REPRESENTING A MINOR ON APPEAL
IN A JUVENILE DELINQUENCY CASE
(Updated July 3, 2012)

The purpose of this handout 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 handout is not meant to be all-inclusive, and the appointed attorney needs to research pertinent case law and statutory provisions.

I. 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).) Minors who are found to come within the jurisdiction of the court are declared wards of the court.[2]

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 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.) 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).)

In some cases, when a minor in the dependency system commits a crime, he or she is declared a ward of the court and his or her dependency case is terminated. Where this dual-jurisdiction situation arises, the juvenile court is expected to determine in which system the minor's needs will best be met based on a joint assessment from the probation and welfare departments, pursuant to section 241.1. Where such procedure is not followed, an issue may exist for appeal. (*In re Joey G.* (2012) 206 Cal.App.4th 343, 348-349; *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1012-1013.)

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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 have suffered or are at risk of suffering serious abuse or neglect. (§ 300, et seq.) Such minors are declared dependents of the court.

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 Ernest R.* (1998) 65 Cal.App.4th 443, 449.) 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. (*In re Kasaundra D.* (2004) 121 Cal.App.4th 533, 535.)

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 and so there is no "judgment" from which to appeal**.** (*In re Rikki J.* (2005) 128 Cal.App.4th 783, 788-789.)

Some minors are prosecuted as adults under the general law in a court of criminal jurisdiction. Minors 14 years old or older who are alleged to have committed certain violent offenses (e.g., murder, some sex offenses) are automatically prosecuted as adults. (§ 602, subd. (b).) Certain other offenses can be handled in juvenile or criminal court. In such cases, the minor has the right to what is called a fitness hearing in juvenile court. 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.) These proceedings are reviewable only by writ within 20 days from the first arraignment in adult court. (See Cal. Rules of Court, rule 5.772(j); *People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 677-80 [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. (§ 606.)

II. 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. (§§ 601, 602.) Jurisdiction may be extended to the age of 25 years when the adjudicated offense is an enumerated offense under section 707, subdivisions (b), (d)(2), or (e) if the minor is committed to Division of Juvenile Justice. (§ 607, subd. (b).)

C. Disposition

If 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.)

III. CONFIDENTIALITY

Juvenile court proceedings and records are confidential in order to protect the privacy rights of the child. (§ 300.2.)

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. In the brief, he or she can be referred to by first name or as "the minor."

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 ROBERT S., A Person Coming Under The Juvenile Court Law.	
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. CHARLES ROBERT S. Defendant and Appellant.	Court of Appeal No. XXXXXX Superior Court No. XXXXXX

IV. 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), 8.404 (record), 8.408 (augmenting/correcting the record), 8.470 (hearing and decision in the Court of Appeal), and 8.472 (hearing and decision in the Supreme Court). (See also rule 5.585.)

The court's order at the jurisdictional hearing is not a final order and thus not appealable. The order is, however, reviewable after the disposition. (*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.* (2010) 188 Cal.App.4th 1129, 1141.)

Generally, appeals are brought by the minor. There is case law that has interpreted section 800 as limiting the right of appeal strictly to minors since the last revision of that statute (e.g., *In re Almalik S.* (1998) 68 Cal.App.4th 851, 854), other than where a parent has a direct interest affected by the order that is the subject of appeal. (*In re Michael S.* (2007) 147 Cal.App.4th 1443, 1449-1451 [parent allowed to appeal when held jointly and severally liable for restitution fines levied on minor].) 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(g), 8.400 [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."

V. 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.

VI. POTENTIAL JURISDICTIONAL ISSUES

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

A. Selection

1. Focus on 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.

B. 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 Regina N.* (1981) 117 Cal.App.3d 577, 584-585; Cal. Rules of Court, rule 5.778 (d).) The record must reflect a intelligent and voluntary waiver of his or her 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.)

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].)

