RECENT DEVELOPMENTS CONCERNING YOUTHFUL OFFENDERS IN ADULT AND JUVENILE COURT

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On May 1, 2011, Joseph, a ten year-old boy who was suffering from mental problems and severe physical abuse inflicted by his neo-Nazi father, shot and killed his father. Joseph was interrogated by the police, adjudicated in juvenile court, found to have committed murder, and committed to the Department of Juvenile Justice (DJJ), formerly known as the California Youth Authority. The Court of Appeal affirmed. Among other things, it decided he could understand his *Miranda* rights and did voluntarily waive them, he understood the wrongfulness of his actions, and a DJJ commitment for the ten-year old was appropriate. (*In re Joseph H.* (2015) 237 Cal.App.4th 517.)

Joseph would not have suffered the same fate today. For example, the police are now required to permit the minor to consult with an attorney before a custodial interrogation (Welf. & Inst. Code, § 625.6), the Legislature now requires that a minor must be at least 12 years old at the time of the offense for the juvenile court to assume jurisdiction (Welf. & Inst. Code, § 602), and DJJ is being shut down. Needless to say, there have been some dramatic changes in the law concerning juvenile and youthful offenders in recent years.

A. Youthful Offenders in Adult Court

Special attention should be given to youthful offenders in adult court. Issues concerning their immaturity arise concerning coerced statements during police interrogations, rights from searches and seizures, and in sentencing. Similar issues can arise with defendants who are developmentally delayed or mentally ill.

1. Police Questioning

When there is a custodial interrogation, there might be several interrelated but distinct claims: whether there was a proper advisement under *Miranda v. Arizona* (1966) 384 U.S. 436, whether there was an effective waiver of the *Miranda* rights, whether there was an invocation of the right to silence, whether there was an invocation of the right to counsel during questioning, or whether any portion of the statement were coerced or

involuntary. Each potential claim of error is based on the due process clause of the Fourteenth Amendment and require separate specific objections. Because trial counsel often fails to appreciate the distinction, an argument of ineffective assistance of counsel often must also be made.

New Welfare and Institutions Code section 625.6 was enacted in 2018 and required that a minor under 16 years old be allowed to consult with counsel before the police conduct a custodial interrogation. Effective in January 2021, this was expanded to include all minors 17 years old or younger. Because of the truth-in-evidence provision (Cal. Const., art. I, § 28, subd. (f)(2)), violation of a state statute is not grounds for excluding the evidence. (*In re Anthony L.* (2019) 43 Cal.App.5th 438, 447-448). The failure of the officer to follow the law, however, might be useful evidence of the officer's bad faith and the use of coercive tactics. Also, Penal Code section 859.5, was amended to require electronic recording of all confessions concerning shootings. (But see *People v. Cervantes* (2020) 55 Cal.App.5th 927, 9410-941 [the statute did not apply retroactively].)

There have been some recent cases of the police interrogating minors in their homes under rather onerous conditions, apparently in order to avoid section 625.6. Some appellate counsel have been successful in arguing the interrogations were custodial and thus violated *Miranda.* (See, e.g., *In re Matthew W.* (2021) 66 Cal.App.5th 392, 406-410 [though not cuffed and told he was not under arrest while interrogated in kitchen, the minor was in custody because he was roused from bed at 6 a.m. by several uniformed officers who pat searched him and then asked accusatorial questions, and his mother was not allowed to be present]; *People v. Torres* (2018) 25 Cal.App.5th 162, 174-180 [though advised not under arrest, the interview became custodial when officers accused the minor of molestation, confronted him with supposed DNA evidence and the questioning became accusatory]; see also *People v. Roberts* (2021) 65 Cal.App.5th 469, 480 [when an "arrest team" arrested the defendant at gunpoint, handcuffed him, and asked him why he ran, police violated *Miranda,* though the questioning occurred at the scene]; but see *In re M.S.* (2019) 32 Cal.App.5th 1177, 1187-1188 [no *Miranda* violation where officers had the minor re-enact the crime while they were in her apartment].)

In determining whether a police interrogation is coercive or if there was a voluntary waiver of rights under *Miranda,* the court can consider the defendant's age. (*Withorow v. Williams* (1993) 507 U.S. 680, 693; *Oregon v.*

Elstad (1985) 470 U.S. 298, 312, fn. 3; *Fare v. Michael C.* (1979) 442 U.S. 707, 725; *In re Gault* (1967) 387 U.S. 1, 45; *Gallegos v. Colorado* (1962) 370 U.S. 549, 554; *Haley v. Ohio* (1948) 332 U.S. 596, 599-603; *People v. Neal* (2003) 31 Cal.4th 63, 84 [18 year old without experience, other factors]; *In re Shawn D.* (1993) 20 Cal.App.4th 200, 212-213; see *Crone v. County of San Diego* (9th Cir. 2010) 593 F.3d 841, 866-867 [according to expert, interrogation of teenager amounted to emotional child abuse and rendered a confession involuntary].)

The court can also consider the defendant's intelligence and education. (*In re Shawn D.* (1993) 20 Cal.App.4th 200, 212-213; see *Oregon v. Elstad* (1985) 470 U.S. 298, 312, fn. 3; *Singleton v. Thigpen* (11th Cir. 1988) 847 F.2d 668, 670-671.)

The court can consider the defendant's physical or mental illness. (*Colorado v. Connelly* (1986) 479 U.S. 157, 163-167; *Reck v. Pate* (1961) 367 U.S. 433, 439-440 & fn. 3; *Blackburn v. Alabama* (1960) 361 U.S. 199; cf. *People v. Lewis* (2001) 26 Cal.4th 334, 384 [voluntary decision to confess by a 14 year old paranoid schizophrenic].)

A minor requesting someone other than an attorney during police questioning is not an invocation of any rights under the Sixth or Fourteenth Amendments. (*Fare v. Michael C.* (1979) 442 U.S. 707, 728 [requested a probation officer]; *People v. Nelson* (2012) 53 Cal.4th 367, 380-383 [requested parents]; *People v. Lessie* (2010) 47 Cal.4th 1152, 1164-1168 [no right to have parents present].)

Recently, there has been some good case law suppressing coerced confessions, especially concerning youthful offenders. In *In re Elias V.* (2015) 237 Cal.App.4th 568, the court discusses the "Reid technique" in depth. Most officers have been trained in the Reid technique of interrogating suspects, which has been criticized for causing false confessions. Under this technique, the officer assures the defendant that they know he did it, they just want his side of the story, and his denials are unreasonable. The officers work on the defendant's sense of honor or desire for respect and suggest two possible scenarios, both equally inculpatory, while suggesting that one of them is at least morally understandable or less blameworthy. Left with no better alternative, the accused adopts the less onerous scenario. The case also shows how even the people who have developed and trained others in the Reid technique have said that these methods should not be used for youthful

offenders because false confessions arise too easily in this context. Notwithstanding the opinion's emphasis on youthful offenders, the case can be useful for explaining to a court why the confession of a defendant of any age is coerced, assuming there is a sufficient factual basis for such a claim. (See also *In re I.F.* (2018) 20 Cal.App.5th 735; *People v. Saldana* (2018) 19 Cal.App.5th 432; *In re T.F.* (2017) 16 Cal.App.5th 202.)

2. Searches and seizures

Third party consent is not valid when the defendant is present and objects. (*Georgia v. Randolph* (2006) 547 U.S. 103, 114-115, 121.) But parental consent to searching their child's room is valid over the minor's objection. (*In re D.C.* (2010) 188 Cal.App.4th 978, 988-990.) Conversely, a young child cannot consent to the search of the parents' home. (*People v. Jacobs* (1987) 43 Cal.3d 472, 481-482 [11 year old girl]; but see *People v. Hoxter* (1999) 75 Cal.App.4th 406, 422 [consent by a 16 year old girl was sufficient].) A parent can consent to the surreptitious recording by government officials of his or her child. (*In re Trevor P.* (2017) 14 Cal.App.5th 486, 501.)

The Fourth Amendment, and maybe the due process clause, applies to school detentions. Nonetheless, a school can detain a student without reasonable suspicion. (*In re Randy G.* (2001) 26 Cal.4th 556, 565.) It can detain someone on school grounds after school hours for school security purposes. (*In re Joseph F.* (2000) 85 Cal.App.4th 975, 979-980, 983-985.)

The police can detain a student during school hours in order to determine if he or she is truant under Education Code section 48264. (*In re James D.* (1987) 43 Cal.3d 903, 915.) A school can search a student arriving on campus late. (*In re Sean A.* (2010) 191 Cal.App.4th 182, 188-190.) The police can arrest a minor for a curfew violation. (*In re Ian C.* (2001) 87 Cal.App.4th 856, 859-860; *In re Charles C.* (1999) 76 Cal.App.4th 420, 423-424.)

