

## “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Evidence a victim was stricken twice was insufficient evidence of force likely to cause GBI - *In re B.M.* A131266 (unpublished)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battery to custodial officer, when battery was to probation officer, not a custodial officer - *In re O.S.*, D057628 (unpublished)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.**