C. Capacity

A minor under the age of 14 years is presumed incapable of committing a crime. (Pen. Code, § 26; *In re Manuel L.* (1994) 7 Cal.4th 229, 239; *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. (*In re Manuel L.*, *supra*; *In re Gladys R.*, *supra*.) The court considers the minor's age,

experience, and level of understanding. (*In re Marven C.* (1995) 33 Cal.App.4th 482, 486-487.)

D. Proof

Adjudications under section 602 are governed by reasonable doubt. (§ 701; *In re Winship* (1970) 397 U.S. 358 [90 S.Ct. 1068, 25 L.Ed.2d 368].) A finding that the minor knew the wrongfulness of the act must be supported by clear and convincing evidence. (*In re Manuel L.* (1994) 7 Cal.4th 229, 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.)

E. 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 805.5 [statutes of limitations].)

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, general principles of due process and California Rules of Court, rule 5.645(d) guide the competency analysis. (*In re Christopher F.* (2011) 194 Cal.App.4th 462, 469.)

F. Search and seizure issues

Minors are protected against unreasonable searches and seizures. (*In re Scott K.* (1979) 24 Cal.3d 395.) 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.)

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, 559.) 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 [105 S.Ct. 733, 83 L.Ed.2d 720].) For example, the United States Supreme Court recently found that a search of a student for prescription strength ibuprofen was permission in response to a report the student passed out a pill. (*Safford Unified School District No. 1 v. Redding* (2009) 557 U.S. 364 [129 S.Ct. 2633, 2640-2641,

174 L.Ed.2d 354].) Though, a subsequent strip search, when nothing was found in the initial search, was impermissible. (*Id*. at pp. 2641-2643.)

A recent Court of Appeal case found 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.* (1979) 24 Cal.3d 395, 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). The opinion in *D.C.* addresses *Scott K.* and *Whitfield*. (D.C., at pp. 983-988.)

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.) This decision overturned the court's ruling in *In re Tyrell J.* (1994) 8 Cal.4th 68.

G. Confessions / Statements to Police

Police and probation officers are required to advise the minor of his or her constitutional rights. (§§ 625, 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* procedures properly followed; and 2) were any statements made free from coercion.

The law used to mandate the cessation of questioning upon a minor's request to speak with a parent before or during questioning. However, the California Supreme Court recently 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, 1160-1161, 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. 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.) 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*.) However, 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. The United States Supreme Court recently made clear that a minor's age should be considered in evaluating whether a minor was "in custody" for *Miranda* purposes. (*J.D.B. v. North Carolina* (2011) ___U.S.___ [131 S.Ct. 2394].)

Whether a minor has voluntarily waived his *Miranda*[3] rights depends on the totality of the circumstances, including age, education, intelligence, and familiarity with the law. (*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].) The standard for establishing the voluntariness of a confession is higher than in an adult case. (*In re Abdul Y.* (1982) 130 Cal.App.3d 847, 862-863; *In re Anthony J.* (1980) 107 Cal.App.3d 962, 971.)

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

Welfare and Institutions 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, 127, 129-131.)

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.)

I. 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 [91 S.Ct. 1976, 29 L.Ed.2d 647]; *In re Myresheia W.* (1998) 61 Cal.App.4th 734, 736 [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.

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

(b)(3))]; *In re Charles C.* (1991) 232 Cal.App.3d 952; *In re Javier A.* (1984) 159 Cal.App.3d 913 [would have granted minors right to jury trial but for stare decisis].) However, 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; *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]; see generally *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 l.Ed.2d 435].)

Unfortunately, the California Supreme Court has decided that there is no Sixth Amendment requirement that a jury trial be an option before a juvenile prior can be used as a strike in an adult case. (*People v. Nguyen* (2009) 46 Cal.4th 1007.) 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 October 10, 2007, S154847.)