A school can conduct random drug tests of student club members. (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 246; *Board of Education of Pottawatomie County v. Earls* (2002) 536 U.S. 822, 825.)

A school can search student lockers, purses, and other belongings with reasonable suspicion. (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 343-347; *In*

re Williams G. (1985) 40 Cal.3d 550, 563-564; but see *In re Lisa G.* (2005) 125 Cal.App.4th 801, 807 [teacher could not look in a student's purse to look for identification].)

A school can conduct general searches of a minor's person or possessions if there is individual suspicion of wrongdoing. (*Safford Unified Sch. Dist. #1 v. Redding* (2009) 557 U.S. 364, 373-374 [can search a student on another student's accusation she possessed prescription-strength ibuprofen]; but see *id.* at pp.374-376 [search of underwear was unreasonable without additional justification]; see also *Chandler v. Miller* (1997) 520 U.S. 305, 313; *In re Bobby B.* (1985) 172 Cal.App.3d 377, 380-383 [can search a student in the bathroom without a hall pass].) A tip concerning a student possessing a firearm need not be corroborated for school officials to conduct a search. (*In re K.J.* (2018) 18 Cal.App.5th 1123, 1133-1134; *In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1740-1741.) A school can pat down a minor who is not a student at the school and appears to have no legitimate business on campus, though there are no grounds to believe he is armed. (*In re Jose Y.* (2006) 141 Cal.App.4th 748, 751-752.)

Random metal detector searches at high schools are acceptable. (*In re Latasha W.* (1998) 60 Cal.App.4th 1524 [administrative search]; but see *B.C. Plumas Unified School Dist.* (9th Cir. 1999) 192 F.3d 1260, 1268 [there must be a problem at the school or reasonable suspicion].)

Generally, a detention occurs when physical force is applied or when there is a submission to authority. (*California v. Hodari D.* (1991) 499 U.S. 621, 624.) The court can consider the age of the minor in deciding whether he or she would feel free to go. (*In re J.G.* (2014) 228 Cal.App.4th 402, 409-411; see also *In re Edgerrin J.* (2020) 57 Cal.App.5th 752, 760.)

3. Sentencing

a. Juvenile strikes

A prior juvenile adjudication can be used as a strike prior, though there was no right to a jury trial in the juvenile court. (*People v. Nguyen* (2009) 46 Cal.4th 1007, 1018-1026; see *People v. Superior Court* (*Andrades*) (2003) 113 Cal.App.4th 817, 830-834.)

Under Penal Code section 667, subdivision (d)(3), a juvenile adjudication qualifies as a prior strike conviction if (A) the minor commits a criminal offense at age 16 or 17 years, (B) the offense is a serious or violent felony, (C) the minor was found fit for juvenile court treatment, and (D) the minor was adjudged a ward because of an offense listed in subdivision (b) of Welfare and Institutions Code section 707. (*People v. Garcia* (1999) 21 Cal.4th 1, 6-7.) The juvenile court need not make an expressed finding that the minor was fit for juvenile court treatment. (*People v. Davis* (1997) 15 Cal.4th 1096, 1101-1102.) There is no requirement that the offense was a section 707 offense when it was adjudicated, as long as it is listed in section 707 at the time of the new offense. (*People v. Bowden* (2002) 102 Cal.App.4th 387, 389, 391.)

Generally, the court cannot make a determination that a prior adjudication qualifies as a section 707 offense based on the facts of the case. (*People v. Jensen* (2001) 92 Cal.App.4th 262, 265-268 [an adjudication for voluntary manslaughter could not qualify as a strike though it involved assault with force likely to cause great bodily injury]; see generally *People v. Gallardo* (2017) 4 Cal.5th 120, 130-131 [courts cannot make new finding of what the facts for the prior conviction were].) But a prior adjudication for an offense not listed in section 707 can be considered to be a section 707 offense if a lesser included offense is listed. (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1065 [a violation of Pen. Code, § 288.5 qualified; though not specifically listed in section 707(b), it was sufficient that Pen. Code, § 288 is listed]), but an adjudicated for a misdemeanor is not a section 707 offense (*In re Sim J.* (1995) 38 Cal.App.4th 94, 96-99).

b. Cruel and unusual punishment

The United States Supreme Court has banned the death penalty and limited the imposition of a sentence of life without parole for offenders under the age of 18 years. The Court has observed the scientific consensus is that the brain continues to develop for most people until they are about 25 years old. The part concerning judgment and risk-benefit analysis is the last part of the brain to fully develop. (See *Miller v. Alabama* (2012) 567 U.S. 460, 471-473; *Graham v. Florida* (2010) 560 U.S. 48, 68-72; *Roper v. Simmons* (2005) 543 U.S. 551, 569-571; see also *People v. Caballero* (2012) 55 Cal.4th 262, 266.) "These cases provide clear rules for the sentencing of juveniles. A juvenile cannot be sentenced to capital punishment for any crime. (*Roper*, *supra*, 543 U.S. at pp. 578-579.) A sentencing court may not sentence a

juvenile to prison for life without the possibility of parole for nonhomicide offenses. (*Graham*, *supra*, 560 U.S. at pp. 74-75.) A sentence for a juvenile who committed a nonhomicide offense that consists of a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy is prohibited. (*Caballero*, *supra*, 55 Cal.4th at p. 268.) Mandatory life-without-parole sentences for juveniles, even those who commit homicide, are not permitted. (*Miller*, *supra*, 132 S.Ct. at p. 2464 [567 U.S. 460, 471].) An LWOP sentence for juveniles who committed a homicide offense is allowable only if the court considers the ' "mitigating qualities of youth" ' and limits 'this harshest possible penalty' to those ' "rare juvenile offender[s] whose crime[s] reflect[ ] irreparable corruption." ' (*Id.* at pp. 476, 479-480.)" (*People v. Watson* (2017) 8 Cal.App.5th 496, 511-512.) Life without parole requires a penological justification, such as a conclusion that the minor is incorrigible. (*Montgomery v. Louisiana* (2016) __ U.S. ___ [136 S.Ct. 718, 736].) However, the court need not make express findings that the offender is incorrigible in imposing a sentence of life without parole. (*Jones v. Mississippi* (2021) __ U.S. __ [141 S.Ct. 1307, 1314].)

There are many youths in California sentenced to life without parole or a functional LWOP sentence. S.B. 260 (Cal. Stats. 2013, ch. 312) has provided a remedy by making offenders 25 years old or younger at the time of the offense eligible for parole in 15 or 25 years, depending on the length of the sentence. (See Pen. Code, §§ 3051.) The California Supreme Court has said this provides an adequate remedy for most youths with most adult sentences. (*People v. Franklin* (2016) 63 Cal.4th 261, 276-280.) The defendant is also entitled to add information about his or her youthfulness at the time of the offense for the parole board's consideration. (*Id.* at p. 284; Pen. Code, § 1203.01.) This right applies to all youthful offenders, even if the crime was committed before *Franklin* was decided. (*In re Cook* (2019) 7 Cal.5th 439, 451, 452-453.)

However, youthful parole does not apply to some young adults. It does not apply to those sentenced to life without parole (that is, murder with special circumstances), or convicted of a Three Strikes or a One Strike offense. (Pen. Code, §§ 3051, subds. (b) & (h).)

The California Supreme Court has held that the death penalty for a young adult is constitutional. (*People v. Powell* (2018) 6 Cal.5th 136, 191-192.) Courts of Appeal have held that LWOP for adult offenders convicted of murder with special circumstances is not categorically unconstitutional. (*In re*

Williams (2020) 57 Cal.App.5th 427, 434-439; *People v. Montelongo* (2020) 55 Cal.App.5th 1016, 1030-1032.) The lack of youthful parole for Three Strike offenders is also constitutional. (*People v. Wilkes* (2020) 46 Cal.App.5th 1159, 1165-1166.)

