REPRESENTING A MINOR ON APPEAL IN A JUVENILE DELINQUENCY CASE

Appellate Defenders, Inc.

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The purpose of this article is to provide some basics of juvenile delinquency appeals, with particular emphasis on the differences between juvenile delinquency appeals and criminal appeals in adult cases. The article is not meant to be all-inclusive – it is a starting point. Appointed counsel will need to research the pertinent cases and statutory provisions as they are subject to change.

Update: The Juvenile Justice Realignment Act, Senate Bill No. 823 ("SB 823"), which took effect September 30, 2020, sets timelines and conditions for the closure of the Department of Juvenile Justice (DJJ). Among other things, the bill provides county funding for the care of the DJJ population, the establishment of a state-level Office of Youth and Community Restoration (OYCR) to be operational July 1, 2021, and changes the ages and provisions for court jurisdiction and local custody. While this article covers the bill's major changes, counsel with clients potentially affected by this new legislation should consult the bill for more details. See also Pacific Juvenile Defense Council at pjdc.org for resources and support.

I. TERMINOLOGY

Use the correct terminology for the juvenile delinquency system in your briefing, rather than the comparable criminal case language. (See, e.g., *In re Robert W.* (1991) 228 Cal.App.3d 32, 34 [criticizing appellate counsel, among others, for discussing minor's "sentencing," because minors are not "sentenced"; such treatment blends and blurs the criminal justice system and the juvenile delinquency system].)

Criminal Case	Juvenile Delinquency Case
Complaint or information	Petition
Trial	Adjudication
Conviction	True finding
Guilty plea	Admission
Sentencing	Disposition
Sentence (to state prison)	Confine/Commit (to DJF/DJJ)
Total sentence	Maximum length of confinement
Defendant	Minor
Charge/Charged	Allegation/Alleged

II. GENERAL BACKGROUND

The juvenile delinquency system is concerned with providing care, treatment, and guidance consistent with both public safety and the minor's best interest. (Welf. & Inst. Code[1], § 202, subd. (b).) The purpose of the juvenile justice system is to rehabilitate minors. (*In re Julian R.* (2009) 47 Cal.4th 487, 496.) Minors are persons under the age of 18 years. (§ 602, subd. (a).)

Where the minor is alleged to have violated a law, the district attorney files a petition pursuant to section 602. (§ 650, subd. (c); Cal. Rules of Court, rule 5.520(b)(3).) Minors who are found to come within the jurisdiction of the court are declared wards of the court.[2] A "juvenile court" is a separate, civil division of the superior court. (§ 246.) Minors can be wards of the court under section 602 for violations of both state and federal law. (*In re Jose C.* (2009) 45 Cal.4th 534, 541-542.) Most appeals deal with section 602. Where the minor is alleged to be habitually disobedient, truant, or beyond parental control, a petition is filed by the probation officer under section 601. (§ 650, subd. (a); Cal. Rules of Court, rule 5.520(b)(2).)

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] This is different from the other half of the juvenile court, the juvenile *dependency* system, which provides protection to children who suffered or are at risk of suffering serious abuse or neglect. (§ 300 et seq.) Such minors are declared dependents of the court.

In some cases, a minor in the dependency system commits a crime. Where this dual-jurisdiction situation arises, the juvenile court is expected to initially determine in which system the minor's needs will best be met based on a joint protocol from the probation and welfare departments, pursuant to section 241.1. Where such procedures are not followed (*In re Joey G.* (2012) 206 Cal.App.4th 343, 348-349; *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1012-1013) or where the required assessment report is inadequate (*In re R.G.* (2017) 18 Cal.App.5th 273), an issue may exist for the appeal.

Successive petitions against a minor are filed under a single case number for practical reasons. It allows the court to keep track of a minor's progress (or lack thereof), to determine whether ordered rehabilitative programs are succeeding or whether new ones should be tried, and to aggregate offenses in order to extend the maximum term of confinement for a new offense where the minor appears to be sliding toward incorrigibility. (*In re Kasaundra D*. (2004) 121 Cal.App.4th 533, 540-541.) Where two section 602 juvenile petitions charging a minor with criminal misconduct were filed under the same superior court case number, an order terminating jurisdiction issued by the judicial officer presiding over one of the petitions also terminates jurisdiction over the other petition. (*Id*. at p. 542.)

Cases are frequently settled *before* the filing of the petition, at the intake stage or with informal probation, and those cases do not end up on appeal. (§ 654, 654.2, 654.3.) Minors cannot appeal an order of informal supervision under section 654.2, because the order by its nature takes place before adjudication so there is no judgment from which to appeal. (*Ricki J. v. Superior Court* (2005) 128 Cal.App.4th 783, 788-789.)

Some minors are prosecuted as adults under the general law in a court of criminal jurisdiction. Historically, minors 14 years old or older who were alleged to have committed certain violent offenses (e.g., murder, some sex offenses) were automatically prosecuted as adults. (Former § 602, subd. (b).) Certain other offenses were handled in juvenile or criminal court. The prosecution had unchecked discretion to direct file charges against minors who were at least 16 years old to adult court under certain circumstances. (Former §§ 602, subd. (b), 707, subds. (a)-(d); see *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 548-550.) A fitness hearing was held to determine whether certain minors were amenable to

juvenile court jurisdiction or whether they should be prosecuted in adult court. (See *Manduley v. Superior Court*, *supra,* 27 Cal.4th at pp. 548-549.)

On November 8, 2016, Proposition 57 repealed the provisions providing for direct filing of juvenile matters in adult court. Proposition 57 places all minors in the jurisdiction of the juvenile court. Now, a minor 16 years or older who is charged with any felony can be transferred to adult court only if the juvenile court finds the minor to be unfit. (§ 707, subd. (a)(1).) A minor who is at least 14 years old can be transferred to adult court if he or she is charged with a section 707, subdivision (b) offense and the court finds the minor to be unfit. (*Ibid.*)

Proposition 57 is retroactive to all cases not yet final when the law was enacted. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299.) The Court approved the remedy set forth in *People v. Vela* (2017) 11 Cal.App.5th 68 (sub. opn. *People v. Vela* (2018) 21 Cal.App.5th 1099) for juveniles who had cases pending in criminal court prior to the passage of Proposition 57. The Supreme Court wrote:

> Specifically, the *Vela* court ordered as follows: "Here, under these circumstances, Vela's conviction and sentence are conditionally reversed and we order the juvenile court to conduct a juvenile transfer hearing. (§ 707.) When conducting the transfer hearing, the juvenile court shall, to the extent possible, treat the matter as though the prosecutor had originally filed a juvenile petition in juvenile court and had then moved to transfer Vela's cause to a court of criminal jurisdiction. ([Welf. & Inst. Code], § 707, subd. (a)(1).) If, after conducting the juvenile transfer hearing, the court determines that it would have transferred Vela to a court of criminal jurisdiction because he is 'not a fit and proper subject to be dealt with under the juvenile court law,' then Vela's convictions and sentence are to be reinstated. (§ 707.1, subd. (a).) On the other hand, if the juvenile court finds that it would not have transferred Vela to a court of criminal jurisdiction, then it shall treat Vela's convictions as juvenile adjudications and impose an appropriate 'disposition' within its discretion." (*Vela, supra*, 11 Cal.App.5th at p. 82, rev.gr.)

(*People v. Superior Court (Lara), supra,* 4 Cal.5th at p. 310.) Since *Lara*, Courts of Appeal have retroactively applied the changes created by Proposition 57 and remanded the cases to the juvenile court for transfer hearings. (See, e.g., *People v. Castillero* (2019) 33 Cal.App.5th 393, 399 [individuals whose cases were not final and had received a fitness hearing prior to the passage of Proposition 57 must be afforded a new hearing under Proposition 57, per *Lara*]; *People v. Carter* (2018) 26 Cal.App.5th 985, 1001; *People v. Phung* (2018) 25 Cal.App.5th 741, 762-763; *People v. Vela, supra*, 21 Cal.App.5th 1099, 1112-1113 [conditional reversal].)

The Legislature further restricted what cases can be eligible for transfer from juvenile to adult court. On September 30, 2018, Senate Bill No. 1391 (SB 1391) was enacted. It became effective January 1, 2019. Like Proposition 57, the new legislation allows the district attorney to seek transfer of a defendant from juvenile to adult court where the defendant was 14 or 15 years old at the time the offense was committed and the offense is a serious felony listed in section 707, subdivision (b), but SB 1391 adds the restriction that such a transfer may be sought *only if the defendant was not apprehended until after the end of juvenile court jurisdiction*. In considering when "the end of juvenile court jurisdiction" occurs, counsel should consult sections 602 and 607, subdivisions (a) and (b), recently amended by Assembly Bill No. 1812 (Stats. 2018, ch. 36, § 30).

SB 1391's amendment further restricting the district attorney's ability to request transfer of a juvenile case to adult court is not an unconstitutional amendment of Proposition 57 (*O.G. v. Superior Court* (2021) 11 Cal.5th 82) and will likely be retroactive within the meaning of *In re Estrada* (1965) 63 Cal.2d 740 – that is, applicable to all cases not yet final for purpose of appellate review as of the effective date of the new laws.

Where the juvenile court finds the minor is "not a fit and proper subject to be dealt with" in the juvenile delinquency system, the court will order that the case be transferred to a court of criminal jurisdiction. (§ 707.01.) Whether juvenile court jurisdiction over all petitions pending against the minor is transferred will depend on the minor's age, whether jeopardy has attached, the nature of the crime, and when the petition was filed. (§ 707.01, subds. (a)-(b).) These proceedings are reviewable only by writ within 20 days from the first arraignment in adult court. (See Cal. Rules of Court, rule 5.770(g); *Rene C. v. Superior Court* (2006) 138

Cal.App.4th 1, 8-9 [minor contesting finding of unfitness]; *People v. Superior Court* (*Jones*) (1998) 18 Cal.4th 667, 677-680 [People challenging finding of fitness]; *People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 707 [minor contesting finding of unfitness], disapproved on another ground in *People v. Green* (1980) 27 Cal.3d 1, 33-35.) Once within the criminal court jurisdiction, such cases are handled just like any other adult case, and the statutes, case law authority, and rules of adult criminal proceedings are applicable during trial and on appeal. (See § 606 [subjecting minor to criminal prosecution].)

As of January 1, 2020, section 707.5 authorizes a person to request a case be returned to juvenile court following conviction by entry of a plea and authorizes a court upon request to return a case to the juvenile court for disposition under specific circumstances. (§ 707.5, added by Stats. 2019, ch. 583, § 1, eff. Jan. 1, 2020: Assem. Bill. No. 1423.) These circumstances relate to the nature of the original basis of the transfer and the nature of the ultimate conviction.

III. PHASES OF DELINQUENCY PROCEEDINGS

Delinquency proceedings have three phases: detention, jurisdiction, and disposition.

A. Detention

A probation officer detains the minor, and a hearing is held to determine whether detention should be continued pending adjudication on the petition. (§ 632.) Minors generally must be immediately released to parental custody with some exceptions. (§ 628, subd. (a).)

B. Jurisdiction

A jurisdictional hearing is held to address the merits of the petition requesting the court exercise jurisdiction over the minor and make him or her a ward of the court. (§ 702.)

The juvenile court may retain jurisdiction over any minor found to be a ward until the minor turns 21 years old. (§ 607, subd. (a).) Jurisdiction may be extended to the age of 25 years when the adjudicated offense is an enumerated offense under section 707, subdivisions (b) or (d)(2), if the

minor is committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities. (§ 607, subd. (b).) Amendments to section 607, created by Senate Bill No. 823, become effective on July 1, 2021. At that time, the juvenile court may still retain jurisdiction over any minor found to be a ward until the minor turns 21 years old. (§ 607, subd. (a).) Jurisdiction may be extended to the age of 23 years when the adjudicated offense is an enumerated offense under section 707, subdivision (b). (§ 607, subd. (b).) And jurisdiction may be extended to the age of 25 years when the adjudicated offense is an enumerated offense under section 707, subdivision (b), and at the time of adjudication the crime or crimes would, in criminal court, have carried an aggregate sentence of seven years or more. (§ 607, subd. (c).)