An argument that a punitive disposition cannot be imposed in the absence of the right to jury trial, pursuant to authorities like *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 l.Ed.2d 435], recently had success in the Fourth Appellate District, Division Three Court of Appeal, before review was granted. (*In re J.L.* (2010) 190 Cal.App.4th 1395, review granted and depublished March 2, 2011, S189721.) In its opinion that cannot be cited, the Court of Appeal found that the lifetime sex offender residency restriction in Penal Code section 3003.5 cannot be imposed in the absence of a jury trial because of its punitive nature. (*Ibid*.) The same opinion, however, rejected the argument that a jury trial was necessary for sex offenses that were subject to sex offender registration and that could lead to civil commitment under the Sexual Violent Predator Act. (*Ibid*.) Sex offender registration triggers the residency restriction. (*Ibid*.) Therefore, the court in this case severed the two by barring the enforcement of the residency restriction. (*Ibid*.) In the lead case on review with *J.L.*, a different panel of justices on the same court found the two non-severable. (*People v. Mosley* (2010) 188 Cal.App.4th 1090, 1118-1119, review granted and depublished January 26, 2011, S187965 .)

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.

VII. POTENTIAL ISSUES REGARDING DISPOSITION

A. 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 (§ 702; 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 Division of Juvenile Justice ("DJJ")[4] (§ 731).[5] Section 202, subdivision (e), provides a list of permissible sanctions.

Minors may not be entitled to the protection of *People v. Harvey* (1979) 25 Cal.3d 754 and instead may be subject o 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*, at p. 1329.)

Legislation effective September 1, 2007, amended the law to prohibit a DJJ commitment unless the "most recent offense alleged in any petition and admitted or found

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[4]The California Department of Corrections web-site refers to the youth prison system as the "Division of Juvenile Justice" and abbreviates it DJJ. Even so, some appellate opinions have called the prison "Division of Juvenile Facilities" and labeled it DJF.

[5]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 [before removal, court must find continued presence in parents' home detrimental].)

true" falls within section 707, subdivision (b), or Penal Code section 290.008, subdivision (c). (§ 733, subd. (c); see also § 731, subd. (a)(4) [providing that a court "may" commit a minor to DJJ if it finds the minor committed an offense under section 707, subd. (b)].) Section 731, subdivision (a)(4) additionally requires a finding the minor "has committed" a section 707, subdivision (b) offense before committing that minor to DJJ. Accordingly, DJJ commitments are error in cases with dispositions after September 1, 2007, where the latest offense admitted or found true does not fall within section 707, subdivision (b) and is not an enumerated sex offense. In cases where the latest offense admitted or found true is an enumerated sex offense but not a section 707, subdivision (b) offense, the court has authority to order a DJJ commitment *only if* the minor previously was found to have committed a section 707, subdivision (b) offense. (*In re C.H.* (2011) 53 Cal.4th 94.)

Also currently on review is the question whether a court may dismiss a more recent sustained petition for which a DJJ commitment is impermissible so it can order a DJJ commitment based on a previous petition. (*In re Greg F.*, review granted June 8, 2011, S191868.) While the issue is pending, there is a split of authority. (Compare *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1463-1469 [court cannot dismiss more recent sustained petition to circumvent section 733] with *In re J.L.* (2009) 167 Cal.App.4th 57 [section 782 permits courts to dismiss a sustained petition and then impose a DJJ commitment, in the interest of justice and welfare of the minor].)

Section 731.1 also provides a means for recall of cases with dispositional orders from prior to September 1, 2007.

Because section 733 refers to "any petition," its plain meaning seems to allow a DJJ commitment only if the most recent "offense" in the latest petition, whether pursuant to section 602 or section 777, is delineated in section 707, subdivision (b) or Penal Code section 290.008. The Court of Appeal in *In re Carl N.* (2008) 160 Cal.App.4th 423, 437-438 presumed section 777 petitions could not lead to DJJ commitments under the amendment, but other courts have reached the contrary conclusion in *In re D.J.* (2010) 185 Cal.App.4th 278, 286-288; *In re J.L.* (2008) 168 Cal.App.4th 43, 60-61; and *In re M.B.* (2009) 174 Cal.App.4th 1472, 1476-1478.