Nonetheless, the issue is not yet settled. In *People v. Edwards* (2019) 34 Cal.App.5th 183, the court held that 195 years to life and 95 years to life for two 19 year-olds convicted of robbery and rape under the One Strike law (Pen. Code, § 667.61) was not cruel and unusual punishment. (*Id.* at pp. 190-192.) However, absence of youthful parole eligibility violated the equal protection clause. (*Id.* at pp. 195-197; *People v. Miranda* (2021) 62 Cal.App.5th 162, 181-182; see also *In re Woods* (2021) 62 Cal.App.5th 740, review granted June 16, 2021, S268740, [excluding one strike offenders from the reach of section 3051 violates equal protection].) Other courts have disagreed and have held One Strike sentences are constitutional. (See, e.g, *People v. Mosely* (2021) 59 Cal.App.5th 1160, 1169, review granted Apr. 14, 2021, S267309; *People v. Williams* (2020) 47 Cal.App.5th 475, 492-493, review granted July 22, 2020, S262229.) Due to the conflict in the courts, the California Supreme Court is considering whether the exclusion of One Strike sex offenders from youthful parole eligibility violates the equal protection clause. (*Williams, supra,* 47 Cal.App.5th 475, review granted July 22, 2020, S262229.)

The cases show that it is important to continue to challenge long sentences imposed on offenders under the age of 25 years, based on cruel and unusual punishment (U.S. Const., 8th & 14th Amends.; Cal. Const., art. I, § 17) and on equal protection (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7, art. IV, § 16).

c. Conditions of probation

It is important to examine conditions of probation and other forms of supervised release carefully. The problem with unreasonably or constitutionally infirm conditions is that it snares the unwary. By the time the issue is litigated, the defendant will have spent a considerable time in custody. This applies to juvenile cases as well.

Some conditions might appear simple and reasonable but do not make sense in everyday life. For example, courts have held an order that a minor not change his or her address without approval of probation is permissible.

(*In re G.B.* (2018) 24 Cal.App.5th 464, 469-470.) However, what happens if the minor's parents are moving but probation does not approve the move? Since the minor is also required to obey the parents and be home during curfew hours, what is the minor to do? The probation condition is thus vulnerable to attack and ought to be replaced by a more reasonable condition, such as to notify probation when there is a move.

Another example most people do not give much thought to is a condition to stay away from those on probation or parole. However, what should a defendant do when a spouse, child, sibling, or parent is on probation or parole? How is the defendant supposed to do the required programs which are attended by other probationers?

By extension, there was recently a case where a minor was accused of molesting a step-sister. He was ordered to stay away from the victim and her family. While the victim was living at a different home by then, the minor's family was part of the victim's family. How could the minor stay away from her family and obey the order to be at home at night?

There are often three potential claims concerning probation conditions: the condition is vague in violation of the due process clause of the Fourteenth Amendment, the condition is overbroad in violation of the due process clause of the Fourteenth Amendment, or the condition is unreasonable. Although each claim is interrelated, they are separate claims and need to be analyzed separately. No objection is required to argue a condition of probation is unconstitutionally vague or overbroad *based on undisputed facts*. (*In re Sheena K.* (2007) 40 Cal.4th 875, 885-887.) A claim that a probation condition is unreasonable is forfeited without an objection. (*People v. Welch* (1993) 5 Cal.4th 228, 237.)

Sometimes, the court will impose probation conditions, and the minor will reoffend. When this occurs, the court often reimposes the same probation conditions, perhaps with some modifications. When the court renews probation with "[a]ll prior orders not in conflict remain in effect," the minor could not challenge the older probation conditions, even on constitutional grounds, in an appeal from the new petition. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1139-1143.)

Whether a probation condition is facially vague or overbroad presents a pure question of constitutional law (*Sheena K.*, *supra*, 40 Cal.4th at pp. 888-

889) that is reviewed de novo (see *People v. Cromer* (2001) 24 Cal.App.4th 889, 894; see also *In re A.L.* (2010) 190 Cal.App.4th 75, 78). Whether a condition of probation is reasonable is reviewed for abuse of discretion. (*People v. Olguin* (2008) 45 Cal.4th 375, 379; *Welch, supra,* 5 Cal.4th at p. 233.)

Vagueness. The Fourteenth Amendment to the United States Constitution and article I, sections 7 and 15 of the California Constitution guarantee no person shall be deprived of life, liberty, or property without due process of law; a condition is vague if it fails to give the defendant fair notice of what is required or fails to give law enforcement fair instructions as to what is proscribed. (*Sheena K., supra,* 40 Cal.4th at p. 890; *In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.)

Overbreadth. Due process under the Fourteenth Amendment requires a clear order that is not overly broad when a condition infringes on a constitutional right. (*People v. Harrisson* (2005) 134 Cal.App.5th 637, 641-642; see also *Broadrick v. Oklahoma* (1973) 413 U.S. 601, 612.) "A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." ((*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) Under this doctrine, " ' "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." ' [Citations.]" (*In re Englebrecht* (1998) 67 Cal.App.4th 486, 497.) " 'A law's overbreadth represents the failure of draftsmen to focus narrowly on tangible harms sought to be avoided, with the result that in some applications the law burdens activity which does not raise a sufficiently high probability of harm to governmental interests to justify the interference.' [Citation.]" (*Ibid.*; accord, *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, 1175.)

Unreasonable. "Although a trial court's discretion is broad in [setting a condition of probation], we have held that a condition of probation must serve a purpose specified in Penal Code section 1203.1." (*Olguin, supra,* 45 Cal.4th at p. 379 [a condition of probation requiring the notification of the probation officer of all pets in the home is valid].) The purpose of probation is to foster rehabilitation, protect the public, and see that justice is done. (*People v. Lent* (1975) 15 Cal.3d 481, 489, superseded by statute on another ground as stated in *People v. Wheeler* (1992) 4 Cal.4th 284, 290; *People v. Richards*

(1976) 17 Cal.3d 614, 620 [punishment is not a valid reason]; *In re T.C.* (2009) 173 Cal.App.4th 837, 847 [the same policy applies in juvenile cases].) More generally, "[t]he purposes of juvenile wardship proceedings are twofold: to treat and rehabilitate the delinquent minor, and to protect the public from criminal conduct." (*In re Ricardo P.* (2019) 7 Cal.5th 1113, 1118, internal quotation marks omitted.) Thus, a "condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. [Citations.] The *Lent* test is conjunctive – all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*Ibid*., internal quotation marks omitted; see also *Lent,* at p. 486.) The same test applies in juvenile court, but a "condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court." (*Ibid*., internal quotation marks omitted; see also *In re Tyrell J.* (1994) 8 Cal.4th 68, 81-82, overruled on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 139.) The test for the reasonableness of conditions of mandatory supervision is the same *Lent* test. (*People v. Bryant* (2021) 11 Cal.5th 976, 986.) Some courts have used the same *Lent* test for the reasonableness of parole conditions. (See, e.g., *In re Hudson* (2006) 143 Cal.App.4th 1, 9; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1233.)

As for the third prong, "*Lent*'s requirement that a probation condition must be reasonably related to future criminality contemplates a degree of proportionality between the burden imposed by a probation condition and the legitimate interests served by the condition. (*Lent, supra*, 15 Cal.3d at p. 486; see *People v. Fritchey* (1992) 2 Cal.App.4th 829, 837–838 [' "[A] reasonable condition of probation is not only fit and appropriate to the end in view but it must be a reasonable means to that end. Reasonable means are moderate, not excessive, not extreme, not demanding too much, well-balanced." '].)" (*Ricardo P., supra,* 7 Cal.5th at p. 1120, internal quotation marks omitted .) " 'Not every probation condition bearing a remote, attenuated, tangential, or diaphanous connection to future criminal conduct can be considered reasonable' under *Lent*." (*Id*. at p. 1127.)

Examples. Again, although vagueness, overbreadth, and reasonableness are separate and distinct, the claims are interrelated. Often two or all three claims will exist concerning the same condition.

