

“10” REASONS TO TAKE JUVENILE OFFENSE CASES

I. YOU PROBABLY WERE A “DELINQUENT” AT SOME POINT, AND YOU PROBABLY DID NOT ENDURE SERIOUS LEGAL CONSEQUENCES.

II. YOU ARE SORELY NEEDED.

A. Informality endangers fairness and due process.

1. Bench trials mean a presumption judges followed the law (without jury instructions) and a presumption of judges acting unemotionally.
2. Mistakes are aplenty.
 - a. Courts commonly omit orders of felony or misdemeanor / maximum term of confinement / award of credits.
 - b. Many reversals for true findings of both lesser and greater offenses
 - c. Substantial evidence issues are common.
 - i. EXAMPLE: Evidence a victim was stricken twice was insufficient evidence of force likely to cause GBI - *In re B.M.* A131266 (unpublished)
 - ii. EXAMPLE: Admission of battery to custodial officer, when battery was to probation officer, not a custodial officer - *In re O.S.*, D057628 (unpublished)
3. Attorneys often make inadequate records.

B. Evidence raises special concerns.

1. Witnesses commonly are peers, susceptible to influence by other peers, in interviews, and in identification. (Drizin & Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?* (2007) 34 N. Ky. L. Rev. 257, 277-283.)

2. Minors are more susceptible to false confessions. (Drizin & Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?* (2007) 34 N. Ky. L. Rev. 257, 274-275; Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development And Police Interrogation* (2007) 31 Law & Psychol. Rev. 53..)

C. Representation often is not particularly zealous.

1. Although no recent assessment of representation in California seems to exist, studies of representation in other states across the country reveal poor quality. (See National Juvenile Defender Center Assessments: <http://www.njdc.info/assessments.php>; Foxhoven, *Effective Assistance of Counsel: Quality of Representation for Juveniles is Still Illusory* (2007) 8 Barry L. Rev. 99, 112-120.)
2. Problems stem from large caseloads, minimal communication, reliance on minors and parents to locate witnesses, lack of pretrial motions, and a culture against zealous advocacy. (Drizin & Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?* (2007) 34 N. Ky. L. Rev. 257, 289-292.)

D. Juvenile offenses bring severe consequences, for example:

- 1 Priors for adult cases
2. Sex offender registration
3. Driver's license restrictions
4. Employment / military
5. Being pulled out or kicked out of school

E. Cases arise at key time in development of identity.

III. YOU GET TO RIDE THE WAVE OF CHANGE.

A. The landscape has changed greatly in the last decade and continues to change.

1. The law now recognizes and deems significant for disposition that minors are different because of immature brain and psychological development:
 - a. More impulsive
 - b. More susceptible to peer pressure
 - c. Character is not fully formed.
2. At the same time, the law continues on the trend toward being more punitive, raising new due process questions.
 - a. Should juveniles have the right to jury trial under all or particular circumstances?
 - b. Should the accomplice corroboration requirement in Evidence Code section 1111 apply to juvenile cases? Current Supreme Court precedent says no. (*In re Mitchell P.* (1978) 22 Cal.3d 946.) The Court of Appeal in *In re Christopher B.* (2007) 156 Cal.App.4th 1557, 1563-1567 outlines an argument for why the answer should be yes.
3. DJJ is much more limited and being monitored for inadequacies
 - a. Without DJJ as an option, courts are imposing long juvenile hall commitments, which are challengeable.
 - b. Updates on ongoing DJJ litigation can be found on Prison Law Office website:
<http://www.prisonlaw.com/cases.php#juvi>.

B. There are more resources and attorneys working together.

IV. YOU CAN BECOME AN EXPERT.

A. 602s are complex.

1. Minors are different, which is highly relevant to disposition.

2. Search / seizure / interrogation rules are more complex
 - a. *Miranda* / voluntariness issues
 - i. *Miranda* custody determination must take into account age. (*J.D.B. v. North Carolina* (2011) ___ U.S. ___ [131 S.Ct. 2394].)
 - ii. Questions of knowing, voluntary, and intelligent waiver of Fifth Amendment rights must take into account age, education, and intelligence. (*Fare v. Michael C.* (1979) 442 U.S. 707, 725 [99 S.Ct. 2560, 61 L.Ed.2d 197]; *People v. Lessie* (2010) 47 Cal.4th 1152, 1167.) Standard is higher than in adult cases. (*In re Abdul Y.* (1982) 130 Cal.App.3d 847, 862-863; *In re Anthony J.* (1980) 107 Cal.App.3d 962, 971.)
 - b. Parental consent to search minor’s room or possessions. (Compare *In re D.C.* (2010) 188 Cal.App.4th 978, 983-988 [search of minor’s room, permissible] with *U.S. v. Whitfield* (D.C.Cir.1991) 939 F.2d 1071, 1074 [search of minor’s room, impermissible without “mutual use”] and *In re Scott K.* (1979) 24 Cal.3d 395, 404-405 [search of minor’s toolbox, impermissible].)
 - c. School searches
 - i. Detention by school officials is permissible, unless arbitrary, capricious or harassing. (*In re Randy G.* (2002) 26 Cal.4th 556, 559.)
 - ii. Search requires reasonableness under all circumstances, less than probable cause. *New Jersey v. T.L.O.* (1985) 469 U.S. 325 [105 S.Ct. 733, 83 L.Ed.2d 720].)
3. Deferred Entry of Judgment & Disposition Rules
4. More to do because multiple tools at disposal given juvenile court’s continuing jurisdiction

- a. Record sealing under WIC 781: always advise eligible clients
 - b. WIC 778: Petition to change, set aside, or modify an order, if change of circumstance or new evidence
 - c. WIC 779: Petition to change modify or set aside DJJ commitment order, if DJJ is unable to or failing to provide treatment
5. Collateral consequences
- a. Resource: PJDC, *Collateral Consequences Handbook*: <http://www.pjdc.org/projects/collateral-consequences-handbook/>.)

V. THE WORK IS PARTICULARLY INTERESTING AND CHALLENGING.

A. More creativity often is needed.

- 1. EXAMPLE: Use court’s language in making true finding to show court didn’t properly exercise discretion - e.g., if court points to material “fact” indicative of substantial evidence but gets that “fact” wrong, ask that the case be remanded for the court to make new finding
- 2. EXAMPLE: The fact of youth sometimes can be used to suggest a special rule or rule application. In *In re Z.A.*, the Fourth District recently found a *Miranda* violation and suppressed the statements because “[a]n officer who intended to “scrupulously honor” (*Mosley, supra*, 423 U.S. at p. 104) Z.A.’s invocation of her right to remain silent would have provided such an admonition, particularly since Z.A. was a minor with no prior criminal history.”
- 3. EXAMPLE: Although typically there is no right to jury trial, an argument may be possible the right to jury trial was required in instances of punitive dispositions. (*In re J.L.* (2010) 190 Cal.App.4th 1395 [lifetime residency restrictions is severe punishment triggering right to jury trial], review granted and depublished March 2, 2011, S189721.)

VI. YOU CAN CHANGE A LIFE.