Three recent Court of Appeal decisions unfortunately concluded this significant change in the law is not retroactive to cases not yet final with dispositional orders from prior to September 1, 2007. (*In re N.D.* (2008) 167 Cal.App.4th 885, 890-894*; In re Carl N.* (2008) 160 Cal.App.4th 423; *In re Brandon G.* (2008) 160 Cal.App.4th 1076.) They employ different reasoning. The California Supreme Court has not yet spoken on the retroactivity issue. For additional information about raising arguments related to this change in the law, please see ADI's December 2007 Memo entitled "Division of Juvenile

Justice Commitments" available on ADI's website in the "Juvenile Delinquency Articles" section.

B. Mandatory Dispositions

A minor must be confined in a juvenile hall, camp, secure juvenile home, or DJJ, if the minor: was 16 years old or older at the time of the offense; was found fit to remain in the juvenile system following an unfitness motion; was declared ward of the court under section 602; and previously was found to have committed two or more felonies when he or she was 14 or older. (§ 707, subd. (a)(2)(E).) Likewise, where the prosecution could have proceeded directly against a minor in criminal court (§ 707, subd. (d)(1)-(3)), but did not, and the minor is adjudged a ward based on a section 707, subdivision (d)(5) predicate offense, confinement in a juvenile hall, camp, secure juvenile home or DJJ is also mandatory. (§ 707, subd. (d)(5).)

Confinement in juvenile hall, a county camp or ranch, or DJJ 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).)

C. Findings Required Before a Minor Can be Committed to DJJ

As explained above in subdivision VII(A), *ante*, legislation limits the cases, based on the underlying offenses, that can result in DJJ commitments. (§ 733.)

Additionally, although there is no requirement that less restrictive alternatives were previously attempted before committing a minor to DJJ, 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 Pedro M.* (2000) 81 Cal.App.4th 550, 555-556; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.) Unavailability of a local program should not be the sole ground for a DJJ commitment. (*In re Gerardo B.* (1989) 207 Cal.App.3d 1252.) Also, before committing a minor to DJJ, the court is required to find a probable benefit to the minor from DJJ. (§ 734; *In re Pedro M.*, at pp. 555-556; *In re Teofilio A.*, at p. 576; *In re Michael D.*, at p. 1396.) Even where a DJJ 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; *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 DJJ having jurisdiction

over the minor until age 25. (*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.)

D. 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 Manzy W.* (1997) 14 Cal.4th 1199, 1209; *In re Kenneth H.* (1983) 33 Cal.3d 616, 618-620; *In re Jacob M.* (1987) 195 Cal.App.3d 58, 64 [offense deemed lower degree where no degree stated].) The mere existence in the record of documents referring to wobbler consideration are insufficient. (*In re Ricky H.* (1981) 30 Cal.3d 176, 191.) 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.*, at pp. 1207-1208; *In re Dennis C.* (1980) 104 Cal.App.3d 16, 23).

E. Deferred Entry of Judgment

Deferred entry of judgment 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.) 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.* (2009) 176 Cal.App.4th 1316, 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 suppression

motion (*In re A.I.* (2009) 176 Cal.App.4th 1426) or 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 recently 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.* (May 17, 2012, C067525) __ Cal.App.4th __, __ [*2-*3.].) The trial court later found the minor eligible but not suitable for DEJ eligibility. (*Ibid*.) 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. (*Ibid*.)

Although the procedures are mandatory, the trial court ultimately has discretion whether or not to grant deferred entry of judgment. (*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 (*In re Mario C.* (2004) 124 Cal.App.4th 1303, 1307-1308; see *People v. Mazurette* (2001) 24 Cal.4th 789, 794 [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, available on ADI's website.

