

**SAMPLE PETITION FOR MODIFICATION**  
**(WITHOUT ATTACHED EXHIBITS)**

**SAMPLE PETITION FOR MODIFICATION**

\_\_\_\_\_

(Bar No. \_\_\_\_\_)

**Attorney for Appellant**

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN MATEO  
JUVENILE DIVISION**

**In the Matter of**

\_\_\_\_\_ ,

**A Minor.**

DOB \_\_\_\_\_

**(San Mateo County  
Superior Court  
No. \_\_\_\_\_)  
PETITION FOR  
MODIFICATION  
OF DISPOSITION  
(Welf. & Inst. Code,  
§779); POINTS &  
AUTHORITIES;  
EXHIBITS**

1. Petitioner \_\_\_\_\_ is a minor, residing in San Mateo County but presently committed to and confined in the California Youth Authority at the Preston Youth Correctional Facility at Ione, California, by order of this court made on March 28, 2003.

2. Petitioner's mother is \_\_\_\_\_, who resides at \_\_\_\_\_ . Petitioner's father is \_\_\_\_\_, whose last known address is \_\_\_\_\_.

3. This petition is presented on petitioner's behalf by \_\_\_\_\_, who represented petitioner in the juvenile court, and by Kathleen Kahn, appointed by the Court of Appeal to represent petitioner in his pending appeal from the CYA commitment.

4. Petitioner was committed to CYA following a placement review hearing held on \_\_\_\_\_, 2003. The hearing took place eight months after petitioner admitted a

misdemeanor assault on a probation officer. (Pen. Code, § 241, subd. (b).) During the intervening eight months, petitioner was sent to several placements, including CYA itself. However, CYA initially declined to accept him, reporting to the court that it did not have the necessary facilities or programs for him.

5. At the time of his commitment, petitioner had been placed in Hillcrest Juvenile Hall, where (the probation department reported) his behavior was improving, where he was able to receive therapy from a therapist with whom he had a long and trusting relationship, and where his school performance was at grade level. “Grade level”, in the spring of 2003, was tenth grade. A plan was in place to “engage the Minor in a slow and deliberate reunification plan home and integration back to the community.” The plan was to have him home, and enrolled in school, in September of 2003.

6. Since his commitment to CYA, petitioner has been receiving only a few hours of education a day. While CYA claims he is still performing at grade level, it also describes “grade level” as tenth grade. (Exhibit A.) Thus, petitioner is in the same grade as he was in the previous academic year.

7. On December 2, 2003, appellate counsel Kathleen Kahn wrote to the high school principal at the Preston Youth Correctional Facility, to ask for petitioner's attendance records. A copy of that letter is attached to this petition as Exhibit B; a copy of all the attendance records sent in response to it is attached to this petition as Exhibit C.

8. The attendance records indicate the following class hours for each month:

May 2003: 7 hours of math, plus one hour of another math class.

June 2003: 7 hours of world history; 8 hours of American literature.

July 2003: 16 hours of gym; 2 hours of math; 5 hours of an unspecified subject.

September 2003: 14 hours of an unspecified subject; 4 hours of math.

October 2003: 11 hours of earth science.

9. Kathleen Kahn asked *petitioner* to keep a daily log of his class hours starting in January, 2004. She asked him to send her this log with a statement under penalty of perjury that it is true. The log and the verification are attached as Exhibit D. From this log, it appears that *petitioner* had six hours of class during the week of January 5; two hours during the week of January 12; four hours during the week of January 19; eight hours during the week of January 26; six hours during the week of February 2; four hours during the week of February 9; none during the week of February 16.

10. It is apparent from these records that *petitioner* cannot possibly finish high school by the time he is eighteen or even nineteen. This circumstance was not contemplated by the court when it made its commitment order. A commitment which prevents *petitioner* from completing his education in a reasonably timely manner cannot be of probable benefit to him.

11. The other presumed benefit of a CYA commitment, that is, the psychotherapy available for his emotional disorder, is available to *petitioner* at Hillcrest without detracting from his education. To the extent that CYA offers psychotherapy at all, it puts it into direct competition with education:

Wards in all main high schools were observed being pulled from general and special education classes to attend other programs, including Board mandated

activities, without regard to their educational needs. It is evident that education is not the primary focus during the school day.

(O'Rourke and Gordon, *Education Program Review of California Youth Authority*,

December 2003, p. 8; this report was prepared under direction of the Alameda County

Superior Court in *Farrell v. Harper*, RG03079344. It is attached to this motion as Exhibit

E.)

WHEREFORE, petitioner \_\_\_\_\_ prays that this court hold a hearing pursuant to Welfare and Institutions Code sections 778 and 779 and California Rules of Court, rule 1432(d) and at the conclusion thereof modify its order of \_\_\_\_\_, 2003 to return *petitioner* to a placement in San Mateo County.

Dated:

\_\_\_\_\_  
KATHLEEN KAHN

Dated:

\_\_\_\_\_  
\_\_\_\_\_  
Attorneys for Petitioner

Petition is set for hearing:

\_\_\_\_\_  
Judge of the Superior Court

**VERIFICATION**

I, Kathleen Kahn, have been appointed counsel for petitioner \_\_\_\_\_ in his pending appeal from the order committing him to the California Youth Authority, made on March 28, 2003. I declare under penalty of perjury that to the best of my knowledge the foregoing allegations are true and correct, except those made in Paragraph 9 and Exhibit D. As to those allegations, a verification from *petitioner* is included with Exhibit D.

