juvenile to conduct the hearing on the Notice aside, the reference in section 257 to the Notice to Appear indicates that the Legislature did not contemplate the

for the law. That result would be intolerable given the incidence of death and serious injury upon the highways of this state. (*Hough v. McCarthy* (1960) 54 Cal. 2d 273, 285; *Cozens v. Superior Court* (*Blaine*) (1973) 31 Cal. App. 3d 441, 444.

⁹ Prior to the enactment of section 257 many of the traffic referees and probation officers who were then hearing juvenile traffic cases were aware of the “precarious legal position” of their orders because the cases were heard without the filing of a Petition to vest jurisdiction in the juvenile court. (*Report*, pt. II at p. 30.) They contended that the orders imposed were done so with the “consent” of the parents, albeit often given as an unhappy choice between that acquiescence and the alternative of the filing of a Petition, a more serious matter. The constitutional propriety of having traffic hearing officers hear contested juvenile traffic infraction cases following section 257’s procedures has now been upheld. (*In re Kathy P.*, *supra*, 25 Cal. 3d at p. 99.) We assume that under section 257, the juvenile’s consent, as the parents before its enactment, is often prompted by the alternative of having a Petition filed to initiate a formal wardship proceeding to determine the case. (§§ 602, 650.)

¹⁰ The Notice to Appear was discussed in detail in 59 Ops. Cal. Atty. Gen. 355, 358, 359 (1976).

possibility of a bail schedule being established and bail forfeiture being permitted. Rather it was intended that some “appearance” by the juvenile take place.

The Notice to Appear is not a document to be taken lightly. By signing it a juvenile, without admitting guilt, “promise[s] *to appear* at the time and place [designated]” (Official Form revised 11/10/69 Veh. Code, § 40513(b) approved by the Judicial Council, pursuant to Veh. Code, § 40500(b).) Refusal to sign the Notice when presented can result in a driver being taken into custody and brought before a magistrate. (*People v. Blazina* (1976) 55 Cal. App. 3d Supp. 35.) Failure of the juvenile to appear in juvenile court as promised constitutes a misdemeanor under section 214 (*cf.* Veh. Code, §§ 40508, 40000.15¹¹) and by so violating a law of this state, he may be adjudged a ward of the juvenile court. (§ 602.) Following a proper Petition to initiate proceedings (§§ 650, 653), an arrest warrant may be issued under section 663. (See California Juvenile Traffic Courts Association, *Recommended Guideline Manual for Juvenile Traffic Court* (1978) at p. 36, fn. 51 (hereinafter “the J.T.C. Manual”)¹²; *cf.* Veh. Code, § 40515 and 56 Ops. Cal. Atty. Gen. 165 (1973).)

Section 256 we have seen authorizes the use of traffic hearing officers to hear and dispose of certain juvenile traffic cases. The permissible dispositions are set forth in section 258(a):

“(a) *Upon a hearing* conducted in accordance with Section 257, *upon an admission* by the minor of the commission of a traffic violation charged, or *upon a finding* that the minor did in fact commit such traffic violation, the judge, referee, or traffic hearing officer may do any of the following:

“(1) Reprimand the minor, and take no further action;

“(2) Direct the probation officer to file a petition as provided for in Article 8 [*sic*] (commencing with Section 325 [*sic*] of this chapter;¹³ or

¹¹ It is especially to be noted that unlike section 40508 of the Vehicle Code which makes it a misdemeanor to fail to appear in court or “*before a person authorized to receive bail*,” section 214 makes it a misdemeanor for a juvenile to fail to perform as promised and appear “before [the] probation officer or *before the juvenile court*.” No mention is made in section 214 of the possibility of a juvenile’s appearing “before a person authorized to accept bail.” The reason will become apparent for as we discuss below, the concept of bail is “completely inconsistent with the philosophy of the juvenile court.” (*In re Harm R.* (1979) 88 Cal. App. 3d 438, 446.)

¹² The J.T.C. Manual has been cited as authority by the Supreme Court. (*Is re Kathy P.*, *supra*, 25 Cal. 3d at p. 102, fn. 12.)