F. Calculation of Maximum Length of Confinement

This issue too is often overlooked. A minor cannot be confined in excess of the maximum term that could be imposed on an adult convicted of the same offenses. (§ 726, subd. (c).) The court must calculate the maximum length of confinement when the minor is removed from the custody of his parents. (§ 726, subd. (c); *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 DJJ, 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.) 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 DJJ, rather than just calculate the maximum period of confinement, the court must exercise its discretion in setting the maximum period of confinement. 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.) Accordingly, a court is permitted to set a maximum term below the adult maximum term. A split of authority exists as to whether a court can set a maximum period of confinement below the adult minimum term. (Compare *In re R.O.* (2009) 176 Cal.App.4th 1493, 1498 and *In re H.D.* (2009) 174 Cal.App.4th 768, 776-779 [maximum period for juvenile can be below adult minimum period because adult determinate sentencing law does not apply in juvenile cases] 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].) The maximum period of confinement set can never exceed the maximum period of confinement an adult could be required to serve under the same circumstances. (§ 731, subd. (c).) 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. (*In re Sean W.,* at pp. 1181-1182.)

A general principle of law is that a proper exercise of discretion is presumed from a silent record. Accordingly, the Supreme Court recently clarified that even where the juvenile court orders the maximum term of confinement equal to the maximum permissible adult sentence, without explanation, it should be presumed the court considered a maximum confinement term less than the permissible maximum. (*In re Julian R.* (2009) 47 Cal.4th 487, 488-489, 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 (c), but need not be aggregated. (*In re Alex N.* (2005) 132 Cal.App.4th 18, 25-27; *In re Adrian R.* (2000) 85 Cal.App.4th 448, 454; *In re Edwardo L.* (1989) 216 Cal.App.3d 470, 478.) Penal Code section 654 *is* applicable. (*In re Michael B.* (1980) 28 Cal.3d 548, 556, fn. 3.) Likewise, 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, 482-483 [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 enhancement and was not pled or proven].)

Juvenile court findings regarding confinement are reviewed for abuse of discretion. (*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 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, 263-269; *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 DJJ terms are indeterminate unlike adult terms. (*In re Alex U.*, at pp. 263-269; *In re Christine G.*, at pp. 713-715.)

G. 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 DJJ or an equivalent institution in another state. (Pen. Code, § 290.008.)

Where a court chooses to commit a minor to DJJ 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, 25.) However, the Fourth Appellate District, Division Two, recently 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 DJJ 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.) If a case arises where a minor was committed to DJJ 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.

H. Probation Conditions

The juvenile court may impose reasonable terms and conditions of probation. (§§ 725, 782.) 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 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 Antonio C.*, *supra*, 83 Cal.App.4th at p. 1034; *In re Kacy S.* (1998) 68 Cal.App.4th 704, 709.) Probation conditions may also be void for vagueness. "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 Binh L.* (1992) 5 Cal.App.4th 194, 203; *In re Michael D.* (1989) 214 Cal.App.3d 1610, 1616; *In re Laylah K., supra,* 229 Cal.App.3d at pp. 1501-1502.) For example, a probation condition cannot prohibit a minor, who is a United States citizen but living in Mexico, from returning to the United States (*In re James C.* (2008)165 Cal.App.4th 1198) 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). 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.)

Under the circumstances of a recent case, 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.)

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, subd. (d)(3)].)

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.) Recently, 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), where the condition is statutorily limited (*People v. Guardado* (1995) 40 Cal.App.4th 757, 763), 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).

I. 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., Vehicle 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 licence 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.)

Some provisions are mandatory. 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).

J. 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 secure juvenile home. (§ 726, subd. (c); *In re Eric J.* (1979) 25 Cal.3d 522, 535-536; *In re Mikael D.* (1983) 141 Cal.App.3d 710, 720-721.) A recent 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. (*In re Lorenzo L.* (2008) 163 Cal.App.4th 1076.) A minor is entitled to pre-sentence 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 Pedro M.* (2000) 81 Cal.App.4th 550, 556.) 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.)

K. Restitution and Other Fees

The court may order various restitution fines (§§ 728, 729, 729.6, 730.5, 731) and victim restitution (§§ 730.6, 730.7). Victim restitution is mandatory unless there are compelling and extraordinary reasons not to award it. (§ 730.6.)