The California Supreme Court recently held that cell phone search conditions are unreasonable if it is justified by nothing more than a mere desire to oversee the probationer. This is because "[s]uch a condition significantly burdens privacy interests. (See *Hill v. National Collegiate Athletic Assn*. (1994) 7 Cal.4th 1, 35 ['privacy' guarantee in Cal. Const. art. I, § 1 protects individuals against 'misuse of sensitive and confidential information ("informational privacy")']; *Riley v. California* (2014) 573 U.S. 373, 393, 394, 395 (*Riley*) [a cell phone's 'immense storage capacity' means it 'collects in one place many distinct types of information . . . that reveal much more in combination than any isolated record'; '[t]he sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions'; cell phone users 'keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate'].) The warrantless search of a juvenile's electronic devices by a probation officer, a government official, plainly raises privacy concerns of a different order than parents checking their children's cell phones." (*Ricardo P., supra,* 7 Cal.5th at pp. 1122-1123.) Thus, an electronic search condition is generally unreasonable when the crime does not involve electronic devices. (*Id*. at pp. 1120-1121; *In re David C.* (2020) 47 Cal.App.5th 657, 662-665 [indecent exposure]; *People v. Cota* (2020) 45 Cal.App.5th 786, 791 [possession of an illegal weapon]; *In re Amber K.* (2020) 45 Cal.App.5th 559, 565-567 [broader than necessary to monitor a stay away order after a Pen. Code, § 245(a)(4)]; but see *In re J.S.* (2019) 37 Cal.App.5th 402, 406-411; *People v. Wright* (2019) 37 Cal.App.5th 120, 129-132.) An electronic search condition is usually reasonable when the underlying conduct does involve electronic devices. (*People v. Castellanos* (2020) 51 Cal.App.5th 267, 275-276 [transportation of drugs with cell phones in the car]; *In re Q.R.* (2020) 44 Cal.App.5th 696, 702-705 [recorded sex with girlfriend and extorted her with it]; *People v. Patton* (2019) 41 Cal.App.5th 934, 944-945 [theft of electronic devices alone makes the condition reasonable].) While this discusses the reasonableness of an electronic search condition, even a reasonable condition might be unconstitutionally vague or overbroad. (See, e.g., *People v. Prowell* (2020) 48 Cal.App.5th 1094, 1101-1102 [condition to search "communication devices" instead of "electronic storage devices" was overbroad].)

We used to challenge probation conditions that did not require the defendant to knowingly or willfully violate the condition. However, the Supreme Court has now said that a condition of probation is often sufficiently clear even if it does not expressly state the defendant must act willfully or knowingly. (*People v. Hall* (2017) 2 Cal.5th 494, 503.) Nonetheless, a

condition must have an express knowledge requirement if the probationer needs to know the character of what is being prohibited. For example, a condition to stay away from gang members usually requires that the probationer stay away from those he or she knows is a gang member or is told by probation to be one. Some conditions remain vague because they cannot be known with sufficient precision. These include a condition to stay away from someone "suspected" to be a gang member. (*People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073; see also *People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1357 [condition to stay away from anyone the probation officer designates was overbroad because it did not give the probation officer guidance from whom to restrict].) A condition to stay away from those who have criminal records was vague and overbroad because it might include those who were arrested but not convicted. (*People v. Gonsalves* (2021) 66 Cal.App.5th 1, 7-11.) Conditions to "be of good behavior and perform well," and "be of good citizenship and good conduct" was unconstitutionally vague. (*In re P.O.* (2016) 246 Cal.App.4th 288, 299; but see *People v. Rhinehart* (2018) 20 Cal.App.5th 1123, 1129 [condition "be of good conduct and obey all laws" was permissible because it meant obey all laws].) Condition to "[c]onsult with the probation officer without hesitation when you are in need of advice" was unconstitutionally vague. (*In re Anthony L.* (2019) 43 Cal.App.5th 438, 455-456.) An order to not associate with "any known member of . . . [a] disruptive group" was too vague. (*United States v. Soltero* (9th Cir. 2007) 510 F.3d 858, 867.) However, an order not to be with a minor unless with "a responsible adult" was not too vague or overbroad. (*People v. Turner* (2007) 155 Cal.App.4th 1432, 1436.) A requirement to report to probation any contact with police was vague. (*In re I.M.* (2020) 53 Cal.App.5th 929, 936; *People v. Relkin* (2016) 6 Cal.App.5th 1188, 1197; but see *People v. Brand* (2021) 59 Cal.App.5th 861, 869-871.)

An order to stay 50 feet away from a school is reasonable. (*People v. Rhinehart* (2018) 20 Cal.App.5th 1123, 1129-1131 [order not to be "adjacent" to a school modified to 50 feet]; see *People v. Barajas* (2011) 198 Cal.App.4th 748, 760-762.) However, a minor should be allowed on a school campus that he or she does not attend if accompanied by a parent, guardian, responsible adult, or authorized by permission of school authorities. (*In re G.B.* (2018) 24 Cal.App.5th 464, 471.) The juvenile court requiring a minor to try to do well in school is not vague. (*In re M.D.* (2014) 231 Cal.App.4th 993, 1003-1004.) It can require the minor to pass his or her classes and follow the school rules. (*In re Angel J.* (1992) 9 Cal.App.4th 1096, 1102 & fn. 7.)

An order to stay away from a chain store often found in malls and the parking lot was not overbroad and did not interfere with the right to travel (*People v. Moran* (2016) 1 Cal.5th 398, 405-407.)

The court can prohibit gang members from being in courthouses unless the probationer is a defendant, victim, party, or witness. (*In re Laylah K.* (1991) 229 Cal.App.3d 1496; see *E.O., supra,* 188 Cal.App.4th at pp. 1153-1158 [the condition must recognize the state constitutional right for victims to be present in court]; see *People v. Leon* (2010) 181 Cal.App.4th 943, 952-954 [cannot ban defendant from courthouse or proceedings not gang related].) It should be noted, however, that "[m]any courts are located in government complexes that house a variety of public agencies. These may include a county law library; a public defender's office . . . . " (*People v. Perez* (2009) 176 Cal.App.4th 380, 385 [finding the condition to be overbroad].)

Penal Code section 1203.067, subdivision (b) requires certain conditions of probation for those who are convicted of sex offenses and not sentenced to prison. The Supreme Court has held that they are constitutional. Specifically, the condition requiring the defendant to waive the Fifth Amendment right from self-incrimination in mandatory polygraph exams is constitutional. (*People v. Garcia* (2017) 2 Cal.5th 792, 806-808.) However, the probationer's statements cannot be used against him or her in a future criminal prosecution. (*Id*. at pp. 806-807.) The polygraph questioning need not be limited by the court. (*Id*. at pp. 808-809; see also *In re David C.* (2020) 47 Cal.App.5th 657, 669-670.) And the required waiver of the psychotherapist-patient privilege is constitutional. (*Id*. at pp. 811-812.)

A condition for sex offenders not to possess "sexually explicit material" was not vague because it was defined by federal statute. (*People v. Connors* (2016) 3 Cal.App.5th 729, 737-738; see also *In re David C.* (2020) 47 Cal.App.5th 657, 667 [not possess "material that has the primary purpose of causing sexual arousal"]; but see *People v. Moses* (2011) 199 Cal.App.4th 374, 377 [not possess sexually explicit movies, materials, or devices]; *People v. Turner* (2007) 155 Cal.App.4th 1432, 1436.) However, an order not to possess pornography was too vague. (*In re D.H.* (2016) 4 Cal.App.5th 722, 727-729; *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1352-1353; *United States v. Guagliardo* (9th Cir. 2002) 278 F.3d 868, 872; *Farrell v. Burke* (2d Cir. 2006) 449 F.3d 470, 486.) Similarly, an order not to possess depictions of partial or complete nudity was overbroad. (*In re Carlos C.* (2018) 19 Cal.App.5th 997, 1001-1004; see *United States v. Simons* (8th Cir. 2010) 614 F.3d 475, 483-485;

but see *United States v. Holm* (7th Cir. 2003) 326 F.3d 872, 877.) On the other hand, the order not to posses material about child pornography was generally valid. (*United States v. Cope* (9th Cir. 2008) 527 F.3d 944, 956-957.)

B. Juvenile Court

Juvenile court law is largely statutory, and the statutes are frequently amended. In interpreting any case, a practitioner should review any subsequent amendments to the applicable statutes to determine if the decision might have been superseded.

In juvenile court, the terms are different. For example, "minors charged with violations of the Juvenile Court Law are not 'defendants.' They do not 'plead guilty,' but admit the allegations of a petition. Moreover, 'adjudications of juvenile wrongdoing are not 'criminal convictions.' " (*In re Joseph B.* (1983) 34 Cal.3d 952, 955.) They do not have trials but instead contested jurisdictional hearings. They do not have sentencing hearings but instead dispositional hearings. "[I]t has long been the practice to file successive juvenile petitions under a single case number." (*In re Kasaundra D.* (2004) 121 Cal.App.4th 533, 540; see also *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 306-307; *In re W.B.* (2012) 55 Cal.4th 30, 43.)

Juvenile matters are confidential. (Welf. & Inst. Code, § 827; Cal. Rules of Court, rule 8.401; *T.N.G. v. Superior Court* (1971) 4 Cal.3d 77; *Lorenzo P. v. Superior Court* (1988) 197 Cal.App.3d 607.) Minors should only be referred to by their first name and initial of their last name; if the first name is not common, you should use only the minor's initials. The minor's family members must be referred to in a similar manner if it would reveal the identity of the minor. (Cal. Rules of Court, rule 8.401(a)(2); see *In re Edward S.* (2009) 173 Cal.App.4th 387, 392, fn. 1.) You should not provide the birthdate of the minor in papers filed in court.