¹³ We believe the references to article 8 and section 325 are most likely in error stemming from

“(3) Make any or all of the following orders:

“(i) That the driving privileges of the minor be suspended or restricted as provided in the Vehicle Code or, notwithstanding Section 13203 of the Vehicle Code or any other provision of law, when the Vehicle Code does not provide for the suspension or restriction of driving privileges, that, in addition to any other order, the driving privileges of the minor be suspended or restricted for a period of not to exceed 30 days.

“(ii) That the minor attend traffic school over a period not to exceed 60 days.

“(iii) That the minor pay to the general fund of the county a sum, not to exceed fifty dollars (\$50), and to the Driver Training Penalty Assessment Fund a penalty assessment in the amount provided in Section 52050 of the Vehicle Code for offenses not relating to parking or registration or offenses

the 1976 rearrangement, amendment and renumbering of the Arnold-Kennick Juvenile Curr. Law. (Stats. 1976, chs. 1068, 1071.) We think correct references should be to article 16 and section 650(b) which provide for commencement of proceedings to establish wardships under section 602 for minors who violate state laws. Former section 564 from which section 258 is derived referenced article 7 and section 650 which dealt with commencement of those wardship proceedings. With the 1976 revisions article 7 was renumbered as article 16; section 650 was divided in two subdivisions to accommodate substantive changes made by chapter 1071 of the 1976 statutes (e.g., having the prosecuting attorney file the petition).

Section 325 in contrast, provides for the commencement or proceedings (On Petition to declare a minor a *dependent child* of the court, i.e., a minor who is in need of proper and effective parental care or control, who is destitute, who is physically dangerous to the public because of a mental or physical problem, or whose home is an unfit place for him to live. (§ 300.) The distinction was succinctly stated in *In re Harm* (1979) 88 Cal. App. 3d 438, 446 thus: “Dependent children and status offenders have no corresponding category in the adult criminal court. They come under ‘pure’ juvenile court concepts. On the other hand, the section 602 ward comes to the juvenile court not necessarily because of any breakdown in the home or in the family in which the court must step in as a substitute parent but because he has committed an antisocial act which would be a crime were he an adult.”

Patently a section 325 proceeding is *not* a rational disposition for the traffic offender, and clearly the institution of section 650(b) proceedings, to have them declared wards of the court under section 602, was intended. Furthermore, the Legislature stated that in enacting chapter 1068 of the statutes of 1976, it did not intend to make any substantive changes in the Arnold-Kennick Juvenile Court Law. (Stats. 1976, ch. 1068. § 82.) The reference to section 325 would be such a substantive change. The Supreme Court did not discuss the error in *In re Kathy P.*, *supra*, (25 Cal. 3d at p. 100, fn 9.)

by pedestrians. Any judge, referee, or traffic hearing officer may waive a penalty assessment if the amount the minor is ordered to pay to the general fund of the county is less than ten dollars (\$10).

“(iv) That the probation officer undertake a program of supervision of the minor for a period not to exceed six months.

“(v) That the minor produce satisfactory evidence that the vehicle or its equipment has been made to conform with the requirements of the Vehicle Code pursuant to Section 40150 of the Vehicle Code.

“(vi) That the minor work in a city park or recreational facility or county or regional park for not to exceed 25 hours over a period not to exceed 30 days, during times other than his hours of school attendance or employment. When the order to work is made by a referee or a traffic hearing officer, it shall be approved by a judge of the juvenile court.”

The possible available dispositions set forth in the section are exclusive. (*Report*, pt. II, at p. 32¹⁴; *cf. In re Kathy P.*, *supra*, 25 Cal. 3d at pp. 99–100; *In re Jon D.* (1978) 84 Cal. App. 3d 337, 339, 340; 57 Ops. Cal. Atty. Gen. 619 (1974); J.T.C. Manual pp. 26–30.) Establishing a bail schedule and permitting bail forfeiture as a possible disposition is nowhere mentioned. Rather, section 258 contemplates that some greater contact with the juvenile will take place than the bail and forfeiture procedure described in the request would allow. The section begins by speaking of the traffic hearing officer making a disposition upon a *hearing* conducted in accordance with section 257, upon an *admission* by the minor of the commission of the traffic violation charged, or upon a *finding* that the minor did in fact commit such traffic violation” (Emphases added.) All of these procedures upon which a disposition may be based presuppose contact with the juvenile and individualized consideration of his case, whereas the practice of establishing a bail schedule and permitting the juvenile to forfeit bail by mail without further process does not.