C. Disposition

The court may dismiss the petition outright without declaring wardship. (§ 782.) Except where the minor has been adjudicated for an offense enumerated in section 654.3, the court, without declaring wardship, may place the minor on probation for six months. (§ 725, subd. (a).) This is beneficial to the minor because if the minor successfully completes probation, the wardship petition is dismissed and the arrest is deemed not to have occurred. (§ 786.) If the court exercises jurisdiction (i.e., makes a true finding that the facts of the case prove a crime has been committed such that jurisdiction in declaring wardship is supported), the next step is the determination of the proper disposition for the minor. (§ 706.) To determine the proper disposition, the juvenile court must consider various factors: public safety, victim redress, the minor's best interest (§ 202, subd. (d)), the minor's "educational, physical, mental health, and developmental-services needs" (Cal. Rules of Court, rule 5.651(b)(2)(D)), the minor's age, the circumstances and gravity of the minor's offense, any prior history of delinquency, and "any other relevant and material evidence." (§ 725.5).

Although juvenile law contemplates a progressively more restrictive placement scheme, beginning with home placement under supervision and culminating in commitment to the Division of Juvenile Facilities ("DJF"), if minor is eligible (§ 733, subd. (c)), the court may consider commitment without prior recourse to other less restrictive placements. (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1159.) However, intake into the Department of Juvenile Justice will end on July 1, 2021, except for cases where minor may be tried in adult court and a transfer motion is filed. The court's

commitment decision will be upheld when the evidence demonstrates a probable benefit to the minor from the commitment and the ineffectiveness or inappropriateness of less restrictive alternatives. (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250.) The juvenile court is not required to expressly state on the record its reasons for rejecting less restrictive placements, but the record must contain some evidence that the court appropriately considered and rejected reasonable alternative placements. (*Nicole H.*, *supra,* 244 Cal.App.4th at p. 1159; see VII, *post*, for *"Potential Issues Regarding Disposition.*")

IV. CONFIDENTIALITY

(See Confidential Records on ADI's website under Practice Tools.)

Juvenile court proceedings and records are confidential in order to protect the privacy rights of the child. (§ 300.2.) This includes all briefing and other documents filed on appeal. No special requests need be made to file these documents in redacted and unredacted form. (Cal. Rules of Court, rules 8.45(b)(5), 8.46 and 8.47.)

The last name of the minor should not be used in the records or in any filing with the court. (That means on the proof of service, too.) The minor is referred to as "John L." or "Susie M.," with the last name abbreviated to its first initial, but if the first name is unusual, the initials of the juvenile may be used. (Cal. Rules of Court, rule 8.401(a)(1); Cal. Style Manual (4th ed. 2000) § 5:10.) In the brief, he or she can be referred to by first name or as "the minor." Adopting the abbreviated name used by the court on the appointment order promotes consistency.

If the minor has committed an offense listed in section 676, the name is not confidential unless the court so orders for good cause. (§ 676, subd. (c).)

Due to confidentiality concerns, the on-line court docket previously did not include delinquency cases. For cases with notices of appeal after September 1, 2008, the on-line docket will include delinquency cases identified by minors' initials.

Sample Case Caption

In re CHARLES S., a Person Coming Under the Juvenile Court Law	
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. CHARLES S., Defendant and Appellant.	Court of Appeal No. XXXXXX Superior Court No. XXXXXX

V. APPEALABILITY

Appeals in proceedings under sections 601 and 602 are authorized pursuant to section 800. Juvenile delinquency appeals are under California Rules of Court, rules 8.400 (taking the appeal), 8.407 (record), 8.410 (augmenting/correcting the record), 8.470, 8.252-8.272 (hearing and decision in the Court of Appeal), and 8.472, 8.500-8.552 (hearing and decision in the Supreme Court). (See also rule 5.585 [rules governing appellate review].)

The court's order at the jurisdictional hearing is not a final order, and thus is not appealable. (*In re P.A.* (2012) 211 Cal.App.4th 23, 32.) The order is, however, reviewable after the disposition. (*In re Z.A*. (2012) 207 Cal.App.4th 1401, 1405, fn. 2; *In re Shaun R*. (2010) 188 Cal.App.4th 1129, 1138; *In re James J.* (1986) 187 Cal.App.3d 1339, 1342-1343.)

A court's order providing that all prior orders not inconsistent with the current order remain in effect does not revive the appealability of prior orders that have already become final. (*In re Shaun R., supra,* 188 Cal.App.4th at p. 1141.)

Generally, appeals are brought by the minor. (§ 800.) The prosecution's right to appeal from a juvenile court order and judgment is

circumscribed to the statutory provisions of section 800, subdivision (b). (*People v. Superior Court (Manuel G.)* (2002) 104 Cal.App.4th 915, 924.) *In re Almalik S.* (1998) 68 Cal.App.4th 851, 854, held that the insertion of the words "by the minor" into subdivision (a) of section 800 in 1993 eliminated the previous right to appeal by a parent deprived of physical custody of the child by the judgment. (Cal. Rules of Court, former rule 1435(a).) The court acknowledged that the purpose of the amendment, as shown by its legislative history, was to provide for a People's appeal in a delinquency proceeding (*Almalik S.*, at p. 854, fn. 1), but did not consider the point that "by the minor" arguably was intended only to distinguish a minor's appeal from a People's appeal, not to eliminate a parent's existing right to appeal. *Almalik S.* also did not address the due process implications of permitting child custodial decisions affecting the parent's own rights to be made without a right of parental appeal.

Courts have found a right of parents to appeal a money judgment holding them liable for the acts of their child. (*In re Michael S.* (2007) 147 Cal.App.4th 1443; *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017 [upholding parent's standing to appeal money judgment against parent for delinquent acts of child].) *Michael S.* questioned the correctness of *Almalik S.* to the extent it suggests a parent has no right to appeal from a delinquency order that affects his or her own interests. (*Id.* at pp. 1450-1451 and fn. 4.) Unpublished case law supports that position, as well. Thus counsel should not allow *Almalik S.* to be a barrier to a parent's appeal from a juvenile adjudication. If the notice of appeal was filed by the parent, consult your assigned project attorney to determine whether any action needs to be taken to prevent dismissal by the court on its own motion.

The California Rules of Court governing appeals from the superior court in criminal cases are applicable in all juvenile court appeals. (Cal. Rules of Court, rules 5.585 and 8.400 et seq. [juvenile appeals].)

Sample Statements of Appealability

"This appeal is from a final judgment entered pursuant to Welfare and Institutions Code section 602 [or 601] and authorized by Welfare and Institutions Code section 800."

"This is an appeal from a judgment declaring a minor to be a ward of the court pursuant to Welfare and Institutions Code section 602 and is authorized by Welfare and Institutions Code section 800."

VI. COMMUNICATION

Minor clients are obviously less sophisticated than adult clients and may have had less experience in the court system and on appeal. Many may never communicate with their attorneys during the pendency of the appeal. Explanations of appellate proceedings or the status of the case need to be tailored to your client's level of understanding. Keep the minor's age and educational background in mind when communicating. It is also important to use a method of communication most conducive to his or her understanding the proceedings (e.g., phone call rather than letter so that you can monitor level of understanding), especially if you must warn of adverse consequences or obtain a decision from the client. This should be followed up with a letter confirming the discussion.

In some cases, the minor's parent or guardian will want to communicate with appellate counsel. Appellate counsel must consider whether there are conflicting interests, confidentiality issues, and the effect of the communication on the attorney-client privilege.

VII. POTENTIAL ISSUES

Practice Tip: Issue Development

1. Focus on the best interest of your client – what really went wrong or what will really help your client?
2. Develop a theme, i.e., errors that exacerbate each other.
3. Evaluate the strength and weakness of each potential issue.
4. Consider the standards of review and reversal - weaker issues can be raised where the standard of review is less deferential to the trial court.
5. Federalize the case by claiming federal constitutional error.
6. Check ADI's Practice Manual, Chapter 4, section 4.178 (Appendix D).
7. Check CCAP's "Issues on Review." (http://www.capcentral.org/high_court/pending_cal.aspx)

A. Potential Jurisdictional Issues

Jurisdictional issues are less common in juvenile delinquency appeals than dispositional issues, and there are certainly fewer evidentiary issues.

1. Admissions

At the detention hearing or thereafter, the minor may personally admit the allegations (the adult equivalent of pleading guilty to charges) and waive the jurisdictional hearing. (§ 657, subd. (b); Cal. Rules of Court, rule 5.778(c).) Counsel must consent. (*In re Alonzo J.* (2014) 58 Cal.4th 924, 939; § 657, subd. (b); Cal. Rules of Court, rule 5.778 (d).) The record must reflect an intelligent and voluntary waiver of the minor's rights pursuant to *Boykin v. Alabama* (1969) 395 U.S. 238 [89 S.Ct. 1709, 23 L.Ed.2d 274] and *In re Tahl* (1969) 1 Cal.3d 122. (*In re Ronald E.* (1977) 19 Cal.3d 315, 320-321, disapproved on another ground in *People v. Howard* (1992) 1 Cal.4th 1132, 1175.) A finding supported by clear and convincing evidence that the minor lacked capacity to understand the consequences of his or her admission due to a developmental disability is good cause to allow the minor to withdraw his admission. (See, e.g., *In re Matthew N.* (2013) 216 Cal.App.4th 1412, 1420.)

Unlike an adult appeal from a guilty plea, there is no requirement to obtain a certificate of probable cause (CPC) before raising issues which challenge the admission. (*In re Joseph B.* (1983) 34 Cal.3d 952, 955-960.) However, issues raised on appeal following an admission must still be cognizable on appeal, regardless of the CPC issue. (See, e.g., *In re John B*. (1989) 215 Cal.App.3d 477, 484 [voluntariness of confession may not be litigated on appeal following an admission because all questions of guilt are removed from consideration by guilty plea].)

The Supreme Court has reaffirmed the principle stated in *People v. Arbuckle* (1978) 22 Cal.3d 749, and extended to juvenile cases generally (see *In re James H*. (1985) 165 Cal.App.3d 911, 917; *In re Ray O*. (1979) 97 Cal.App.3d 136, 139–140 ["whenever a juvenile enters a plea bargain before a judge he has the right to be sentenced by that same judge"]): "in every plea in both adult and juvenile court, an implied term is that the judge who accepts the plea will be the judge who pronounces sentence. (*K.R. v. Superior Court* (2017) 3 Cal.5th 295, 312.) "Should the People wish to

allow a different judge to preside at sentencing (or, in juvenile cases, disposition), they should seek to obtain a waiver from the pleading defendant or juvenile." (*Ibid*.)

2. Capacity

A minor under the age of 14 years is presumed incapable of committing a crime. (Pen. Code, § 26; *People v. Cottone* (2013) 57 Cal.4th 269, 280; *In re Manuel L*. (1994) 7 Cal.4th 229, 231; *In re Gladys R.* (1970) 1 Cal.3d 855, 862.) Clear and convincing evidence that the minor knew of the wrongfulness of the charged act at the time he or she committed it defeats this presumption. (Pen. Code, § 26; *Cottone*, *supra*, 57 Cal.4th at p. 280; *In re Manuel L.*, *supra*, 7 Cal.4th at p. 239.) The court considers the minor's age, experience, and level of understanding. (*In re Gladys R., supra,* 1 Cal.3d at p. 864.) The court also considers the "attendant circumstances of the crime, such as its preparation, the particular method of its commission, and its concealment." (*Cottone*, *supra*, 57 Cal.4th at pp. 280-281; *In re Joseph H*. (2015) 237 Cal.App.4th 517, 539; *In re Marven C*. (1995) 33 Cal.App.4th 482, 487.)

A minor under 12 years of age when he or she is alleged to have committed an offense can come within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court, only if he or she has committed one of five enumerated offenses: murder, aggravated rape, aggravated sodomy, aggravated oral copulation, or aggravated sexual penetration. (§ 602, subds. (a) & (b).)

3. Proof

Adjudications under section 602 are governed by reasonable doubt. (§ 701; *In re Winship* (1970) 397 U.S. 358, 368 [90 S.Ct. 1068, 25 L.Ed.2d 368]; *In re Mitchell P*. (1978) 22 Cal.3d 946, 950.) A finding that the minor knew the wrongfulness of the act must be supported by clear and convincing evidence. (*Cottone*, *supra*, 57 Cal.4th at p. 280; *In re Manuel L., supra*, 7 Cal.4th at p. 239.)

Adjudications under section 601 are governed by a preponderance of the evidence. (§ 701; *In re Bettye K*. (1991) 234 Cal.App.3d 143, 148.)

4. Pretrial Issues

The statute of limitations is the applicable adult statute of limitations. (*In re Gustavo M.* (1989) 214 Cal.App.3d 1485, 1493-1495; Pen. Code, §§ 799 through 805.)