There is no requirement to obtain a certificate of probable cause in order to appeal a case after an admission. (*In re Joseph B.* (1983) 34 Cal.3d 952, 755; *In re Uriah P.* (1999) 70 Cal.App.4th 1152, 1157; *In re John B.* (1989) 215 Cal.App.3d 477, 483.)

1. Constitutional Rights

There is no constitutional right for a minor to be adjudicated in a juvenile court as opposed to adult court. (*In re Gault* (1966) 387 U.S. 1; *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 564-565 [thus it does not violate due process to directly file in adult court]; *Alvarado v. Hill* (9th Cir. 2001) 252 F.3d 1066, 1069.)

Because juvenile proceedings are technically not criminal proceedings, the Fifth, Sixth, and Eighth Amendments do not directly apply. But many of the protections in the Bill of Rights apply to minors in juvenile court through the due process clause of the Fourteenth Amendment. (*Gault, supra,* 387 U.S. 1; *Richard M. v. Superior Court* (1971) 4 Cal.3d 370.) They include:

- The Fifth Amendment right against double jeopardy. (*Breed v. Jones* (1975) 421 U.S. 519, 531; *In re James M.* (1973) 9 Cal.3d 513, 520; *In re Carlos V.* (1997) 57 Cal.App.4th 522, 525.)

- The Fifth Amendment right against self-incrimination. (*Gault, supra,* 387 U.S. at pp. 44-56.)

- The Sixth Amendment right to counsel. (*Gault, supra,* 387 U.S. at pp. 34-35; *Kent v. United States* (1966) 383 U.S. 541, 554.) The Sixth Amendment right to effective assistance of counsel. (See, e.g. *In re Edward S.* (2009) 173 Cal.App.4th 387; *In re Daniel S.* (2004) 115 Cal.App.4th 903, *In re O. S.* (2002) 102 Cal.App.4th 1402.)

- The Sixth Amendment right to compel the attendance of witnesses. (See, e.g., *In re Thomas F.* (2003) 113 Cal.App.4th 1249, 1255; see generally *Gault, supra,* 387 U.S. at pp. 56-57.)

- The Sixth Amendment right to confrontation and cross-examination. (*Gault, supra,* 387 U.S. at pp. 56-57.)

- Not the Sixth Amendment right to an indictment. (*Kent, supra,* 383 U.S. at p. 555.)

- Not the Sixth Amendment right to jury trial. (*McKeiver v. Pennsylvania* (1971) 403 U.S. 528, 545 (plur. opn.); *In re Myresheia* (1998) 61 Cal.App.4th 734; *In re Javier A.* (1984) 159 Cal.App.3d 913; *In re T.R.S.*

(1969) 1 Cal.App.3d 178, 182.)

- The Sixth Amendment right to notice. (*Gault, supra,* 387 U.S. at pp. 31-34.)

- Not the Eighth Amendment right to bail. (*Kent, supra,* 383 U.S. at p. 555; *Aubrey v. Gadbois* (1975) 50 Cal.App.3d 470, 473-474.)

- The Fourteenth Amendment right to a standard of proof of beyond a reasonable doubt. (*In re Winship* (1970) 397 U.S. 358, 365-367; see *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1083-1089 [same substantial evidence test as in criminal cases].)

Due process rights apply to a fitness hearing. (*Kent, supra,* 383 U.S. at p. 557; *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 566; *People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 718.) Due process for a fitness hearing requires: (1) a hearing, (2) counsel, (3) access to the probation report upon request, and (4) the judge state the reasons for the transfer to adult court. (*Chi Ko Wong,* at p. 718; see *Kent,* at p. 557; *Manduley, supra,* at p. 573.) It does not violate due process to assume the minor committed the crime when determining fitness. (*United States v. Juvenile* (9th Cir. 2006) 451 F.3d 571, 575-577.)

2. Informal Supervision, Diversion, and DEJ

There are three statutory schemes for placing a minor on informal supervision, diversion, or deferred entry of judgment: Welfare and Institutions Code sections 654, 725, subdivision (a), and 790 et seq. The decision whether to place a minor on informal supervision or DEJ (Welf. & Inst. Code, §§ 654, 790 et seq.) is not an immediately appealable order; instead there must be an appeal when there is a judgment. (*In re Mario C.* (2004) 124 Cal.App.4th 1303, 1308-1309 [could not challenge the denial of suppression motion in an appeal from placing the minor on DEJ].) One can appeal the imposition of probation without declaring a wardship under Welfare and Institutions Code section 725, subdivision (a). (*In re Do Kyung K.* (2001) 88 Cal.App.4th 583, 587-590.)

Informal supervision is not available if the amount of restitution would be more than $1000. (Welf. & Inst. Code, § 654.3, subd. (g).) This is so, even if the amount of the loss has not yet been alleged or proven. (*In re A.J.* (2019) 39

Cal.App.5th 1112, 1118-1119.)

3. Dual Status

Many juveniles offend because of problems at home. Some of them are already dependents of the court under Welfare and Institutions Code section 300 or eligible to become dependents. Welfare and Institutions Code section 241.1 is the procedure where the executive branch decides whether to proceed with dependency or delinquency jurisdiction. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.) There is not a requirement that a written report be prepared. (*Id*. at pp. 1123-1124.) The minor does not have the right to present evidence at a hearing. (*In re Henry S.* (2006) 140 Cal.App.4th 248, 256-260.) The court abuses its discretion when it fails to follow Welfare and Institutions Code section 241.1. (*In re R.G.* (2017) 18 Cal.App.5th 273, 285-287 [report was untimely and inadequate]; *In re Joey G.* (2012) 206 Cal.App.4th 343, 349.) Wardship was within the court's discretion when the minor with psychological problems and history of sexual abuse was arrested for prostitution. (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1513-1517; see also *In re Amanda A.* (2015) 242 Cal.App.4th 537, 552-554.)

4. Transfer to Adult Court

Previously, a minor who was at least 14 years old could be tried in adult court for certain felony violations. This included the power of the prosecution to directly file in adult court. Proposition 57 (Gen. Elec. (Nov. 8, 2016)) eliminated direct filing. Proposition 57 applies retroactively to cases not yet final. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 308-310.) Thus, there are some cases where the minor was tried and convicted in adult court, appealed, and was allowed to return to the juvenile court for a new transfer hearing. A case might become unfinal if the court grants a petition for writ of habeas corpus. (See *People v. Padilla* (2020) 50 Cal.App.5th 244, 254-255, review granted Aug. 26, 2020, S263082.) When the case is remanded and not transferred to adult court, the court shall treat the convictions as adjudications and hold a disposition hearing. (*People v. Castillero* (2019) 33 Cal.App.5th 393, 400.)

Senate Bill No. 1391 (2017–2018 Reg. Sess.) requires the minor to be at least 16 years old to be tried in adult court. (Stats. 2018, ch. 1012, § 1.) S.B. 1391 is constitutional. (*O.G. v. Superior Court* (2021) 11 Cal.5th 82.)

The factors the court must consider at a transfer hearing are listed in Welfare and Institutions Code section 707, subdivision (a)(1). They include the degree of criminal sophistication exhibited by the minor, whether the minor can be rehabilitated in the juvenile court system, the minor's previous delinquent history, the prior performance on probation, and the gravity of the offense. Under the old system, a minor was presumed to be unfit for juvenile court jurisdiction in most cases. Under the current system, the prosecution has the burden of persuading the juvenile court to transfer the matter to the adult court. Much of the battle centers on whether the minor can be rehabilitated in the juvenile court system, especially for older clients who are not caught until years after they became adults. Nonetheless, the juvenile court has jurisdiction to decide not to transfer a person who is more than 25 years old. (*People v. Ramirez* (2019) 35 Cal.App.5th 55, 67.) The new secured track system (see below) permits the court to retain jurisdiction for up to two years, regardless of the client's age.

Changes in defining an offense can require a new transfer hearing. For example, under S.B. 1437, the felony murder rule and natural and probable consequence doctrine could not be used to impute malice on an aider and abettor. When the minor had been transferred to adult court under the old law, he was entitled to a new transfer hearing when the new law became effective. (*D.W. v. Superior Court* (2019) 43 Cal.App.5th 109, 118-119.)