We conclude accordingly that sections 256, 257 and 258 which define the powers of the traffic hearing officers and circumscribe their authority do not permit the establishment of a bail schedule or perforce allow bail forfeiture by the juvenile traffic offender.

There is a noticeable absence of provision for bail everywhere else in the present

¹⁴ The commission’s Report recommended that “restrictions as to the limits of the dispositions . . . should be outlined in the law.”

Juvenile Court law. (*Aubry v. Gadbois* (1975) 50 Cal. App. 3d 470, 474, 475.) Former section 828¹⁵ which had provided for admission of a juvenile to bail pending a hearing in the juvenile court was repealed when the law was revised in 1961. (Stats. 1961, ch. 1616, p. 3459, § 1.) In its stead the revised law made “ample provision . . . for what would even be more advantageous to a potential ward in a proper case” (*In re Castro* (1966) 243 Cal. App. 2d 402, 412) and “as properly administered, provides an adequate system for prehearing release of juveniles without the requirement of posting bail [citations].” (*In re William M.* (1970) 3 Cal. 3d 16, 26, fn. 17.) (See §§ 625–641 dealing with the matter of temporary custody.)

The lack of a provision for bail in the juvenile court law is neither unconstitutional¹⁶ nor surprising. Proceedings in juvenile court, it has been said, are sui generis. (*In re Dennis M.* (1969) 70 Cal. 2d 444, 456.) They are conducted for the protection and benefit of the youth in question and are thus different from adult criminal prosecutions where major goals are punishment (Pen. Code, § 1170(a) (1)) and the corrective confinement of the defendant for the protection of society (*In re Ricky H.* (1970) 2 Cal. 3d 513, 519, 520; *In re Ricardo M.* (1975) 52 Cal. App. 3d 744, 749; see also *In re Dennis M.*, *supra*, 70 Cal. 2d at p. 456; *In re Magnuson*, *supra*, 110 Cal. App. 2d at p. 75; but see § 202 declaring a purpose of the Juvenile Court Law to be the protection of the public).

“The basic predicate of the Juvenile Court Law is that each juvenile be treated an individual.” (*In re William M.*, *supra*, 3 Cal. 3d at p. 31.) Its concept “is that special diagnosis and treatment be accorded the psychological and emotional problems of each offender so that he achieves a satisfactory adjustment”(*ibid.*) and can become a useful member of society (*T.N.G. v. Superior Court*, *supra*, 4 Cal. 3d at p. 775). Realizing the peculiar nature of juvenile proceedings, even those decisions of the High Court which held that certain procedural protections of due process must be observed in juvenile proceedings in order to guarantee their fundamental fairness,¹⁷ did not “suggest a surrender of the salutary protections of the juvenile court system.” (*T.N.G. v. Superior Court* (1971) 4 Cal. 3d 767, 775; accord, *In re William M.*, *supra*, 3 Cal. 3d at p. 29, fn. 22 and *In re Dennis M.*, *supra*, 70 Cal. 2d at p. 456.)

¹⁵ Section 828 provided as follows:

“Pending hearing in the juvenile court the lodge thereof may admit the person so brought before him to bail or may otherwise provide for his temporary custody in any manner provided in this chapter for the care of a ward of the juvenile court.” (Stats. 1937, ch. 369, p. 1045, § 828.)

¹⁶ (*Aubry v. Gadbois* (1975) 50 Cal. App. 3d 470, 474–475; *cf. In re Magnuson* (1952) 110 Cal. App. 2d 73, 74 (bail pending appeal.)

¹⁷ (See *eg.*, *In re Gault* (1967) 387 U.S. 1; *In re Winship* (1970) 397 U.S. 358; *Kent v. United States* (1966) 383 U.S. 541.)

As the California Supreme Court observed in *In re Dennis M.*, *supra*,

“In such circumstances, factors other than ‘moral certainty of guilt’ come into play: e.g., the advantages of maintaining a noncriminal atmosphere throughout the hearing, and the need for speedy and individualized rehabilitative services. Indeed, the youth’s alleged crime may often be only the latest or most overt symptom of an underlying behavioral or personality disorder which could equally well warrant a declaration of wardship pursuant to other provisions of the code.” (70 Cal. 2d at p. 456; footnote omitted.)