The California and federal Constitutions require that the minor be competent to stand trial, just like an adult. However, Penal Code section 1367 et seq., does not apply to juvenile cases; instead, section 709 guides the competency analysis. (*In re R.V.* (2015) 61 Cal.4th 181, 189-191.) The minor is presumed competent and the party claiming otherwise has the burden to prove incompetency by a preponderance of the evidence. (*Id.* at pp. 193, 197.)

Due process principles set forth in *Jackson v. Indiana* (1972) 406 U.S. 715, 738 [92 S.Ct. 1845, 32 L.Ed.2d 435] and *In re Davis* (1973) 8 Cal.3d 798 preclude indefinite detention of incompetent minors. (*In re Albert C.* (2017) 3 Cal.5th 483, 490 (*Albert C.*).) When minor is incompetent, wardship proceedings shall be suspended "for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction." (§ 709, subd. (c).) In the adult context, the Penal Code provides comprehensive structure to ensure commitment of incompetent adults is reasonably related to reaching competency. (See Pen. Code, § 1370.) But the Legislature has not provided an analogous statutory comprehensive scheme in the juvenile context. (*Albert C.*, *supra*, 3 Cal.5th at p. 491.) An administrative court protocol, not adopted pursuant to any mechanism vesting it with legal authority, "may serve as useful guidance concerning the placement, detention, and treatment" of incompetent minors, but it does not carry the force of law. (*Id*. at p. 492.) "*Jackson* and *Davis* set constitutional limits defining when a detention becomes so lengthy or unjustified as to violate due process. But neither *Jackson* nor *Davis* requires any court to make the reasonableness determination strictly on a case-by-case basis, with no presumption, time limit, or general guidance. A protocol, local rule, or state statute may adopt a detention policy that is more protective of a juvenile's rights than *Jackson* and *Davis*; neither case requires any jurisdiction to detain an incompetent minor at all." (*Id*. at p. 494.)

Two cases have held mental health diversion under Penal Code section 1001.36 does not apply to juveniles in delinquency proceedings. (*In re J.M.* (2019) 35 Cal.App.5th 999, 1009-1010 (*J.M.*); *In re M.S.* (2019) 32 Cal.App.5th 1177, 1193.) The court in *J.M.* further held this exclusion does not violate equal protection given that "there are material differences between the adult and juvenile justice schemes with regard to their underlying purposes and to the treatment of offenders with mental health issues." (*Id*. at p. 1011.)

Recently, review was granted by the California Supreme Court to resolve the following question: When the prosecution moves for a temporary restraining order in a juvenile wardship proceeding without having given advance notice to the minor, must it be shown that: (a) "great or irreparable injury will result" before the matter could be heard with proper notice, and (b) the prosecution notified the minor within a reasonable time prior to the hearing regarding when and where the order would be sought, or attempted to notify the minor, or for specified reasons should not have been required to notify the minor? (See § 213.5, subd. (b); Code of Civ. Proc., § 527, subd. (c).) (*In re Erika F.* (2020) 45 Cal.App.5th 216, review granted Jun. 17, 2020, S260839.)

5. Search and Seizure Issues

Minors are protected against unreasonable searches and seizures. (*In re William G*. (1985) 40 Cal.3d 550, 557, citing *In re Scott K.* (1979) 24 Cal.3d 395, 401-402.) Suppression motions are made pursuant to section 700.1 (not Pen. Code, § 1538.5) and are appealable even where the minor has admitted the allegations in the petition. (§ 800, subd. (a).) Case law recognizes that minor children are treated differently than adults in determining the "reasonableness" of a search.

Detention of a minor by school officials to investigate is permissible even in the absence of reasonable suspicion of criminal activity unless made in an arbitrary, capricious or harassing manner. (*In re Randy G.* (2002) 26 Cal.4th 556, 564-565.) Searches by school officials are governed by the Fourth Amendment, but full probable cause is not required for a search, the reasonableness of which turns on all the circumstances. (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 336-337, 341 [105 S.Ct. 733, 83 L.Ed.2d 720].) For example, the United States Supreme Court found that a search of a backpack and outer clothing of a student for prescription

strength ibuprofen was permissible in response to a report the student passed out a pill. (*Safford Unified School District No. 1 v. Redding* (2009) 557 U.S. 364, 372-374 [129 S.Ct. 2633, 174 L.Ed.2d 354].) However, a subsequent strip search, when nothing was found in the initial search, was impermissible. (*Id*. at pp. 374-377.)

In 2010, a Court of Appeal case held that a parent can consent to a search of a minor's room and thereby waive the minor's Fourth Amendment rights. (*In re D.C*. (2010) 188 Cal.App.4th 978, 983-988.) However, the holding in *D.C.* seems challengeable. The California Supreme Court previously found that a parent lacks authority to consent to the search of a minor's toolbox (*In re Scott K., supra,* 24 Cal.3d at pp. 404-405), and a federal appellate court found that a parent lacks authority to consent to the search of an adult child's room without proof of "mutual use" (*U.S. v. Whitfield* (D.C.Cir.1991) 939 F.2d 1071, 1074-1075). The opinion in *D.C.* addresses *Scott K.* and *Whitfield*. (*In re D.C., supra*, 188 Cal.App.4th at pp. 986-988.)

Evidence seized as the result of an otherwise illegal search of a minor on probation is inadmissible unless the searching officer was aware of the minor's probation search condition. (*In re Jaime P.* (2006) 40 Cal.4th 128, 138-139, overruling the court's prior ruling in *In re Tyrell J.* (1994) 8 Cal.4th 68.)

6. Confessions / Statements to Police

Police and probation officers are required to advise the minor of his or her constitutional rights. (§§ 625, subd. (c), 627.5; *In re Joseph R.* (1998) 65 Cal.App.4th 954, 956-960.) Section 701 governs the procedures for a motion to suppress a confession or other statement to police. As in adult cases, two separate potential admissibility issues should be considered: 1) were *Miranda*[3] procedures properly followed, and 2) were the statements made free from coercion. (*In re Teters* (1968) 264 Cal.App.2d 816, 819-821; *In re James M.* (1977) 72 Cal.App.3d 133, 136, 137.)

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[3] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

The law previously mandated cessation of questioning upon a minor's request to speak with a parent before or during questioning. However, the California Supreme Court concluded that a minor's request to speak with a parent does not automatically invoke his or her right against self-incrimination; a request for a lawyer is the only automatic invocation of the right against self-incrimination. (*People v. Lessie* (2010) 47 Cal.4th 1152, 1168, disapproving its prior decision in *People v. Burton* (1971) 6 Cal.3d 375, 383-384.) The California Supreme Court premised its decision on the United States Supreme Court's holding in *Fare v. Michael C.* (1979) 442 U.S. 707, 727-728 [99 S.Ct. 2560, 61 L.Ed.2d 197] that a minor's request for a probation officer was not an automatic invocation of his or her right against self-incrimination. (*Lessie, supra,* 47 Cal.4th at pp. 1164-1165.) In a 2012 case, the California Supreme Court further clarified that a request for a parent after a valid *Miranda* waiver is insufficient to require the cessation of questioning "unless the circumstances are such that a reasonable officer would understand that the juvenile is actually invoking — as opposed to might be invoking — the right to counsel or silence." (*People v. Nelson* (2012) 53 Cal.4th 367, 381.) Thus, the California Supreme Court concluded that the same standard for post-waiver invocation of the right to silence or counsel applies to juveniles as adults; the request must be such that a reasonable officer would understand it as an unambiguous invocation of the right to counsel or silence. (*Ibid*.)

The United States Supreme Court has not yet decided the particular question of whether a minor's request to speak with a parent automatically invokes his or her right against self-incrimination. In *J.D.B. v. North Carolina* (2011) 564 U.S. 261 [131 S.Ct. 2394, 180 L.Ed.2d 310], the United States Supreme Court made clear that, while not a determinative factor in every case, a minor's age should be considered in evaluating whether a minor was "in custody" for *Miranda* purposes. (*Id.* at pp. 272-277.)

Whether a minor has voluntarily waived his *Miranda* rights depends on the totality of the circumstances, including age, education, intelligence, and familiarity with the law. (*People v. Lessie, supra*, 47 Cal.4th at p. 1167; *In re Elias V.* (2015) 237 Cal.App.4th 568, 586-587 [13-year old's *Miranda* waiver found to be involuntary based on 1) minor's youth; 2) "the absence of any evidence corroborating [minor's] inculpatory evidence; and 3) the likelihood that [the officer's] use of deception and overbearing tactics would induce involuntary and untrustworthy incriminating admissions"]; *In*

re Peter G. (1980) 110 Cal.App.3d 576, 584-585 [13-year-old's *Miranda* waivers found involuntary due to his extreme intoxication, emotional demeanor, and tender age].) Voluntariness must be tested by "the totality of all the surrounding circumstances – both the characteristics of the accused and the details of the interrogation." (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 226 [93 S.Ct. 2041, 36 L.Ed.2d 854]; *In re Abdul Y.* (1982) 130 Cal.App.3d 847, 862.) The standard for establishing the voluntariness of a confession is higher than in an adult case. (*In re Abdul Y., supra,* 130 Cal.App.3d at p. 862; *In re Anthony J.* (1980) 107 Cal.App.3d 962, 971; *In re Gault* (1966) 387 U.S. 1, 55 [87 S.Ct. 1428, 18 L.Ed.2d 527].)

Under state law a minor must consult with counsel before a custodial interrogation. Section 625.6, per amendment signed into law on September 30, 2020, provides that "[p]rior to a custodial interrogation, and before the waiver of any *Miranda* rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference." (§ 625.6, subd. (a).) This consultation may not be waived. (*Ibid*.) Courts must "consider the effect" of a failure to comply with this requirement in considering the admissibility of custodial statements. (§ 625.6, subd. (b.)) Certain exclusions apply. (*Id*. at subd. (c).) However, a court is not authorized to exercise its discretion to exclude statements if those statements are admissible under federal law. (*In re Anthony C.* (2019) 43 Cal.App.5th 438, 450.)

7. Statements Made to Expert Psychologists

In *Elijah W. v. Superior Court* (2013) 216 Cal.App.4th 140, the Court of Appeal declined to read in the Child Abuse and Neglect Reporting Act (CANRA) that defense experts have the affirmative duty to report abuse, neglect, or threats, when it contravenes a minor's right to confidentiality and privilege. To the extent it is reasonably necessary for a minor's defense, minors have a constitutional right to the appointment of qualified experts, including a psychotherapist, to be part of a defense team protected by counsel's duty to confidentiality of client information and the lawyer-client privilege. (*Id.* at pp. 156-159.)

8. Miscellaneous Issues Regarding Offense Allegations More Likely to Arise in Juvenile Cases

Penal Code section 626.10 delineates a list of weapons that are prohibited on school campuses. Possessing a multi-tool device on school grounds is a violation of the statute, if it happens to have as one tool a blade that locks into place; a violation occurs even where the tool is never used or opened. (*In re T.B.* (2009) 172 Cal.App.4th 125, 129-131; but see *People v. Castillolopez* (2016) 63 Cal.4th 322, 333-334 [in an adult case, a folding knife was not "locked into position" and thus was not a prohibited "dirk or dagger"].)

Penal Code section 4573, which prohibits the bringing of controlled substances into a variety of adult penal institutions does not apply to juvenile institutions. Rather, Welfare and Institutions Code section 871.5 applies. (*In re Edward Q.* (2009) 177 Cal.App.4th 906, 908-910.)