"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 Welf. & Inst. Code, § 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.)

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 minor is confined. (§§ 903, 903.1, 903.2, 903.25, 03.45, 903.5.) An argument can be made that the minor has standing to raise these issues. (See *In re Byron S.* (1986) 176 Cal.App.3d 822, 825-826.) However, a recent Court of Appeal opinion held that 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.)

L. 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.A. § 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.

Also, California state law may provide protections beyond those in federal ICWA. In cases where a child with Indian heritage is placed in foster care or is at risk of entering foster care, it should be considered whether it is arguable inquiry and notice like that in ICWA proceedings was necessary pursuant to *California law* under sections 224.3 and 224.4.[1] Section 224.3 applies to section 602 proceedings by its plain language. At least one Court of Appeal has concluded that California's duty of notice applies in section 602 cases: *R.R. v. Superior Court* (2009) 180 Cal.App.4th 185, 206-208. It found federal law did not preempt California from creating greater protections than provided in ICWA. (*R.R.*, at pp. 205-208.) The Fourth Appellate District, Division Two case came to the contrary conclusion, holding that any state law applying ICWA to delinquency cases is preempted by federal law, but this case has since been depublished by the Supreme Court's grant of review. (*In re W.B.* (2010) 182 Cal.App.4th 126, review granted and depublished May 12, 2010, S181638.) The Supreme Court's decision in *W.B.* should resolve the issue, but in the meantime, the duty of inquiry in section 224.3 at least arguably applies to section 602 proceedings.

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[1]Section 727.4 also requires the court or probation officer to notify the child's parents or guardian, Indian custodian, and tribe of certain post-placement hearings.

Also, the Fourth Appellate District, Division One in *In re Alejandro A.* (2008) 160 Cal.App.4th 1343, 1347, noted in dicta that section 224.3 only applies to parents and Indian custodians in section 602 cases, given language in federal ICWA permitting states to pass stricter laws protecting parents and Indian custodians, without mention of minors The Court of Appeal in *R.R.* rejects this suggestion in its analysis explaining why California law does not interfere with federal law. (*R.R. v. Superior Court* (2009) 180 Cal.App.4th 185, 205-208.)

VIII. PROBATION VIOLATIONS

Before Proposition 21, if a minor committed subsequent criminal offenses while within the jurisdiction of the court, supplemental petitions were filed. Post-Proposition 21, that procedure is eliminated. (§ 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, though, it may be an abuse of discretion to permit the substitution of hearsay. (*In re Kentron D.* (2002) 101 Cal.App.4th 1381.) 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.,* at p. 486.)

As aforementioned, if a new offense is subject of a probation violation and if that new offense is not a section 707, subdivision (b) offense, then section 733 appears to prohibit DJJ.[2]

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.) Consult the

[2]Case law has not yet confirmed this conclusion.

project staff attorney monitoring your case for the correct procedures before such a brief is filed.

X. 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 DJJ)
Total sentence	Maximum length of confinement
Defendant	Minor
Charge/charged	Allegation/alleged

XI. ADVICE ABOUT 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; *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767.) 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. Unfortunately, unlike in many states, minors in California must take action to seal their records. Therefore, it makes sense to advise clients about the right to seal their records, the importance of sealing their records, and the process for sealing their records.

XII. ADDITIONAL RESOURCES

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

American Bar Association, Juvenile Justice Committee Website:
http://www.abanet.org/dch/committee.cfm?com=CR200000

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

California Juvenile Courts Practice and Procedure (2006), Matthew Bender (LexisNexis).

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

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

National Council on Crime And Delinquency Website:
http://www.nccd-crc.org/nccd/index.html

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

Siraco, Seligman, and Braucher, First District Appellate Project, "Basic Juvenile Criminal Law and Procedure," available at: http://www.fdap.org/r-article_search.php?category=del

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