Regarding the question of traffic cases, special considerations attend the case of the errant juvenile driver. “Though adults and juveniles when operating vehicles have the same duties, juveniles who breach those duties may require programs addressing discrete social and psychological problems that apparently accompany adolescence.” (*In re Kathy P.*, *supra*, 25 Cal. 3d at p. 101.)¹⁸ Those problems are best discerned and addressed by the procedures provided by the juvenile court process. (*Id.*; see also *Report*, pt. II at p. 31.) Through it a juvenile receives needed individualized attention at a time when it can do the most good,¹⁹ important parental involvement is secured,²⁰ a valuable forum is furnished for the education of both the juvenile and the parent, and a wide variety of appropriate dispositions under section 258 are possible. (*Report*, at p. II, at p. 31; *In re Kathy P.*, *supra*, 25 Cal. 3d at pp. 99–101.)

¹⁸ Some of the causes for the difference between adult and juvenile traffic errancy have been suggested to us. Juveniles are more susceptible to peer pressure and for the most part they drive for convenience and pleasure, unlike the adult who usually drives as an essential for functioning. The need for inculcating a sense of responsibility is therefore much greater with the juvenile.

¹⁹ It has been found that juveniles are likely to respond more favorably to personal attention and efforts at rehabilitation. (*Report*, pt. II at p. 31; *J.T.C. Manual* at p. 1.)

²⁰ Parental involvement with and supervision of the errant juvenile is a keystone of the juvenile court process. Section 202 (a) provides:

“The purpose of [the Juvenile Court law] 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 impose on the minor sense of responsibility for his own acts: to *preserve and strengthen the minor’s family ties* whenever possible. removing him from the custody of his parents only when necessary for his welfare or for the safety and protection of the public * * *; and when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. [The Law] shall be liberally construed to carry out these purposes.” (Emphases added.)

See also *In re William M.*, *supra*, 3 Cal. 3d at p. 26.

The bail and forfeiture practice has no place in the juvenile process. As one court said in passing, “bail is-completely inconsistent with the philosophy of the juvenile court . . .” (*In re Harm R.* (1979) 88 Cal. App. 3d 438, 446.) Since it does not and cannot provide a meaningful contact with the juvenile, and since it will often permit concealment of the offense from the parent, it utterly negates any possibility of discovering a problem, real or potential, or of achieving any salutary remedial action for which the juvenile court process was designed. If a juvenile is permitted to forfeit bail by mail, his particular problem could never be discerned, parental involvement could not be secured, and the juvenile could not be educated and inculcated with a sense of responsibility and respect for the law.

Further, as the Supreme Court said in *In re William M.*, *supra*:

“Nothing could be further from the spirit of the law than the absorption of the individual into a stereotype. A mechanized, mass treatment of offenders not only violates our deep conviction that each individual should personally obtain the protection of due process of law but also thwarts the legislative objective of providing the troubled youth of today with particularized treatment directed toward rehabilitation.” (3 Cal. 3d at p. 31.)

In respect to juvenile traffic cases, a practice of establishing bail and permitting its forfeiture in lieu of an appearance, utterly ignores the legislature’s acceptance of the Commission’s Report and Recommendations to have juvenile traffic cases handled on a personalized basis in the appropriate forum provided by the juvenile court. (*Report*, pt. II at p. 32.) The practice, which would provide no more than a mass treatment of the juvenile traffic offender, is utterly antithetical to the spirit and purpose of the Juvenile Court Law and as we have seen, to the letter of its provisions dealing with juvenile traffic cases as well (§§ 255–258.)

The California Juvenile Traffic Courts Association has recommended against the bail by mail and attendant forfeiture procedure for juvenile traffic cases (*J.T.C. Manuel* at p. 11, fn. 19) and our Supreme Court has noted that to “superimpose a provision for bail in [*sic*] the Juvenile Court Law would cause unexplored difficulties for most juveniles, particularly those who are indigent [citations].” (*In re William M.*, *supra*, 3 Cal. 3d at p. 26, fn. 17.)

We can only conclude accordingly that the practice described is legally impermissible. Traffic hearing officers may not establish a bail schedule and permit forfeiture of bail in lieu of an “appearance” by the juvenile in juvenile traffic cases heard by them pursuant to sections 255–258 and 260–262.