9. Jury Trial

There is currently no general right to a jury trial in a juvenile wardship adjudication. (*McKeiver v. Pennsylvania* (1971) 403 U.S. 528, 545 [91 S.Ct. 1976, 29 L.Ed.2d 647]; *In re Myresheia W.* (1998) 61 Cal.App.4th 734, 741 [no right to jury trial even where current alleged offense can be used as a "strike" in the future]; see Pen. Code, § 1170.12, subd. (b)(3) [prior juvenile adjudication shall constitute a prior serious and/or violent felony for purposes of enhancement if certain conditions are met]; *In re Charles C.* (1991) 232 Cal.App.3d 952, 955-956; *In re Javier A*. (1984) 159 Cal.App.3d 913, 968-975 [would have granted minors right to jury trial but for stare decisis].) In an appropriate case, there might be a viable argument that a jury trial is mandated or a disposition may not be imposed absent a jury trial option, such as where the instant allegation could be used in an adult case as a strike prior or where a true finding could lead or does lead to lifetime sex offender registration or residency restrictions. The rationale behind such an argument would be that juvenile proceedings now are adversarial, criminal, and punitive. (See *United States v. Tighe* (9th Cir. 2001) 266 F.3d 1187, 1191-1195; *In re L.M.* (Kan. 2008) 186 P.3d 164, 165-172 [Kansas Supreme Court concludes Kansas law now affords the right to jury trial in juvenile cases]; *In re Javier A., supra*, 159 Cal.App.3d at pp. 958-967; see generally *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

However, in *People v. Nguyen* (2009) 46 Cal.4th 1007, the defendant objected to use of his juvenile adjudication as a strike because he had not been accorded the right to a jury in the juvenile proceeding and its use in sentencing was a violation of his Sixth Amendment rights. (*Id.* at p. 1014.) The California Supreme Court held that use of a prior juvenile adjudication to increase a sentence under Three Strikes law did not violate the defendant's right to jury trial. (*Id*. at p. 1025, see also *People v. Mosley* (2015) 60 Cal.4th 1044, 1069 [a defendant has no right to a jury trial on the factual findings subjecting him to sex offender residency restrictions].) The United States Supreme Court has not yet decided this issue, however. The Court of Appeal's decision in *Nguyen*, which has been overruled and thus cannot be cited, provides some helpful background and authority. (See *People v. Nguyen* (2007) 152 Cal.App.4th 1205, review granted and depublished Oct. 10, 2007, S154847.)

No jury trial means no instructional errors, which are frequently fertile ground for reversal on appeal. Applicable jury instructions and annotations should nonetheless be reviewed to ensure that the evidence is sufficient for each of the elements of the substantive offenses, enhancements, or defenses and that the true finding complied with the general principles of law as expressed in the instructions.

B. Potential Issues Regarding Disposition

1. Sufficiency of the Evidence

Review the evidence on which the true finding rested to determine whether it meets constitutional and statutory requirements. Could a reasonable trier of fact find each element of each offense proven beyond a reasonable doubt? (*In re Jose R.* (1982) 137 Cal.App.3d 269, 275; *In re Winship* (1970) 397 U.S. 358, 368 [90 S.Ct. 1068, 25 L.Ed.2d 368].)

2. Court's Discretionary Choices

After making a true finding, the court may: 1) set aside the finding and dismiss the petition in the interests of justice and the welfare of the minor or if the minor is not in need of rehabilitation, setting forth the specific reasons for dismissal in the minutes (§ 782; cf. Pen. Code, § 1385); 2) not adjudge the minor a ward and place him or her on probation for less

than six months (§ 725, subd. (a)); or 3) adjudge the minor a ward (§ 725, subd. (b)).

Once it has adjudged the minor a ward, the court may: 1) place the minor on unsupervised probation (§ 727, subd. (a)); 2) place the minor on supervised probation at home (§ 730, but see § 727, subd. (a)); 3) place the minor with a relative or in a licensed group or foster home (§ 727, subd. (a)); 4) commit the minor to juvenile hall or a county camp or ranch (§ 730, subd. (a)); or 5) commit the minor to the DJF (§ 731)[4]. Section 202, subdivision (e), provides a list of permissible sanctions - fines, community service, probation conditions, and commitment.

Minors may not be entitled to the protection of *People v. Harvey* (1979) 25 Cal.3d 754 [absent a waiver by defendant, a sentencing court is not permitted to rely upon information relating to counts dismissed in accordance with a plea bargain] and instead may be subject to adverse consequences based on facts underlying dismissed counts. (*In re T.C.* (2009) 173 Cal.App.4th 837, 849-850; *In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329; *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1683-1684.) This is because it would limit the court's consideration of relevant evidence at disposition, and in turn would countermand section 725.5, which requires consideration of "any other relevant and material evidence." (*In re Robert H., supra,* 96 Cal.App.4th at p. 1329.)

A court may dismiss a more recent sustained petition for which a DJF commitment is impermissible so it can order a DJF commitment based on a previous petition. (*In re Greg F*. (2012) 55 Cal.4th 393, 415, 419-420, disapproving *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1463-1469 [court cannot dismiss more recent sustained petition to circumvent section 733].) However, section 733, subdivision (c), precludes committing a juvenile ward to DJF if the wardship petition includes both qualifying and non-qualifying offenses and the most recent offense is a non-qualifying one. (*In re D.B.* (2014) 58 Cal.4th 941, 944.)

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[4] Certain requirements must be met before a minor can be removed from the home of his or her parents. (§ 726; *In re Cindy E*. (1978) 83 Cal.App.3d 393, 406 [before removal, court must find continued presence in parent's home detrimental].)

The juvenile court has discretion to dismiss a juvenile petition which operates to erase the juvenile adjudication as if it never occurred. (§ 782; *People v. Haro* (2013) 221 Cal.App.4th 718, 720.) Section 782 is similar in operation to Penal Code section 1385, which authorizes dismissal of a criminal action in furtherance of justice. In *People v. Haro*, the Court of Appeal agreed with the defendant that dismissal under section 782 of the petition underlying his robbery adjudication precludes the use of that adjudication as a strike under the three strikes law. (*Id.* at p. 724.)

Section 731.1 provides a means for recall of cases in which DJF was ordered (§ 731.1, subd. (a)) or where the minor is under parole supervision (§ 731.1, subd. (b)). Section 777 provides for a noticed hearing for changes or modifications of previous orders by the probation officer or prosecuting attorney when the minor, a court ward or probationer under section 602, has violated a court order.

Under SB 823, except as otherwise provided in section 733.1, a ward of the court shall not be committed to DJJ on or after July 1, 2021. (§§ 733.1, subd. (a), 736.5, subd. (b).) However, a ward who is otherwise eligible to be committed under existing law and in whose case a motion to transfer the minor from juvenile court to a court of criminal jurisdiction was filed can still be committed to DJJ pending final closure. (§ 736.5, subd. (c).) Youth committed prior to July 1, 2021, remain at DJJ until discharged, released, or otherwise moved. (§ 736.5, subd. (d).)

3. Mandatory Dispositions

Confinement in juvenile hall, a county camp or ranch, or DJF is mandatory where a minor has personally used a firearm during the commission of a violent felony. (§ 602.3, subd. (a) [formerly 602.5]; Pen. Code, § 667.5, subd. (c) [violent felonies].) However, if the court finds the minor has a mental disorder requiring intensive treatment, the court may impose an alternative treatment-based placement order. (§ 602.3, subd. (b).)

4. Findings Required Before a Minor Can be Committed to DJF

Section 733 precludes DJF commitment for juvenile court wards under 11 years of age, wards suffering from illness that would "probably

endanger the lives or health" of other inmates, and wards who have been adjudged a ward under section 602 "and the most recent offense alleged in any petition and admitted or found to be true by the court is not described in" section 707, subdivision (b) or Penal Code section 290.008, subdivision (c), "and [who are] not otherwise ineligible for commitment to DJF under section 733." (*In re K.J.* (2014) 224 Cal.App.4th 1194, 1201-1202; § 731, subd. (a)(4); § 733.) *In re Edward C.* (2014) 223 Cal.App.4th 813, 821-824, provides helpful background on changes in the law relating to DJF commitments.

Although there is no requirement that less restrictive alternatives were previously attempted before committing a minor to DJF, the court must make a determination that less restrictive alternatives are ineffective or inappropriate. (*In re Aline D.* (1975) 14 Cal.3d 557, 567; *In re M.S.* (2009) 174 Cal.App.4th 1241, 1250; *In re Angela M*. (2003) 111 Cal.App.4th 1392, 1396; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) Unavailability of a local program should not be the sole ground for a DJF commitment. (*In re Aline D., supra,* 14 Cal.3d at pp. 565-566; *In re Gerardo B.* (1989) 207 Cal.App.3d 1252, 1257.) Also, before committing a minor to DJF, the court is required to find a probable benefit to the minor from DJF. (§ 734; *In re Aline D., supra*, 14 Cal.3d at pp. 565-566; *In re Teofilio A*., *supra,* 210 Cal.App.3d at p. 576; *In re Michael D*. (1987) 188 Cal.App.3d 1392, 1396; *In re A.M.* (2019) 38 Cal.App.5th 440, 449.) Concrete evidence in the record about relevant programs at DJF is necessary to withstand appellate review. (*In re Carlos J.* (2018) 22 Cal.App.5th 1, 12.) Even where a DJF commitment previously was stayed, the juvenile court cannot impose it because of subsequent conduct without first fully considering current factors and circumstances relevant to disposition. (*In re Jose T.* (2011) 191 Cal.App.4th 1142, 1147-1149; *In re Ronnie P.* (1992) 10 Cal.App.4th 1079, 1087-1091.)

Further, the court must determine whether the minor has committed one of the offenses listed in section 707, subdivision (b), which results in DJF having jurisdiction over the minor until age 25. (§ 1769, subds. (a)-(c); *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1064.) In making this determination, the court may rely on facts presented at the dispositional hearing that the court found to be true by a preponderance of the evidence. (*Id.* at p. 1065.) A minor can enter a plea bargain and be committed to DJF by stipulation. (*In re Travis J*. (2013) 222 Cal.App.4th 187, 198.) The juvenile court has discretion to reject the plea bargain but no authority to

change the terms of the bargain. (*Ibid.*) Contractual principles govern a negotiated disposition. (*Ibid.*)

Beginning September 30, 2020, upon petition by the probation department, a youth whose case originated in juvenile court and who is 19 years or older can be moved from juvenile hall to an adult facility, including a jail or other facility established for the purpose of confinement of adults. (§ 208.5, subd. (b).) Upon receipt of a petition, the court must hold a hearing at which it shall determine whether the person will be moved to an adult facility, and make written findings of its decision based on the totality of five criteria. (§ 208.5, subd. (c).)

5. Misdemeanor/Felony Determination

This issue is often overlooked. When an offense has degrees or is a wobbler [can be a felony or misdemeanor], the court must make an express finding as to the degree of the offense or whether the offense committed was a felony or misdemeanor. (§ 702; Pen. Code, § 1157; Cal. Rules of Court, rule 5.778(f)(9); *In re Eddie M*. (2003) 31 Cal.4th 480, 487; *In re Manzy W*. (1997) 14 Cal.4th 1199, 1209; *In re Kenneth H.* (1983) 33 Cal.3d 616, 618-620; *In re M.G*. (2014) 228 Cal.App.4th 1268, 1278-1279; *In re Cesar V*. (2011) 192 Cal.App.4th 989, 1000.) The mere existence in the record of documents referring to wobbler consideration is insufficient. (*In re Ricky H*. (1981) 30 Cal.3d 176, 191; *In re Ramon M*. (2009) 178 Cal.App.4th 665, 675.) Courts have reversed and remanded for a felony/misdemeanor determination even where there was an admission of an allegation charged as a felony (e.g., *In re Nancy C.* (2005) 133 Cal.App.4th 508, 512) or calculation of the maximum period of confinement as a felony (e.g., *In re Manzy W., supra*, 14 Cal.4th at pp. 1207-1208; *In re Dennis C.* (1980) 104 Cal.App.3d 16, 23).

Appeal of a court's failure to designate the offense as a misdemeanor or felony must be taken after the initial disposition. (*In re G.C.* (2020) 8 Cal.5th 1119, 1125.) This claim of error is not cognizable following orders in a subsequent wardship proceeding because a timely notice of appeal is a jurisdictional requirement. (*Id*. at p. 1129.) *G.C.* rejected appellant's position that the court's error resulted in an unauthorized sentence correctable at any time, which is, in contrast, an exception to the waiver doctrine. (*Ibid*.)

Penal Code section 17, subdivision (b)(3) which provides that a "wobbler" offense is a misdemeanor when "the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor," applies in juvenile proceedings. (*In re E.G.* (2016) 6 Cal.App.5th 871, 883-884.)

Even if a juvenile court declares an offense a felony, the exact language of a statute that uses prior felony convictions to enhance a subsequent offense must be carefully considered. In *People v. Lopes* (2015) 228 Cal.App.4th 983, the juvenile court declared minor's DUI (a wobbler) a felony and committed the minor to a DUI youth program. The enhancement statute applied to offenses "punished as a felony." Because the minor's juvenile adjudication was not a "conviction," nor was it "punished as a felony," it could not be used to elevate a subsequent DUI charge to a felony. (*Id.* at pp. 987-988.) "In the relatively rare instances where the Legislature wants to include juvenile adjudications in provisions that may elevate the penalty for new offenses, it knows how. (See, e.g., [Veh. Code] § 13105 [juvenile adjudications can be used as a basis for suspension or revocation of driving privileges]; Pen. Code, §§ 667, subd. (d)(3), 1170.12, subd. (b)(3) [Three Strikes law].)" (*Id.* at p. 987.)