For the longest time, the decision transferring a minor to juvenile court could not be appealed; it must be reviewed by a timely petition for writ of mandate. (*People v. Chi Ko Wong* (1976) 18 Cal.3d 689, 714.) The Legislature passed Assembly Bill No. 624, which was signed by the governor. Effective January 1, 2022, new Welfare and Institutions Code section 801 allows an interlocutory appeal for transfer orders, so long as the notice of appeal is filed within 30 days of the order. These appeals are likely heavily laden with psychological reports. They need to be handled as quickly as possible because the client's case will be pending in the adult court during the appeal.

5. Competency in Juvenile Court

Penal Code section 1368 does not apply to juveniles. (*In re Patrick H.* (1997) 54 Cal.App.4th 1346, 1359.) The minor does have a due process right to a competency hearing. (*In re Ricky S.* (2008) 166 Cal.App.4th 232, 234; *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 857.) The procedure for determining if a minor is incompetent is similar to the procedure used in

adult court. (Welf. & Inst. Code, § 709; see *Timothy J.,* at pp. 857-858; see also *In re R.V.* (2015) 61 Cal.4th 181, 193-194; *James H. v. Superior Court* (1978) 77 Cal.App.3d 169, 172-178.) A juvenile can be found to be incompetent if he does not understand the proceedings or is unable to assist counsel. (*Christopher F., supra,* 184 Cal.App.4th at pp. 470-471.) A minor can be found incompetent if he cannot understand the wrongfulness of his actions because of immaturity or developmental delay. (*In re Matthew N.* (2013) 216 Cal.App.4th 1412, 1420-1421 [lacked the capacity to understand his admission]; *Timothy J.,* at pp. 856-862; see *Bryan E. v. Superior Court* (2014) 231 Cal.App.4th 385, 390-393.) However, the test for competence does not include the minor's education or knowledge of the juvenile court system. (*In re Alejandro G.* (2012) 205 Cal.4th 472, 478-480.)

Adequate services must be provided to an incompetent minor. (see *In re Jesus G.* (2013) 218 Cal.App.4th 157, 174, overruled on other grounds in *In re Albert C.* (2017) 3 Cal.5th 483, 492-493.) The minor cannot normally be held in custody longer than 12 months as being incompetent. (*J.J. v. Superior Court* (2021) 65 Cal.App.5th 222, 234, 241-242.)

By the way, the insanity defense applies to juvenile proceedings. (See *In re Vicki H.* (1979) 99 Cal.App.3d 484; *In re M.G.S.* (1968) 267 Cal.App.2d 329.)

6. Pretrial Procedure

The procedure for discovering material in a police officer's personnel file (Evid. Code, §§ 1043-1045; Pen. Code, §§ 832.7, 832.8; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531) applies to juvenile case. (*City of San Jose v. Superior Court (Michael B.)* (1993) 5 Cal.4th 47, 53-54.)

Discovery rules in criminal cases (Pen. Code, § 1054 et seq.) do not apply to juvenile cases. (*In re Thomas F.* (2003) 113 Cal.App.4th 1249, 1254-1255; *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1166.) However, there are similar provisions in the juvenile court rules of court. (See Cal. Rules of Court, rule 5.546.) While there are little practical differences between the two systems, it is important to read the law that actually applies to juvenile cases when a claim arises.

A motion for a continuance is under Welfare and Institutions Code section 682, subdivision (a), not Penal Code section 1050 or 1050.1. (*A.A. v.*

Superior Court (2004) 115 Cal.App.4th 1; *In re Sean R.* (1989) 214 Cal.App.3d 662.) The procedure and standards for continuance are similar. (*In re Maurice E.* (2005) 132 Cal.App.3d 474, 480.)

Welfare and Institutions Code section 213.5 permits the juvenile court to issue a protective order on a delinquent minor. (*In re Carlos H.* (2016) 5 Cal.App.5th 861, 867-868.) The statute requires notice before issuing a temporary restraining order (as opposed to an emergency protective order). (*In re E.F.* (2021) 11 Cal.5th 320, 326-331; *In re L.W.* (2019) 44 Cal.App.5th 44, 50.)

7. Jurisdictional Hearings

The prosecution must show clear and convincing evidence that a minor under the age of 14 years knew the wrongfulness of his or her acts under Penal Code section 26. (*People v. Lewis* (2001) 26 Cal.4th 324, 379; *In re Manuel L.* (1994) 7 Cal.4th 229, 234; *In re Gladys R.* (1970) 1 Cal.3d 855, 862-866.) The court considers the minor's age, experience, understanding, circumstances, and method of committing the crime. (*Lewis, supra*, at p. 380; *In re Marvin C.* (1995) 33 Cal.App.4th 482, 487.)

The requirement that accomplice testimony be corroborated (Pen. Code, § 1111) does not apply to juvenile court. (*In re Mitchell P.* (1978) 22 Cal.3d 946, 949; *In re Christopher B.* (2007) 156 Cal.App.4th 1557.)

The court can adjudicate the minor as a ward for violating federal law. This is because Welfare and Institutions Code section 602 allows the court to declare a minor a ward for violating "any laws of this state or of the United States." (*In re Jose C.* (2009) 45 Cal.4th 534, 548-555 [illegal re-entry into the United States].)

The court cannot amend the petition on its own during the hearing over objection, unless it is a lesser included offense. (*In re Robert G.* (1982) 31 Cal.3d 437, 440; *In re E.R.* (2010) 189 Cal.App.4th 466, 470-471*; In re Johnny R.* (1995) 33 Cal.App.4th 1579, 1584.)

8. Disposition Hearings

a. Generally

The appealable judgment in juvenile cases is the disposition order. (*In re Henry S.* (2006) 140 Cal.App.4th 248, 255.)

The court must affirmatively declare if wobblers are felonies or misdemeanors. (Welf. & Inst. Code, § 702; *In re Manzy W.* (1997) 14 Cal.4th 1199.) The specification in the delinquency petition of a wobbler offense as a felony is insufficient to show that the court made the decision and finding required under Welfare and Institutions Code section 702. (*Id.* at p. 1207; accord, *In re G.C.* (2020) 8 Cal.5th 1119, 1125.) Rather, to comply with the statute, the juvenile court must make an express oral finding on the record whether the wobbler offense was a felony or misdemeanor. (*In re Jorge Q.* (1997) 54 Cal.App.4th 223, 238.) If the court failed to make the necessary finding, the matter must be remanded for a new disposition hearing unless the record otherwise demonstrates the trial court was aware of and exercised its discretion. (*Manzy W.,* at p. 1209.) The court's denial of reducing the charge to a misdemeanor under Penal Code section 17(b) was sufficient under *Manzy W.* (*In re Raymundo M.* (2020) 52 Cal.App.5th 78, 92.) The claim can be raised on appeal without an objection. (*Manzy W.,* at p. 1204.) However, the minor must appeal the disposition order; the issue cannot be raised in an appeal from a subsequent hearing. (*G.C.*, at pp. 1127-1128.)

The court must determine the degree of an offense. (*In re Kenneth H.* (1983) 33 Cal.3d 616, 619; but see *In re C.R.* (2008) 168 Cal.App.4th 1387, 1392 [court found petition true that murder was with deliberation and premeditation and the court explained its findings of that]; *In re Andrew I.* (1991) 230 Cal.App.3d 572, 580-581 [implied finding when the court makes specific findings of fact necessary for first degree murder].)

The minor must pay victim restitution. (Welf. & Inst. Code, § 730.6; *In re Steven F.* (1994) 21 Cal.App.4th 1070.) Welfare and Institutions Code section 730.6 parallels the Penal Code section requirement. (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1386.) Under Welfare and Institutions Code section 730.6, the court can have the probation office determine the amount of victim restitution. (*In re Karena A.* (2004) 115 Cal.App.4th 504, 511.)

The court must find the minor has the ability to pay any general fund fine imposed under Welfare and Institutions Code section 730.5. (See *In re Steven F.* (1994) 21 Cal.App.4th 1070, 1078.) Payment of the general fund fine cannot be a condition of probation. (*In re David C.* (2020) 47 Cal.App.5th 657, 671-672.)

The court must set the maximum confinement time if the minor is placed out of home. (*In re Edward B.* (2017) 10 Cal.App.5th 1228, 1238.) It shall not set the maximum confinement time if the minor is not removed from the parent. (*In re A.C.* (2014) 224 Cal.App.4th 590, 591-592.) If the minor is on probation when he or she commits a new offense, the juvenile court has the discretion to aggregate prior offenses in calculating the maximum confinement time, even if a violation of probation is not alleged. (Welf. & Inst. Code, § 726; *In re Michael B.* (1980) 28 Cal.3d 548, 553; *In re Adrian R.* (2000) 85 Cal.App.4th 448, 454 [can commit the minor to a ranch program, though the new offense was punishable only by a fine]; *In re Ernest R.* (1998) 65 Cal.App.4th 443.) The court has discretion not to aggregate prior offenses. (*In re Richard W.* (1979) 91 Cal.App.3d 960, 982-983; see *In re Bryant R.* (2003) 112 Cal.App.4th 1230, 1237-1238.) The court cannot aggregate the sentence to include adjudications from a previously dismissed wardship. (*In re Dana G.* (1983) 139 Cal.App.3d 678, 680-681.)