6. Deferred Entry of Judgment

Deferred entry of judgment (DEJ) is available in juvenile cases involving felony allegations, where certain prerequisites are met. (§§ 790-795.) Although one disqualifying factor is a prior probation revocation, a prior probation violation without revocation does not disqualify a minor. (*In re T.P.* (2009) 178 Cal.App.4th 1, 4.) Deferred entry of judgment's inapplicability to cases involving misdemeanor allegations is not a denial of equal protection, at least according to one Court of Appeal. (*In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1324-1329.) Where a minor is eligible for deferred entry of judgment, a set of mandatory procedures exists for courts to follow. (*In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123; *In re C.W.* (2012) 208 Cal.App.4th 654, 660; §§ 790-792.) Therefore, it is important to determine if a minor was eligible for deferred entry of judgment and whether the mandatory procedures were followed.

Where the prosecution does not file the necessary written notification of eligibility, the minor's denial of allegations does not foreclose a claim of error in following the mandatory procedures. (*In re Spencer S., supra,* 176 Cal.App.4th at p. 1323.) Likewise, as long as the jurisdictional hearing has not commenced, a minor does not forego consideration for deferred entry by litigating a suppression motion and agreeing that testimony presented there could also be used for trial purposes if he loses the suppression motion (*In re A.I.* (2009) 176 Cal.App.4th 1426, 1436) or by admitting reduced charges after a suppression motion (*In re Joshua S.* (2011) 192 Cal.App.4th 670, 680).

At least two Courts of Appeal have concluded that a trial court need not determine a minor's eligibility if the prosecution files the necessary written notification of eligibility and the minor thereafter chooses not to admit the allegations, as required for DEJ. (*In re Usef S.* (2008) 160 Cal.App.4th 276, 285-286; *In re Kenneth J.* (2008) 158 Cal.App.4th 973, 978-979.) Yet, an appellate court reversed for a due process error, where the prosecution filed notice of DEJ eligibility, but the court did not set a hearing for its determination or inform the minor the issue was under consideration. (*In re D.L.* (2012) 206 Cal.App.4th 1240, 1242, 1244-1245.) The trial court later found the minor eligible but not suitable for DEJ eligibility. (*Id*. at p. 1243.) Because the court denied the minor mandatory meaningful notice before this finding and the minor denied the allegations only after the finding, the minor could challenge the process despite not admitting the allegations or objecting. (*Id.* at p. 1245.)

Although the procedures are mandatory, the trial court ultimately has discretion whether or not to grant deferred entry of judgment. (*In re D.L.*, *supra,* 206 Cal.App.4th at p. 1244; *In re C.W.* (2012) 208 Cal.App.4th 654, 660; *In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123.) There is a right to appeal from a denial of deferred entry of judgment (e.g., *In re Sergio R.* (2003) 106 Cal.App.4th 597), but there is no right to appeal where deferred entry is granted (*Luis M. v. Superior Court* (2014) 59 Cal.4th 300, 303, fn. 3; *In re T.C.* (2012) 210 Cal.App.4th 1430, 1433 [restitution order is a component of the DEJ order and not appealable]; *In re Mario C.* (2004) 124 Cal.App.4th 1303, 1307-1308; see *People v. Mazurette* (2001) 24 Cal.4th 789, 794, 798 [no right to appeal in adult deferred entry of judgment case unless defendant unsuccessful on program and judgment is entered]).

For additional information regarding deferred entry of judgment in juvenile cases, see ADI's July 2004 newsletter.

7. Calculation of Maximum Length of Confinement

Previously, a minor could not be confined in excess of the maximum term that could be imposed on an adult convicted of the same offenses. (§§ 726, subd. (d), 731, subd. (c); *In re Bryant R*. (2003) 112 Cal.App.4th 1230, 1236; *In re Prentiss C*. (1993) 14 Cal.App.4th 1484, 1487.) The maximum term for DJJ commitments is now the middle term (§ 731, subd (c), eff. Sept. 30, 2020), and effective July 1, 2021, the maximum term for *all* placements can be no greater than the middle term. (§ 730, subd. (a)(2), eff. July 1, 2021.) The court must calculate the maximum length of confinement when the minor is removed from the custody of his parents. (§ 726, subd. (d); *In re George M*. (1993) 14 Cal.App.4th 376, 381-382.) When a minor is removed from his or her parents' custody but not committed to DJF, the court must set the maximum at the longest potential sentence provided for by statute, taking into account both the offenses committed and enhancements. (*In re Eddie L*. (2009) 175 Cal.App.4th 809, 813-816.) The maximum period of confinement must be part of a written order, but need not be orally pronounced. (*In re Julian R.* (2009) 47 Cal.4th 487, 496-498.)

Where a minor is committed to DJF, rather than just calculating the maximum period of confinement, the court must exercise its discretion in setting the maximum period of confinement. The discretion conferred by section 731, subdivision (c) has been held to be only related to DJF commitments. (*In re Geneva C.* (2006) 141 Cal.App.4th 754, 759-760 [section 731, subdivision (c) (then subdivision (b)), which authorizes a juvenile court to exercise discretion in setting a maximum term in DJF less than that for an adult offender does not apply to a camp commitment]; *In re Eddie L., supra* (2009) 175 Cal.App.4th at p. 816 [no discretion to determine maximum period of confinement for non-DJF ranch placement].)

The court must appropriately consider the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court. (§ 731, subd. (c); *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1183-1184.) A minor does not forfeit the claim that a court failed to exercise its discretion under section 731, subdivision (c), by failing to object in the trial court. (*Id*. at pp. 1181-1182.) The maximum

period of confinement set can never exceed the middle term of confinement an adult could be required to serve under the same circumstances. (§ 731, subd. (c); Stats. 2020, ch. 337, § 28.) A split of authority, however, exists as to whether a court can set a maximum period of confinement below the adult minimum term. (Compare *In re A.G.* (2011) 193 Cal.App.4th 791, 806, *In re R.O.* (2009) 176 Cal.App.4th 1493, 1498 and *In re H.D*. (2009) 174 Cal.App.4th 768, 776-779 with *In re Joseph M.* (2007) 150 Cal.App.4th 889, 896 [in setting maximum period, juvenile court must adhere to triad of sentencing choices in adult determinate sentencing law].)

A general principle of law is that a proper exercise of discretion is presumed from a silent record. Accordingly, the Supreme Court clarified that where the juvenile court orders the maximum term of confinement equal to the maximum permissible adult sentence without explanation, it will be presumed the court considered imposition of a confinement period — shorter than the adult maximum — that might be justified by the "facts and circumstances" of the crime committed by the juvenile. (*In re Julian R*. (2009) 47 Cal.4th 487, 498-499, disapproving *In re Jacob J*. (2007) 130 Cal.App.4th 429, 438.)

Whether the maximum period of confinement must be calculated under section 726 or set pursuant to an exercise of discretion under section 731, allegations found true in previous petitions can be aggregated under section 726, subdivision (d), but need not be aggregated. (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; *In re Alex N.* (2005) 132 Cal.App.4th 18, 24-25; *In re Adrian R.* (2000) 85 Cal.App.4th 448, 454; *In re Edwardo L.* (1989) 216 Cal.App.3d 470, 478.) The maximum period of confinement may only include punishment for an enhancement if that enhancement has been alleged and has been proven or admitted. (*In re Jonathan T*. (2008) 166 Cal.App.4th 474, 482-484 [maximum term of confinement in robbery case was six years, rather than nine years for robbery in concert because Penal Code section 213 (robbery in concert) is an enhancement and was not pled or proven].) Penal Code section 654 is applicable. (*In re Michael B*. (1980) 28 Cal.3d 548, 556, fn. 3.) In calculating a minor's maximum term of confinement, "a court adjudicating a subsequent petition … may not reevaluate a prior juvenile court's conclusions regarding the truth of the prior petitions, the applicability of Penal Code section 654, or the appropriateness of aggregating time on multiple sustained counts in determining the maximum confinement time" because "it lacks the firsthand view of the facts and circumstances

supporting the earlier court's decisions. (*In re David H.* (2003) 106 Cal.App.4th 1131, 1137.)

Juvenile court findings regarding confinement are reviewed for abuse of discretion. (*In re Edward C*. (2014) 223 Cal.App.4th 813, 829; *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067, citing *In re Michael D*. (1987) 188 Cal.App.3d 1392, 1395.)

Before Senate Bill No. 40 amended Penal Code section 1170 to no longer require a factual finding to justify the upper term, challenges pursuant to *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856] were made to the propriety of calculating the maximum period of confinement based on upper terms. At least two Court of Appeal opinions concluded that the holding of *Cunningham* did not limit the maximum period of juvenile confinement to the middle term. (*In re Alex U.* (2007) 158 Cal.App.4th 259, 263-266; *In re Christine G.* (2007) 153 Cal.App.4th 708, 713-715.) These opinions premised their rejection of the issue on the distinct nature of the juvenile system with its focus on rehabilitation and specifically on the fact DJF terms are indeterminate unlike adult terms. (*In re Alex U*., *supra*, 158 Cal.App.4th at pp. 263-266; *In re Christine G.*, *supra*, 153 Cal.App.4th at pp. 713-715.)

Aging-out discharge of persons committed to DJF by the juvenile court is governed by section 1769. Sections (b) and (c) distinguish between persons committed to DJF on or before July 1, 2012 and those committed after that date. For persons committed to DJF on or after July 1, 2012, if they are found to be section 602 wards based on the offenses listed in section 707, subdivision (d)(2), the law mandates discharge "upon the expiration of a two-year period of control, or when he or she attains 23 years of age, whichever occurs later unless an order for further detention has been made by the committing court." (§ 1769, subd. (c).) But if the commitment to DJF is made before July 1, 2012, DJF discharge is mandated after two years or when the person is 25 years of age, whichever occurs later, unless there is an order for further detention. (§ 1769, subd. (b).) For all other non-section 707, subdivision (d)(2) wards, discharge is mandated after two years or when the person is 21 years of age, whichever occurs later, unless there is an order for further detention. (§ 1769, subd. (a).)

SB 823 amends this statutory scheme in several ways. For those found to have committed an offense listed in subdivision (b) of section 707, and where the aggregate sentence is less than seven years, jurisdiction continues until the person attains 23 years of age. (§ 607, subd. (b) [eff. July 1, 2021].) For those found to have committed an offense listed in subdivision (b) of section 707, and where the aggregate sentence is seven years or more, jurisdiction continues until the person attains 25 years of age. (*Id*. at subd. (c).)

The revised law contains no provision for a two-year period of control, except for youth committed to DJJ before intake closes on July 1, 2021. (§ 607, subds. (c), (g), (h).) Second, SB 823 contains no language for extended commitment where discharge of a person would by physically dangerous to the public, formerly permitted under section 1800, subdivision (a). Establishment of a separate dispositional track for higher-need youth is deferred until March 1, 2021. (§ 736.5, subd. (e).)

8. Sex Offender Registration for Juvenile Offenses

Unlike adults, minors who commit enumerated sex offenses in Penal Code section 290 are not automatically required to register as a sex offender for life. However, a minor who commits a delineated offense is required to register as a sex offender for life if that minor is committed to and paroled or discharged from DJF or an equivalent institution in another state. (Pen. Code, § 290.008.) Section 781, subdivision (a) [record sealing], can be used in an attempt to remove the lifetime sex offender registration if it can be proved that the minor has been rehabilitated and the juvenile adjudication did not involve section 707, subdivision (b) (forcible sex) crimes committed when the minor was 14 years or older. (§ 781, subd. (a)(1)(C)-(D).) Once the minor turns 38, section 781, subdivision (d) [record sealing], can be used.

Where a court chooses to commit a minor to DJF on a current petition not involving an enumerated sex offense, it may elect not to aggregate previously sustained petitions to avoid lifetime sex offender registration. (*In re Alex N.* (2005) 132 Cal.App.4th 18, 24-25.) However, the Fourth Appellate District, Division Two, concluded that, where a minor's most recently sustained petition includes an enumerated sex offense, a juvenile court lacks discretion to choose to commit the minor to DJF based on an offense from a previously sustained petition in order to

avoid a lifetime registration requirement. (*In re G.C.* (2007) 157 Cal.App.4th 405, 409-411.) If a case arises where a minor was committed to DJF based on a non-sex offense but where the minor also had a sustained true finding for an enumerated sex offense in the most recently sustained petition, the client should be properly advised regarding the serious potential adverse consequence of lifetime sex offender registration.

On January 1, 2021, a tiered registration system took effect that replaced the lifetime registration requirement with a five-year minimum or ten-year minimum registration requirement. (§ 290.008, subd. (d).) Tier one juvenile offenders are those adjudicated as a ward of the court for commission or attempted commission of non-serious, non-violent sex offenses and are subject to register for a minimum of five years. (*Id*. at subd. (d)(1).) Tier two juvenile offenders are those adjudicated as a ward of the court for commission of a serious or violent sex offense and are subject to register for a minimum of ten years. (*Id*. at subd. (d)(2).) Persons may petition for removal from the registry following the expiration of the minimum registration period. (Pen. Code, § 290.5, subd. (b).)

9. Probation Conditions

The juvenile court may impose reasonable terms and conditions of probation. (§§ 725, 730, subd. (b).) Such conditions must be "fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (§ 730, subd. (b)); *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033.) Such conditions may be broader than criminal probation conditions. (*In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1330; *Alex O. v. Superior Court* (2009) 174 Cal.App.4th 1176, 1180; *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.)

A probation condition is invalid if: 1) it has no relationship to the crime of which the offender was convicted; 2) it forbids conduct that is not reasonably related to future criminality; and 3) it relates to conduct that is not itself criminal. (*People v. Lent* (1975) 15 Cal.3d 481, 486; *In re D.G.* (2010) 187 Cal.App.4th 47, 52; *In re Antonio C., supra*, 83 Cal.App.4th at p. 1034; *In re Kacy S.* (1998) 68 Cal.App.4th 704, 709.) A search condition requiring the minor to submit to warrantless searches of electronic devices may be invalid under *Lent* if it is not reasonably related to future criminality. (*In re Ricardo P.* (2019) 7 Cal.5th 1113 [no showing the minor used electronic devices or social media to engage in criminal conduct].)

Probation conditions may also be void for vagueness and/or overbroad facially and/or as applied. "An order must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated." (*People v. Reinerston* (1986) 178 Cal.App.3d 320, 324-325.)

If a probation condition infringes on constitutional rights, it must be tailored specifically to the needs of the minor. (*In re Ramon M*. (2009) 178 Cal.App.4th 665, 676; *In re D.G., supra,* 187 Cal.App.4th at p. 52; *In re Binh L.* (1992) 5 Cal.App.4th 194, 203; *In re Michael D.* (1989) 214 Cal.App.3d 1610, 1616.) For example, a probation condition cannot prohibit a minor, who is a United States citizen living in Mexico, from returning to the United States (*In re James C.* (2008) 165 Cal.App.4th 1198, 1205), or from entering the United States only for purposes of work, school, and visiting family (*In re Alex O*. (2009) 174 Cal.App.4th 1176, 1182-1183). Likewise, a probation condition cannot bar all travel to Mexico but can require case-by-case approval for travel to Mexico and that the minor be accompanied by his or her parents when traveling to Mexico. (*In re Daniel R.* (2006) 144 Cal.App.4th 1, 8.)

In 2009, a court found that a probation condition requiring global positioning monitoring of a minor was both reasonable and constitutional. (*In re R.V.* (2009) 171 Cal.App.4th 239, 247-249.) Blood testing for drugs and alcohol may be imposed as a probation condition for juveniles who have been declared a ward of the court for violating a law applicable to adults. (*In re P.A.* (2012) 211 Cal.App.4th 23, 40.) For juveniles who have not been adjudged a ward of the court or who are mere status offenders, only urine testing can be required. (*Id.* at pp. 35-36.)

Because the juvenile court has broad discretion in imposing probation conditions for the purpose of rehabilitation, a lack of statutory authority for the imposition of a probation condition does not mean the juvenile court cannot impose the condition. (*In re Ronny P.* (2004) 117 Cal.App.4th 1204, 1206-1207 [approving juvenile court's imposition of minimum period of confinement at camp even though not expressly authorized by statute].) However, a court cannot impose a probation condition that effectively expands existing Legislative criteria for imposing the requirement at issue. (*In re Bernardino S.* (1992) 4 Cal.App.4th 613, 623 [court cannot require registration as sex offender when offense did not fall within Penal Code section 290].) Probation conditions are improper in

the case of a DJF commitment. (See *In re Travis J.* (2013) 222 Cal.App.4th 187, 190.)

In the case of vandalism, section 742.16 delineates special mandatory probation conditions. At least one court concluded they are not exclusive. (*In re G.V.* (2008) 167 Cal.App.4th 1244, 1249-1250.)

Where trial counsel made no objection, an argument against forfeiture or waiver may need to be addressed in the opening brief. Although the general rule is that a contemporaneous objection to a probation condition is necessary to preserve the issue for appeal (*In re Justin S.* (2001) 93 Cal.App.4th 811, 814; *In re Josue S.* (1999) 72 Cal.App.4th 168, 172), there are exceptions. There is no forfeiture or waiver where the issues raised on appeal present "pure questions of law that can be resolved without reference to the particular sentencing record developed in juvenile court." (*People v. Welch* (1993) 5 Cal.4th 228, 235; *In re Justin S.*, *supra*, 93 Cal.App.4th at p. 815.) The Supreme Court held there is no forfeiture or waiver when the minor challenges the probation condition on constitutional grounds of vagueness and overbreadth, where the challenge raises a pure question of law. (*In re Sheena K.* (2007) 40 Cal.4th 875, 886-889 [finding probation order specifying that minor not associate with anyone disapproved of by probation officer to be unconstitutionally vague and overbroad].) Waiver or forfeiture can also be overlooked where there are peculiar circumstances (*In re Khonosavanh S.* (1998) 67 Cal.App.4th 532, 537 [minor arbitrarily ordered to undergo an AIDS test]), where the condition is statutorily limited (*People v. Guardado* (1995) 40 Cal.App.4th 757, 763 [AIDS testing]), or where an objection would have been futile or unsupported by current state of the law (*In re Justin S.*, *supra*, 93 Cal.App.4th at p. 814).

For arguments against forfeiture see Forfeiture, Waiver, and Appealability on ADI's MCLE webpage and ADI Appellate Practice Manual, section 4.39 and section 5.27.

10. Driver's License Suspension

A driver's license (driving privilege) may be suspended, revoked, delayed, or restricted as part of the disposition of a case. (See Veh. Code, § 13200 et seq.) Many such provisions are specifically applicable to minors. (See, e.g., Veh. Code, §§ 13202.4 [suspension, restriction, or delay for

offense involving concealable firearm]; 13202.5 [suspension, delay, or restriction for drug and alcohol related offenses]; 13202.6 [suspension or delay for vandalism convictions]; 13202.7 [suspension, delay, or restriction for minor adjudged ward under § 601]; 13352 [suspension or revocation for speed contests]; 13352.3 [revocation for Veh. Code, §§ 23152/23153 convictions].)

The juvenile court has authority to order suspension of minor's driver's license for a violation of Penal Code section 192, subdivision (c)(2), under Vehicle Code section 13361, subdivision (c). However, pursuant to Vehicle Code section 13556, subdivision (a), the suspension must be limited to 12 months. (*In re Colleen S.* (2004) 115 Cal.App.4th 471, 474.)

If minor commits a violation of Penal Code section 245, with the express finding that a motor vehicle constituted the deadly weapon, the court must forward the certified abstract of record to the Department of Motor Vehicles which is then empowered pursuant to Vehicle Code section 13351.5 to revoke minor's driver's license for life.

Some provisions are mandatory. (§ 13202.5 [suspension or delay for drug and alcohol related offenses]; § 13202.6 [suspension or delay for vandalism convictions].) In such cases, the juvenile court's failure to so order might be corrected on appeal and should be viewed as a possible adverse consequence, with risks and benefits of proceeding with the appeal explained to the client (including the possibility the error might be uncovered by a probation officer or other person anyway). See ADI's Appellate Practice Manual, section 4.117.

11. Credits

A minor is entitled to pre-commitment credit for actual time confined pending resolution of the allegations. (*In re Eric J.* (1979) 25 Cal.3d 522, 536.) No conduct (good time) credits are available. (*In re Ricky H.* (1981) 30 Cal.3d 176, 185-190.) Credit for actual confinement only applies to "physical confinement" in secure placements including but not limited to juvenile hall, ranch, camp, or a secure juvenile home. (§ 726, subd. (d); *In re Eric J.* (1979) 25 Cal.3d 522, 535-536; *In re Mikael D.* (1983) 141 Cal.App.3d 710, 720-721.) In *In re Lorenzo L.* (2008) 163 Cal.App.4th 1076, the court found the electronic monitoring program is not

physical confinement, and thus, a minor is not entitled to credits for time spent on an electronic monitor. (*Id.* at p. 1080.) A minor is entitled to pre-commitment custody credits for time spent after disposition but before beginning the ordered disposition. (*In re J.M.* (2009) 170 Cal.App.4th 1253, 1256.)

Adult credits provisions providing presentence custody credits are inapplicable to minors because minors are not sentenced. (Pen. Code, § 2900.5; *In re W.B., Jr.* (2012) 55 Cal.4th 30, 43; *In re Leonard R.* (1977) 76 Cal.App.3d 100, 103-104.) Similarly, Penal Code section 1237.1, which bars raising credits error as the sole issue on appeal where it was not raised at trial, does not apply to juvenile appeals. (*In re Antwon R.* (2001) 87 Cal.App.4th 348, 350.)

12. Restitution and Other Fines and Fees

Section 730.6 governs restitution fines and victim restitution, analogous to restitution for adult offenders under Penal Code section 1202.4. The restitution fine in subdivision (a)(2)(A) and in accordance with subdivision (b) is the juvenile counterpart to the Penal Code section 1202.4, subdivision (b) mandatory fine for adult offenders. (See *In re Enrique Z.* (1994) 30 Cal.App.4th 464, 467-470.) If the minor is found to be a person described by section 602 by reason of commission of one or more felony offenses, the court must impose a fine between $100 and $1000, regardless of the minor's ability to pay. (*Id.,* at p. 470; § 730.6, subd. (b)(1), (c) & (f).) However, this fine may be waived if the court finds there are compelling and extraordinary reasons to support the waiver and states them on the record. (§ 730.6, subd. (g)(1).) If the minor is a ward for a misdemeanor offense, the fine shall not exceed $100. (§ 730.6, subd. (b)(2).)

The amount of the subparagraph (A) fine is set at the discretion of the court commensurate with the seriousness of the offense. (§ 730.6, subd. (b).) In setting subparagraph (A) fines, the court "shall consider any relevant factors including, but not limited to, the minor's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the minor as a result of the offense, and the extent to which others suffered losses as a result of the offense." (§ 730.6, subd. (d)(1).) Express findings, however, are not

required. (§ 730.6, subd. (e).) The minor bears the burden of demonstrating a lack of ability to pay. (§ 730.6, subd. (d)(1).)

Practice Tips:

A potential issue arises if the court orders a fine but fails to exercise discretion, or properly exercise discretion, in setting the fine. If an objection has not been made below, to get around waiver problems (see *People v. Scott* (1994) 9 Cal.4th 331, 351-353), appellate counsel may need to argue (if applicable and the error was prejudicial) that the court failed to exercise its discretion, and, as a fallback, ineffective assistance of counsel for failing to object.

Restitution is mandatory unless there are compelling and extraordinary reasons not to award it which must be stated on the record. (§ 730.6, subds. (f) & (g)(1).) Thus, this may be a potential adverse consequence to watch for in a juvenile appeal. (Cf. *People v. Rodriguez* (2000) 80 Cal.App.4th 372, 376.)

The subparagraph (B) restitution order is the juvenile law counterpart to Penal Code section 1202.4, subdivisions (a) and (f). (See § 730.6, subds. (a), (h) & (i); Pen. Code, § 1202.4, subds. (a), (f)-(j).) Where a victim incurs an economic loss as a result of a section 602 minor's conduct, section 730.6 requires an order for restitution to be paid directly to the victim. (§ 730.6, subd. (a)(1).) The purpose of an order for victim restitution is three-fold: to rehabilitate the minor, deter future delinquent behavior, and make the victim whole by compensating him for his economic losses. (*In re Anthony S.* (2014) 227 Cal.App.4th 1352, 1357; *In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1017.) The victim's economic loss is calculated "without regard to potential reimbursement from a third party insurer." (*In re Anthony M., supra,* 156 Cal.App.4th at p. 1017.) A restitution order can be proper even if the victim of the crime had no direct economic loss and could conceivably profit from recovering restitution if a third party insurer does not pursue reimbursement from the victim. (*In re Anthony S., supra,* 227 Cal.App.4th at p. 1357.)