The court must calculate precommitment credits. (*In re Eric J.* (1979) 25 Cal.3d 522, 526; *In re A.M.* (2014) 225 Cal.App.4th 1075, 1085-1086; *In re Antwon R.* (2001) 87 Cal.App.4th 348, 351-353 [the issue can be raised on appeal even if there are no other claims; Pen. Code, § 1237.1 does not apply]; *In re Mikeal D.* (1983) 141 Cal App 3d 710, 720-721.) If the court does aggregate prior offenses, it must aggregate the precommitment credits. (Welf. & Inst. Code, § 726; *Eric J.,* at p. 536; *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) The minor shall receive precommitment credits for time in custody on a petition that is eventually dismissed. (*In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1232.) The minor is not entitled to custody credit when he or she is not in a secure setting. Thus, no custody credit was permitted while on house arrest. (*In re Randy J.* (1994) 22 Cal.App.4th 1497, 1505-1506; see also *In re Lorenzo L.* (2008) 153 Cal.App.4th 1076, 1079-1080 [electronic monitoring program].) No custody credits were permitted when the minor was in the Rites of Passage program because it was an unsecured placement. (*Randy J.,* at pp. 1505-1506.) The minor is not entitled to conduct credits. (*In re Ricky H.* (1981) 30 Cal.3d 176, 182-190.)

It used to be that a juvenile hall commitment could not be for more than a couple of months. However, courts now have the power to order extensive, sometimes indeterminate periods, of confinement in juvenile hall. (*In re I.M.* (2020) 53 Cal.App.5th 929, 932-936; *In re J.C.* (2019) 33 Cal.App.5th 741, 745-748; *In re L.R.* (2019) 32 Cal.App.5th 334, 339; *In re Calvin S.* (2016) 5 Cal.App.5th 522, 530-532.)

A minor should be placed locally if possible. Sometimes, there are only a few appropriate programs for certain offenders. Otherwise, placing a minor hundreds of miles from home can be an abuse of discretion. (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1154-1159.) In 2021, the Legislature has largely banned placing delinquents in programs located outside of California. (A.B. 153.)

Federal law has required states to phase out group homes. California has replaced them with short-term residential therapeutic programs (STRTP). Additional regulations are in place to prevent them from becoming de facto group homes. A court order placing a minor in a STRTP without following the required regulation can constitute an abuse of discretion. (See, e.g., *In re A.M.* (2020) 53 Cal.App.5th 824, 836-839.)

b. Probation

A minor over the age of 18 years can be on juvenile probation. (*In re Charles G.* (2004) 115 Cal.App.4th 608, 616.)

The juvenile court can order the parents do certain reunification services under Welfare and Institutions Code section 727.2 when the minor is removed under section 602. (*In re Damian M.* (2010) 185 Cal.App.4th 1, 6-7.) The minor does not have standing to object to their conditions. (*In re David C.* (2020) 47 Cal.App.5th 657, 673.)

If the only offense is a misdemeanor, punishable only by a fine, the court can place the minor on probation but cannot confine him or her. (*In re Walter P.* (2009) 170 Cal.App.4th 95, 100-103 [including 45 days of house arrest and 8 days of juvenile work program].)

See also section A.3.c, *supra*.

c. Department of Juvenile Justice/Secured Track

There have been serious problems at the Department of Juvenile Justice (DJJ), formerly the California Youth Authority, which have been litigated in federal court in *Farrell v. Cate* (Ala. Super. Ct., No. RG 03079344). Because of ongoing problems at DJJ, the Legislature is shutting it down. Nonetheless, there are still appeals from DJJ commitments.

"When determining the appropriate disposition in a delinquency proceeding, the juvenile courts are required to consider '(1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor's previous delinquent history.' (Welf. & Inst. Code, § 725.5; see also *In re Gary B.* (1998) 61 Cal.App.4th 844, 848-849.) Additionally, 'there must be evidence in the record demonstrating both probable benefit to the minor by a [DJJ] commitment and the inappropriateness or ineffectiveness of less restrictive alternatives.' (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) 'A juvenile court's commitment order may be reversed on appeal only upon a showing the court abused its discretion. [Citation.]' (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.)" (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 484-485.) It is an abuse of discretion to commit the minor to DJJ solely because of the gravity of the offense. (*In re Calvin S.* (2016) 5 Cal.App.5th 522, 528-529; but see *In re Carl N.* (2008) 160 Cal.App.4th 423, 433-435 [CYA commitment is appropriate when every other placement has failed]; see *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 151 [consider circumstances of the crime, though not dispositive, age, history, public safety, the minor's sophistication].) A DJJ commitment is an abuse of discretion if there are not programs that can help the minor. (*In re Carlos J.* (2018) 22 Cal.App.5th 1, 10-14.)

The court must consider rehabilitation of the minor and public safety. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396.) The Code prefers the least restrictive placement. (*In re Aline D.* (1995) 14 Cal.3d 86; *In re John H.* (1978) 21 Cal.3d 18, 27; *In re Jorge Q.* (1997) 54 Cal.App.4th 223.)

A minor can be sent to DJJ only if the most recent offense was a section 707(b) offense or a sex offense listed under Penal Code section 290.008(c). (*In re C.H.* (2011) 53 Cal.4th 94, 102; *In B.J.* (2020) 49 Cal.App.5th 646, 653; *In re G.C.* (2007) 157 Cal.App.4th 405, 409-410.) After *In re C.H.,* the Legislature amended Welfare and Institutions Code sections 731 and 733 to permit any

juvenile who was found to commit an offense listed in Penal Code section 290.008 to be eligible for DJJ placement, even if there has been an intervening adjudication. (Stats. 2012, ch. 7, §§ 1, 2 (effective Feb. 29, 2012).) It was an abuse of discretion to dismiss an intervening adjudicated petition under section 782 in order to make the minor eligible for DJJ commitment from a section 707(b) offense sustained in an older petition. (*In re D.B.* (2014) 58 Cal.4th 941, 945-948; *In re A.O.* (2017) 18 Cal.App.5th 390, 393-394; *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1467-1469; but see *In re Albert W.* (2015) 240 Cal.App.4th 411, 416-419 [intervening non-707(b) offense was committed in another state]; *In re M.L.* (2015) 243 Cal.App.4th 21, 26-27 [nonqualifying offense committed around the same time as a qualifying offense did not disqualify the minor].) An intervening violation of probation (Welf. & Inst. Code, § 777) does not preclude a commitment to DJJ. (*In re D.J.* (2010) 185 Cal.App.4th 278, 285-289; *In re M.B.* (2009) 174 Cal.App.4th 1472, 1477-1478.)

The court now calculates the maximum confinement time by using the *middle* term of the offense. The court can further limit the time of physical confinement in DJJ. (Welf. & Inst. Code, § 731, subd. (b); *In re Alex N.* (2005) 132 Cal.App.4th 18, 25-27; *In re Jacob J.* (2005) 130 Cal.App.4th 429, 435-436, disapproved on other grounds in *In re Julian R.* (2009) 47 Cal.4th 487, 499; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1538; *In re Sean W.* (2005) 127 Cal.App.4th 1177, 1183.) It is presumed on a silent record that the court did consider limiting the time of physical confinement; it need not give reasons for the time it set. (*In re Julian R.* (2009) 47 Cal.4th 487, 496-499.) This provision does not apply to other placements while on probation. (*In re Geneva C.* (2006) 141 Cal.App.4th 754, 759-760; *In re Ali A.* (2006) 139 Cal.App.4th 569, 573.)

Starting with disposition orders entered on July 1, 2021, DJJ is no longer an option. Instead, juveniles may be committed in a local "secure youth treatment facility." (Welf. & Inst. Code, § 875.) Since most counties have not yet set up their local secure youth treatment programs, much of this is still in flux. DJJ is scheduled to close by July 1, 2023. Starting mid 2022, wards will be transferred from DJJ to the local secure treatment facilities.

A commitment to a secure track facility is possible if the juvenile is at least 14 years old and the most recent adjudication is for a section 707(b) offense. (Welf. & Inst. Code, § 875, subds. (a)(1)-(a)(2).) Within 30 days of the secure track commitment, the court must approve an "individual

rehabilitation plan." (*Id.*, subd. (d).) The IRT shall be created by an MDT, which is a multidisciplinary team. (*Ibid.*) Each county is setting up its own MDT, and they will vary throughout the state, but they ideally consist of representatives from probation and service providers with input from the minor and the prosecution. Be wary that some notices of appeal might not accurately reflect the minor is challenging both the disposition order and the IRT, which is an order after judgment. It might be necessary in some cases to amend the notice of appeal or seek relief from default to correct a defective notice of appeal.

The court shall set the maximum confinement time, which cannot be more than the middle term for the offenses. (Welf. & Inst. Code, § 875, subd. (c)(2).) The court loses jurisdiction after the juvenile turns 23, or turns 25 if the maximum confinement time is at least seven years. However, the court always retains jurisdiction for two years. (*Id.*, subd. (c)(1).) This allows the juvenile court to be able to handle youths who are not caught until they are at least in their mid 20's.

The goal is to release the ward sooner than the maximum confinement time. The Judicial Council shall develop guidelines that create presumptive terms of confinement that is expected for certain offenses. (Welf. & Inst. Code, § 875, subd. (h).) The rules will not be ready before July1, 2023, and so the court will be setting the "baseline term of confinement" in the meantime. (*Id.*, subd. (b).) The minor's case shall return to court every six months to review the progress. A failure to progress sufficiently could result in increasing the baseline confinement time. (*Id.*, subd. (e).) Since the minor is already confined, there cannot be a "violation of probation," but this provision allows the court to add six months to the outdate. Conversely, minors who are doing well can have time decreased from the baseline term of confinement. (*Id.*, subd. (f).) Eventually, the minor should be placed in a less restrictive placement to transition into community, sometimes called a "step-down." (*Ibid.*)

9. Violations of Probation

After Proposition 21, the standard of proof is the preponderance of the evidence. (*In re Eddie M.* (2003) 31 Cal.4th 480, 508.) A violation of probation can be based on criminal conduct. (*In re Emiliano M.* (2003) 31 Cal.4th 510, 516; *Eddie M.,* at p. 502.)

10. Petitions to Modify

Welfare and Institutions Code sections 775 and 778 permit in juvenile court what amounts to a motion for a new trial. (*In re Edward S.* (2009) 173 Cal.App.4th 387, 398, fn. 3; *In re Kenneth S.* (2005) 133 Cal.App.4th 54, 61; *In re Steven S.* (1979) 91 Cal.App.3d 604, 605-607.)

The court cannot interfere how DJJ supervises a minor (*In re Owen E.* (1979) 23 Cal.3d 398, 404-405), but the court can reduce the confinement time the minor spends at DJJ if it finds DJJ has failed to comply with the law or abused its discretion in dealing with the ward (*In re Antoine D.* (2006) 137 Cal.App.4th 1314, 1322, relying on Welf. & Inst. Code, §§ 778, 779).

A Welfare and Institutions Code section 778 petition cannot lead to more restrictive placement. (*In re Brent F.* (2005) 130 Cal.App.4th 1124, 1129; *In re Kanuo G.* (1994) 22 Cal.App.4th 1, 6; *In re Geronimo M.* (1985) 166 Cal.App.3d 573, 584.)

Because a DJJ commitment can occur if the most recent adjudication was for a section 707(b) offense or sex offense, the court sometimes dismisses an intervening petition under Welfare and Institutions Code section 782. The Supreme Court has ruled the court has the authority to do this. (*In re Greg F.* (2012) 55 Cal.4th 393, 408.)

The existence of a section 707(b) prevents a juvenile from sealing his or her record. It is not clear if the the record can be sealed if the 707 offense is eventually dismissed under section 782. (Compare *In re David T.* (2017) 13 Cal.App.5th 866, 871-878 [can dismiss the section 707(b) offense under section 782 and then seal the record] with *In re K.W.* (2020) 54 Cal.App.5th 467, 475-476 [cannot dismiss the section 707(b) offense under section 782].)

The juvenile may petition to modify a secured track commitment under new Welfare and Institutions Code section 779.5. It appears that the method for the minor to request terminating secured track supervision, and the wardship, is to file a modification petition under this section.

11. Intercounty transfers

The disposition hearing shall occur in the county where the minor resides. (Welf. & Inst. Code, § 750.) The court must accept a transfer-in, but it

can decide to transfer out the case again if it is in the minor's best interests. (*In re Carlos B.* (1999) 76 Cal.App.4th 50, 55; *Lassen County v. Superior Court* (1958) 158 Cal.App.2d 74, 74-75.) Once the case is transferred in, the county has jurisdiction over all of the case and can modify previous orders. (*In re Brandon H.* (2002) 99 Cal.App.4th 1153, 1156.) The notice of appeal is properly taken after the disposition hearing in the county to where the case has been transferred.

12. Sealing

The Legislature has become increasingly aware that collateral consequences follow from a juvenile adjudication, sometimes for life. This can interfere with the youth's effort to live a productive life after successfully completing probation. Such a system runs counter to the purpose of the juvenile court system to rehabilitate young people so that they can enter adulthood with a clean slate. Consequently, the Legislature has passed a series of statutes to seal juvenile records, sometimes automatically, upon the successful completion of probation.

The older statute, Welfare and Institutions Code section 781, was passed in an anti-crime initiative (Prop. 21, § 28 (Prim. Elec. (Mar. 7, 2000)), and the Legislature generally lacks the power to repeal it. It permits the juvenile to petition the court to seal the record when he or she turned 18 years old or five years after probation ended, whichever is later. Sealing is possible if there are no criminal convictions involving moral turpitude and the minor demonstrates he or she has been rehabilitated. (Welf. & Inst. Code, § 781, subd. (a).) However, the record is still accessible by law enforcement and the Department of Motor Vehicles. (*Id.*, subd. (c).) Sealing is not available if the minor committed an offense listed under Welfare and Institutions Code section 707, subdivision (b). (Welf. & Inst. Code, § 781, subd. (a)(1)(D).)

The older statute was unsatisfactory because most juveniles were unaware of the law permitting them to seal the record, and they lacked the skills to successfully petition for sealing. Effective in 2015, the Legislature enacted Welfare and Institutions Code section 786. The statute supplements section 781; it does not replace or supersede it. Major revisions were enacted in 2017. Thus, one must look carefully at case law from the pre-2017 version to see if it still applies. The new version applies to all court orders starting January 2017, regardless of when the petition to seal was filed. (*In re I.F.* (2017) 123 Cal.App.5th 64, 72-73; see *In re O.C.* (2019) 40 Cal.App.5th 1196,

1206-1210 [does not apply if the wardship terminated before Jan. 1, 2015].)

Section 786 requires the juvenile court record to be sealed automatically if the minor successfully completes probation or informal supervision. (Welf. & Inst. Code, § 786, subd. (a).) Except for jobs that require a security clearance, the youth can legally claim in a job application that he or she does not have a criminal record. (*Id.*, subd. (b).) The court still lacks the authority to seal the record if the minor commits a section 707(b) offense. (*Id.*, subd. (d).) The record is still accessible by the juvenile court or when it is necessary to determine if the person is eligible to possess a firearm. (*Id.*, subd. (g).) When the minor commits a second offense while on probation for the first one, the court can seal the second petition upon the successful completion of probation but not the first one because the minor did not successfully complete probation for the first offense. (*In re Y.A.* (2016) 246 Cal.App.4th 523, 526-528.)

Sealing is also available if the minor successfully completes diversion (Welf. & Inst. Code, § 786.5), was arrested for a misdemeanor without becoming a ward (Pen. Code, § 851.7), or was found to have been a prostitute as a minor under certain circumstances (Pen. Code, § 1203.47).

The prohibition against sealing the record if there has been a section 707(b) offense means the minor cannot have any adjudication sealed. (*In re Jose D.* (2017) 12 Cal.App.5th 1107, 1119-1120; *In re G.Y.* (2015) 234 Cal.App.4th 1196, 1200-1204.)

Whether to seal a record is reviewed for abuse of discretion. (*In re J.W.* (2015) 236 Cal.App.4th 663, 668.) The court can consider the seriousness of the crime. (*Id.* at pp. 668-670.) The minor can have record sealed though victim restitution is still owed. (*In re J.G.* (2016) 3 Cal.App.5th 521, 526.) The court has discretion not to seal school records. (*In re M.L.* (2017) 18 Cal.App.5th 120, 123-124.)