The court in *In re Michael S.* (2007) 147 Cal.App.4th 1443, dealt with a restitution order for $139,000, arising from a fire set by the minor which damaged a school. (*Id*. at p. 1447.) The court noted the minor may be burdened with the payments well into adulthood. (*Id*. at p. 1457.)

Section 730.6 provides that for minors declared to be wards under Section 602, "[a]ny portion of a restitution order that remains unsatisfied after a minor is no longer on probation shall continue to be enforceable by a victim pursuant to subdivision (r) until the obligation is satisfied in full." (§ 730.6, subd. (l).) Subdivision (r), in turn, provides an unsatisfied restitution order "may be enforced in the manner provided in Section 1214 of the Penal Code." (§ 730.6, subd. (r).) The restitution order is deemed a money judgment, as fully enforceable by the victim as if it were a civil judgment and in the same manner provided for a money judgment. (Pen. Code, § 1214, subd. (b).) Where, however, the minor was not adjudicated as a person described in section 602, the juvenile court may not convert a victim restitution order entered pursuant to a program of informal supervision into a civil judgment utilizing the statute providing for conversion of such an order "after a minor is no longer on probation." (*In re K.C.* (2013) 220 Cal.App.4th 465, 471.)

"If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court at any time during the term of the commitment or probation." (*In re Karen A.* (2004) 115 Cal.App.4th 504, 507-508, citing § 730.6, subd. (h).) The juvenile court has the authority to direct the probation officer to determine the appropriate amount of restitution. (*Id.* at p. 511.)

Under section 730.5, the court may levy a fine against the minor up to the amount that could be imposed on an adult for the same offense, if the court finds that the minor has the financial ability to pay the fine. (§ 730.5; *In re Steven F.* (1994) 21 Cal App.4th 1070, 1080.) Unlike section 730.6 mandatory fines, section 730.5 fines are discretionary. This can be an issue on appeal if the court has found no ability to pay and yet imposes this fine. A restitution order must be supported by substantial evidence. (*In re Travis J.* (2013) 222 Cal.App.4th 187, 203.)

Parents may be obligated to pay for restitution, fines, penalty assessments (§ 730.7; Civil Code §§ 1714.1, 1714.3 [joint and several liability], probation supervision, legal services, and "reasonable costs of support" if the minor is confined (§§ 903, 903.1, 903.15, 903.2, 903.25, 903.45, 903.5). Section 730.7 imposes joint and several liability on the parents of the minor for the economic damages arising out of the criminal acts of their child. (*In re Michael S.*, *supra,* 147 Cal.App.4th at pp. 1448-

1449; *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, 1025.) Section 730.7, however, limits a parent's liability to $25,000 for each tort of the minor (Civ. Code, § 1714.1) and $30,000 for injury or death as a result of firearm use for one person, or $60,000 for all persons as a result of one occurrence (Civ. Code, § 1714.3), and it expressly permits a court to consider a parent's inability to pay (§ 730.7, subd. (a); *In re Michael S., supra,* 147 Cal.App.4th at p. 1455). In determining the parents' ability to pay for legal services, Supplemental Security Income should not be considered as income. (See *In re S.M.* (2012) 209 Cal.App.4th 21, 30.) A minor does not have standing to challenge an order for his or her parent(s) to pay the costs of the minor's care and custody. (*In re Alex U.* (2007) 158 Cal.App.4th 259, 266; *In re George B*. (1991) 228 Cal.App.3d 1088, 1094.)

Beginning January 1, 2018, Senate Bill No. 190 repealed county authority to charge all juvenile fees assessed to parents and guardians for their children's care in the delinquency system, including fees related to (a) detention (§903), (b) legal representation (§§ 903.1, 903.15), (c) electronic monitoring (§ 903.2), (d) probation or home supervision (§ 903.2), and (e) drug testing (729.9).

Beginning January 1, 2021, Senate Bill No. 1290 prohibits counties from collecting fees assessed to parents and guardians for their children's detention, representation by counsel, electronic monitoring, probation, supervision, and drug testing in the juvenile system. The bill also discharges all outstanding juvenile fees.

Because a minor cannot appeal the order placing him on deferred entry of judgment, he also cannot appeal its restitution component. (*In re T.C.* (2012) 210 Cal.App.4th 1430, 1433.) The appropriate remedy would involve trial counsel filing a petition for writ of mandate or prohibition.

Practice Tips:

Full restitution is mandatory unless there are compelling and extraordinary reasons not to award it which must be stated on the record. (§ 730.6, subd. (h)(1).) The minor's inability to pay is not a compelling or extraordinary reason. (§ 730.6, subd. (h)(1).) Thus, this may be a potential adverse consequence to watch for in a juvenile appeal. (Cf. *People v. Rodriguez* (2000) 80 Cal.App.4th 372, 376.) Recently, the California Supreme Court held that a restitution order could be converted into a civil

judgment and Supplemental Security Income (SSI) could be used to determine ability to pay restitution, while remanding for a new hearing on the juvenile's ability to pay, based on respondent's concession of the matter. (*In re J.G.* (2019) 6 Cal.5th 867.)

If restitution was imposed joint and severally with other minors, consider arguing that the court abused its discretion in ordering such restitution, where the facts show minimal culpability on the minor's part. (See *In re Brian S.* (1982) 130 Cal.App.3d 523, 533-534 [the juvenile court should take into account other culpable parties in imposing a restitution, but there are no rigid guidelines for apportionment], but see *In re S.S.* (1995) 37 Cal.App.4th 543, 550 [*Brian S.* stands only for the proposition that the juvenile court has the discretion to apportion restitution, but apportionment is not required, so joint and several liability is also permissible].)

A ward ordered to undergo treatment per sections 727 and 730 may be ordered to pay a fine of up to $250. The treatment fine is discretionary and subject to an ability to pay finding.

A ward found to have committed graffiti or vandalism per Penal Code sections 594, 594.3, 594.4, 640.5, 640.6, and 640.7 may be required to fully compensate the victim for the damages or total cost incurred by a public entity for removal, repair, or replacement. (Section 742.16.) While the fine is mandatory, the court may find full restitution is inappropriate. (*Id*. at subd. (a).) The court shall consider ability to pay. (*Id*. at subds. (a), (b), (c).)

13. Indian Child Welfare Act

Generally, the federal Indian Child Welfare Act (ICWA) and its notice requirements do not apply to juvenile delinquency proceedings because the law explicitly excludes from its scope placements due to an "act which, if committed by an adult, would be deemed a crime." (25 U.S.C. § 1903.) It should not be discounted entirely, though, because it may apply where: 1) the disposition includes placement of the minor in foster care; and 2) the underlining true finding regards an act that would not have been a crime if committed by an adult.

In all juvenile delinquency proceedings, including those alleging adult criminal conduct, the court and the probation department have a duty

to inquire about Indian status as soon as they determine that the child is in foster care or is at risk of entering foster care due to conditions in the child's home. (§§ 224.3, subd. (a), 727.4, subd. (d)(1).) Notice pursuant to ICWA is generally not required in a delinquency proceeding premised on conduct that would be criminal if committed by an adult. However, if, at the disposition stage or at any point in the proceedings, the court contemplates removing an Indian child from the parental home based on concerns about harmful conditions in the home, and not based on the need for rehabilitation or other concerns related to the child's criminal conduct, notice is required and all other ICWA procedures must be followed. (*In re W.B., Jr.* (2012) 55 Cal.4th 30, 55-59.)

14. Penal Code section 1170.95 relief

Senate Bill No. 1437's petition process for those convicted under an invalid theory of felony murder applies to delinquency cases where the juvenile court sustained the felony murder allegation. (*In re R.G.* (2019) 35 Cal.App.5th 141, 151.) The same holds true for those convicted under a natural and probable consequences theory. (*In re I.A.* (2020) 48 Cal.App.5th 767, 770.)

VIII. PROBATION VIOLATIONS

Before Proposition 21, if a minor committed subsequent criminal offenses while within the jurisdiction of the court, supplemental petitions were filed. Proposition 21 eliminated that procedure. (§ 777; *In re Eddie M*. (2003) 31 Cal.4th 480, 485-486.) Supplemental petitions have been replaced by the notice requirement of section 777, subdivisions (a)(2) and (b). (*In re Eddie M., supra,* 31 Cal.4th at p. 491.) The standard of proof is a preponderance of the evidence (§ 777, subd. (c); *In re Eddie M., supra,* 31 Cal.4th at p. 491), and reliable hearsay evidence may be admitted (§ 777, subd. (c); *In re Eddie M., supra,* 31 Cal.4th at p. 491). Where live testimony is available, it may be an abuse of discretion to permit the substitution of hearsay. (*In re Kentron D.* (2002) 101 Cal.App.4th 1381, 1392-1394.) There is a greater need for confrontation when the out-of-court statement is testimonial because the declarant's demeanor has significance in evaluating the evidence. (*People v. Arreola* (1994) 7 Cal.4th 1144, 1157.) Generally, adult probation revocation statutes are followed, and prosecutors have discretion "to seek a dispositional change for a criminal juvenile probationer who violates probation, regardless of the

actual criminal nature of the violation alleged, without proving any crime beyond a reasonable doubt, so long as any resulting physical confinement does not exceed the maximum term of adult confinement tied to the original offense." (*In re Eddie M., supra,* 31 Cal.4th at p. 486.)

As aforementioned, if a new offense is the subject of a probation violation and if that new offense is not a section 707, subdivision (b) offense, then section 733 prohibits DJF commitment. (*In re D.B*. (2014) 58 Cal.4th 941, 948.)

In *In re Oscar A.* (2013) 217 Cal.App.4th 750, the court found that the juvenile court did not abuse its discretion in placing the minor out of state when he repeatedly failed to comply with the conditions of probation and evidence supported a finding that in-state facilities were unavailable or inadequate for the minor. (*Id. at p. 758*.) The court held that a juvenile court "need not determine all in-state facilities are unavailable and may determine in-state facilities are either unavailable or inadequate. (*Id.* at p. 757.) But, in *In re Khalid B*. (2015) 233 Cal.App.4th 1285, the juvenile court's order for out-of-state placement was reversed where the court delegated the appropriate placement determination to the probation department and the record showed the probation department considered only two out-of-home California placements. (*Id.* at p. 1289.) Because "[t]he placement decision is particularly fact intensive and requires a fully informed analysis by the juvenile court of the minor's needs and the programs' services," the court abused its discretion when it approved the probation department's out-of-state placement recommendation where no evidence supported a finding the probation department considered the adequacy of other California placement options. (*Id.* at pp. 1289-1290; see also *In re Nicole H.* (2016) 244 Cal.App.4th 1150 [a minor's in-state out-of-home placement located far from her father's home reversed as an abuse of discretion].)

IX. WENDE REVIEW

If no arguable issues are found on appeal, the minor is entitled to have the Court of Appeal review the record for error pursuant to *People v. Wende* (1979) 25 Cal.3d 436, *People v. Feggans* (1967) 67 Cal.2d 444, and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493]. (*In re Kevin S.* (2003) 113 Cal.App.4th 97, 114.) See ADI Appellate Practice Manual, section 4.73.

Practice Tip:

Always consult the project staff attorney assigned to your case for the correct procedures before a *Wende* brief is filed**.**

X. SEALING RECORDS

Five years after the termination of juvenile court jurisdiction or upon reaching age 18, individuals have the right to seal their records in most cases (some exceptions exist). (§ 781, subd. (a)(1)(A); *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 782.) "Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed." (§ 781, subd. (a)(1)(A); *In re James H*. (2007) 154 Cal.App.4th 1078, 1083.) Given the severe consequences for sentencing in adult cases where the adult has a history of prior offenses, sealing a juvenile record can greatly benefit an individual and not sealing it can greatly harm an individual. Statutes dealing with sealing and disclosure of juvenile records extend to a minor a greater degree of protection from future prejudice resulting from his "record" than would normally be received. (*In re Jeffrey T.* (2006) 140 Cal.App.4th 1015, 1020.)

Historically, all minors in California had to initiate action to seal their records. On September 9, 2013, Governor Brown approved Assembly Bill No. 1006 which amended Section 781, relating to juvenile court records. The amendment added subdivision (g)(1) to section 781, which puts an affirmative duty on the court and probation department to inform minors about their right to seal their juvenile records. It also added subdivision (h)(1), which provides, "On and after January 1, 2015, each court and probation department shall ensure that information regarding the eligibility for and the procedures to request the sealing and destruction of records shall be provided" to persons who have had wardship petitions filed on or after January 1, 2015, or who are brought before a probation officer.

Under section 786, effective January 1, 2017, the court has the independent duty to seal records when a minor satisfactorily completes a supervision program or probation. Subdivision (a) provides, "If a person who has been alleged or found to be a ward of the juvenile court satisfactorily completes 1) an informal program of supervision pursuant to

Section 654.2, 2) probation under Section 725, or 3) a term of probation for any offense, the court shall order the petition dismissed. The court shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. The court shall send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed. Each agency and official named in the order shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and, after advising the court, shall seal the copy of the court's order that was received. The court shall also provide notice to the person and the person's counsel that it has ordered the petition dismissed and the records sealed in the case." (§ 786, subd. (a).)

Subdivision (b) provides, "Upon the court's order of dismissal of the petition, the arrest and other proceedings in the case shall be deemed not to have occurred and the person who was the subject of the petition may reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case." (§ 786, subd. (b).)

Subdivision (e)(2) gives the court discretion to seal records pertaining to the case in the custody of a public agency other than a law enforcement agency "if the court determines that sealing the additional record will promote the successful reentry and rehabilitation of the individual." (§ 786, subd. (e)(2).) This issue has arisen when the court denies a minor's request to order school records sealed.

While the focus of a hearing on a petition to seal juvenile records is on the applicant's rehabilitation, some offenses are so serious that juvenile records must be open as a matter of law. (*In re J.W.* (2015) 236 Cal.App.4th 663, 668-669.) Thus, in determining whether an applicant has been rehabilitated, prior wrongdoings must be taken into account. (*Id.* at p. 670.) "An applicant seeking to seal his or her juvenile records must make a showing sufficient to convince the court that criminal behavior is in the past and will not be repeated. This is a determination based on the totality of the circumstances and individual factors will inevitably vary. It is the life that the juvenile has lived that will direct the trial court's ruling." (*Id.* at p. 671-672.) In *In re G.Y.* (2015) 234 Cal.App.4th 1196, the court held that even where his felony adjudication was reduced to a misdemeanor and even

where the applicant demonstrated that he is a very valuable member of society, his juvenile court records for assault with a firearm could not be sealed because he committed an offense listed in section 707, subdivision (b) when he was over 14 years old. (*Id.* at p. 1204; see also *In re Chong K.* (2006) 145 Cal.App.4th 13, 21.)

But, under section 786, if a minor's compliance with probation is satisfactory for dismissal purposes, it is also satisfactory to warrant the sealing of the petition. It is an abuse of discretion to refuse to seal a petition if the minor's performance is good enough to warrant dismissal of the petition. (*In re A.V.* (2017) 11 Cal.App.5th 697, 715.)

Under section 781, subdivision (d), the law mandates destruction of sealed juvenile records five years after the record was ordered sealed if the person was a section 601 ward, or when the person is 38 years old if the person was a section 602 ward. The record will be retained where the court finds good cause to retain the juvenile court records, and also for a section 602 ward who committed offenses listed in section 707, subdivision (b) when he or she was 14 years of age or older.

Even if juvenile records are sealed, certain restrictions could still apply. In *In re Joshua R., supra,* the court imposed probation conditions on a minor including "minor may not own or possess any firearm until age 30." (*In re Joshua R., supra,* 7 Cal.App.5th at p. 866.) The minor successfully completed probation, and his motion to withdraw his plea was granted. (*Id.* at pp. 866-867.) But because of the outstanding firearm condition, the court declined to seal the minor's records. (*Id.* at p. 867.) Section 786 mandates the minor's petition be dismissed and all pertinent records sealed if the minor satisfactorily completes probation. (*Ibid.*) Penal Code section 29820 prohibits firearm possession for wards that committed specific offenses. (*Id.* at p. 868.) The court reconciled the apparent conflict in the statutes to reverse the order denying the request to seal the record, but not order the firearm prohibition destroyed until the minor's 38th birthday. (*Id.* at p. 869.)

Practice Tip:

An order denying a petition to seal juvenile court records under section 781 is appealable. (*In re J.W.* (2015) 236 Cal.App.4th 663, 667; *In re G.Y.* (2015) 234 Cal.App.4th 1196, 1198.) Similarly, a juvenile court's

order denying a minor's motion under section 786 is appealable. (See *In re Y.A.* (2016) 246 Cal.App.4th 523, 525; *In re Joshua R.* (2017) 7 Cal.App.5th 864, 866.) An order denying a minor's motion under section 786 is appealable because it affects a minor's substantial rights and constitutes a "subsequent order" under section 800.

XI. JUVENILE INDETERMINATE AND LWOP SENTENCE

Cases from the United States and California Supreme Courts have established new ground rules for heavy punishment of crimes committed by juveniles:

Lead cases:

In *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*), the California Supreme Court extended the ban of *Graham v. Florida* (2010) 560 U.S. 48 [130 S.Ct. 2011, 176 L.Ed.2d 825] (*Graham*) on LWOP for non-homicides committed by a juvenile, holding unconstitutional a sentence so long it is the equivalent of LWOP.

People v. Gutierrez (2014) 58 Cal.4th 1354 considered the ban on mandatory LWOP for juvenile homicides established in *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455, 183 L.Ed.2d 407] (*Miller*) in the context of Penal Code section 190.5, holding that section does not create a presumption of LWOP for juvenile special circumstances murders.

Montgomery v. Louisiana (2016) 577 U.S. 911 [136 S.Ct. 718, 193 L.Ed.2d 599] (*Montgomery*), held *Miller* retroactive as a substantive provision of law. (See also *People v. Berg* (2016) 247 Cal.App.4th 418.)

In *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*), the Supreme Court held the enactment of Penal Code section 3051 satisfies the requirement of *Miller-Caballero* that a defendant who was a minor at the time of an offense have a reasonable opportunity to gain release during his or her natural lifetime, because it requires that the defendant receive a parole hearing during his 25th year of incarceration. The court remanded to the trial court to determine whether the defendant had an adequate opportunity at trial to make a record on applicable mitigating evidence tied to his youth. Such a record would play a major role at any parole release hearing under section 3051.

People v. Contreras (2018) 4 Cal.5th 349 held a sentence of 50 years to life or 58 years to life for One Strike juvenile nonhomicide offender is the functional equivalent of LWOP and constitutes cruel and unusual punishment under *Graham.* The court remanded the case with directions for the trial court to consider any mitigating circumstances of defendants' crimes and lives and the impact of any new legislation and regulations on appropriate sentencing, and to impose a time by which the defendants may seek parole, consistent with the court's opinion.

When a juvenile offender seeks relief from a life-without-parole sentence that has become final, Penal Code section 1170, subdivision (d)(2), which permits most juvenile offenders to petition for recall of a life-without-parole sentence imposed pursuant to Penal Code section 190.5 after 15 years, does not provide an adequate remedy under *Miller*. Habeas relief is therefore available. (*In re Kirchner* (2017) 2 Cal.5th 1040, 1056.)

In re Cook (2019) 7 Cal.5th 439 clarifies the availability of a *Franklin* hearing to juvenile offenders with indeterminate and LWOP sentences whose cases are final, holding an offender entitled to a hearing under Penal Code sections 3051 and 4801 may seek the remedy of a *Franklin* hearing even though the offender's sentence is otherwise final. (*Id*. at p. 451.) In the first instance Penal Code section 1203.01, supplemented as necessary by Code of Civil Procedure section 187, provides an adequate remedy for the offender whose judgment is final to submit evidence for the benefit of the Board of Parole Hearings. (*Id*. at pp. 457-458.)

In *Jones v. Mississippi* (2021) ___ U.S. ___ , the United States Supreme Court ruled that in a case where defendant committed a homicide when he or she was under 18, *Miller* and *Montgomery* do not require the sentencing court to make a separate factual finding of permanent incorrigibility before sentencing the defendant to life without parole.

Case on Review:

The California Supreme Court is reviewing the question whether Penal Code section 3015, subdivision (h), violates the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code,

§ 667.61) from youth offender parole consideration, while young adults convicted of first degree murder are entitled to such consideration. (*People v. Williams* (2020) 47 Cal.App.5th 475, review granted Jul. 22, 2020, S262229.)

XII. PROPOSITION 47 / Penal Code Section 1170.18

Proposition 47 applies to juvenile adjudication and dispositions. (*Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1224.) Moreover, Proposition 47 does not preclude relief when the disposition was pursuant to a plea agreement. (*T.W. v. Superior Court* (2015) 236 Cal. App.4th 646, 652-653.) In *Alejandro*, the minor's commercial burglary offense qualified for reclassification from a felony to a misdemeanor. (*Id.* at pp. 1217, 1226.) The Court of Appeal held the minor's maximum term of confinement must be reduced, and the minor was entitled to redesignate his juvenile adjudication as a misdemeanor. (*Id.* at 1226.)

In *Alejandro N.,* the court further held that a minor's redesignated misdemeanor offense entitles the minor to expungement of his or her DNA record if there is no other basis for retaining it. (*Alejandro N., supra,* 238 Cal.App.4th at pp. 1227, 1230.) However, two months after *Alejandro N.* was decided, Assembly Bill No. 1492 was signed into law. (Stats. 2015, ch. 487; *In re J.C.* (2016) 246 Cal.App.4th 1462, 1471.) The bill amended Penal Code section 299, subdivision (f) – the statute that authorizes expungement of DNA records – to prohibit the expungement of a defendant's DNA record when his or her felony offense is reduced to a misdemeanor under Proposition 47. (*Id.* at p. 1472.) The *In re J.C.* court concluded, because Assembly Bill No. 1492 clarified the Proposition 47 law, it precluded the grant of expungements made prior to its enactment. (*Id.* at p. 1475-82.)

Juveniles who had to submit their DNA after suffering felony adjudications may not have their DNA profiles expunged after their offenses were reduced to misdemeanors under Proposition 47. (*In re C.B.* (2018) 6 Cal.5th 118.) The Court also found reading the statutory scheme to allow retention of a juvenile's DNA profile after his felony adjudication was reduced to a misdemeanor does not violate equal protection under the state and federal Constitutions. (*Id*. at p. 134.)

Where a juvenile court accepts transfer of an entire delinquency case from another county, the transferee juvenile court has the power to rule on a Proposition 47 recall petition. (*In re I.S.* (2016) 6 Cal.App.5th 517, 524.)

XIII. ADDITIONAL RESOURCES

Administrative Office of the Courts, Center for Family, Children and the Courts, Juvenile Delinquency: https://www.courts.ca.gov/cfcc-delinquency.htm

California Division of Juvenile Justice Website: http://www.cdcr.ca.gov/Juvenile_Justice/index.html

California Juvenile Courts Practice and Procedure (2020), Seiser & Kumli, Matthew Bender (LexisNexis) https://store.lexisnexis.com/products/seiser-kumli-on-california-juvenile-courts-practice-and-procedure-skuusSku13057

Central California Appellate Program's website, Juveniles (300/602), Delinquency Articles at: http://www.capcentral.org/juveniles/delinquency/index.asp

Center on Juvenile and Criminal Justice Website: http://www.cjcj.org

Differences in Handling Juvenile Delinquency Cases, available at: http://www.capcentral.org/juveniles/delinquency/docs/602Differences.pdf

First Appellate District Appellate Project's website (search Delinquency under Practice & Legal Guides in Research Resources) at: http://www.fdap.org/resource/articles

Grossman, Jonathan, "Youthful Offenders in Adult and Juvenile Court," available at: http://www.sdap.org/downloads/research/criminal/youth.pdf

Quick, Lori, Issues in Juvenile Delinquency Dispositions, available at: http://www.sdap.org/downloads/research/criminal/delinquents.pdf

Evident Charge (formerly National Council on Crime & Delinquency & the Children's Research Center) Website: www.evidentchange.org

Pacific Juvenile Defender Center Website: http://www.pjdc.org

Siraco, Seligman, and Braucher, First District Appellate Project, "Basic Juvenile Criminal Law and Procedure-2011," available at: https://www.fdap.org/wp-content/uploads/2020/11/BasicJuvenileCriminalLawAndProcedure-2011.pdf

United States Department of Justice Office of Juvenile Justice and Delinquency Prevention Website: http://www.ojjdp.gov

Uribe, Sandra, Central California Appellate Program (CCAP), Issue Spotting Overview in 602 Appeals, available at: http://capcentral.org/juveniles/delinquency/docs/602article.pdf