Dated:

\_\_\_\_\_  
KATHLEEN KAHN

**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF PETITION FOR RECONSIDERATION**

**I.**

**A JUVENILE COURT HAS JURISDICTION TO MODIFY  
ANY DISPOSITIONAL ORDER, INCLUDING A COMMITMENT TO THE  
YOUTH AUTHORITY.**

Unlike the court in criminal cases, a juvenile court is not deprived of jurisdiction when a “sentence” is imposed or when an appeal is taken. Welfare and Institutions Code sections 775-779<sup>1</sup> vest broad continuing discretion in the juvenile court after the dispositional hearing. As section 775 says,

Any order made by the court in the case of any person subject to its disposition may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article.

Section 778 provides that any person having an interest in a minor may petition for such a modification “upon grounds of change of circumstances or new evidence.” It further provides that upon receipt of a verified petition the court shall order a hearing, “if it appears that the best interests of the child may be promoted by the proposed change ....”

Section 779 applies these general provisions specifically to modifications of Youth Authority commitments. In its newest amendment, section 779 provides that the failings of the Youth Authority itself may be the basis for a modification:

This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause

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<sup>1</sup> Statutory citations are to the Welfare and Institutions Code.

that the Youth Authority is unable to, or failing to, provide treatment consistent with section 734.

Section 734 is, of course, the statute which requires a court to find that a CYA commitment will be of probable benefit to a minor, before ordering one.

## II.

### **PETITIONER'S BEST INTERESTS WOULD BE SERVED BY MODIFYING HIS PLACEMENT SO THAT HE COULD FINISH HIGH SCHOOL WHILE RECEIVING THERAPY.**

Seven months after his arrival at CYA, *petitioner* was placed in a treatment ward at the Preston Youth Correctional Facility. Up until that point, he had been in mainstream dormitory housing, where fighting and violence were all that CYA had to offer him. His present placement is at least peaceful, and offers treatment which if nothing else is age-appropriate.<sup>2</sup> The actual value to *petitioner* of group discussions led by a CYA counselor on a ward of teen-age sex offenders,<sup>3</sup> as compared to the professional therapy available to him in San Mateo County,<sup>4</sup> is dubious, but that is not the basis of this petition. The basis

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<sup>2</sup> He was moved from his last "lodge" because the other wards were younger and less mature than he is.

<sup>3</sup> *Petitioner* has no sex offenses on his record, nor any suggestions of sexually deviant behavior.

<sup>4</sup> As this court's records indicate, *petitioner* was a patient of \_\_\_\_\_, a clinical psychologist at Kaiser, while he was at Hillcrest. See Report of the Probation Officer, February 25, 2003, in the court's files. (The report is at CT 247 et seq. in the appellate record.)

of this petition is that the group discussions at Preston's Oak Lodge come at the expense of his education. The therapy at Kaiser did not.

As the briefs on appeal have pointed out, *petitioner* does not have a serious criminal record. In fact, nothing in his past or in his psychiatric history would bar him from getting through adolescence without undue emotional scarring. Furthermore, he is academically competent. (See Probation Report for 2/25/03, p. 3, at CT 249 in the record on appeal.) Nothing would bar him from attaining a normal adulthood, and from becoming a self-supporting man. The major obstacle to such success, it now appears, is one created by CYA itself. *Petitioner* will be discharged from the institution, at the age of eighteen or nineteen, with a tenth grade education. At an age when his peers are beginning college and contemplating careers, he will be a junior in high school – two or three years older than all the other juniors.

This is not simply a waste of his time. It is an emotional blow to a teenager to be held back from his class. To be held back for no fault of his own is simply unfair. This setback could not have figured into the court's “probable benefit” calculation a year ago, when the CYA commitment was originally made. Now that it is known, it changes the calculation completely.

Nothing that CYA can offer *petitioner* in the way of group therapy is worth the loss of two years of high school. It is not as though CYA was the only source of therapy; as the latest probation report indicated, much more appropriate and valuable treatment

was available to *petitioner* locally. Under these circumstances, the sacrifice of a high school education is made for nothing.

Under section 734, the court can make a CYA commitment only when “the mental ... condition and qualifications of the ward are such as to render it probable that he will be benefitted by the reformatory educational discipline or other treatment” he is expected to receive. Here, *petitioner’s* “mental condition” is such that he *could* benefit from a high school education. But he is not receiving one. This is exactly the situation that section 779 was amended to address: when “the Youth Authority is unable to, or failing to, provide treatment consistent with section 734”, the commitment must be vacated.

For the foregoing reasons, *petitioner* through his counsel requests this court to order a hearing as provided by section 778 and California Rules of Court, rule 1432(d), and to vacate his commitment to the California Youth Authority.

Dated:

Respectfully submitted,

MATTHEW ZWERLING  
Executive Director

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KATHLEEN KAHN  
Staff Attorney  
Attorneys for Appellant

**DECLARATION OF SERVICE BY MAIL**

**Re: People v. \_\_\_\_\_ Case No. : \_\_\_\_\_ (Appeal No. \_\_\_\_\_)**

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of \_\_\_\_\_, State of California. My business address is \_\_\_\_\_. On \_\_\_\_\_ I have caused to be served a true copy of the attached Petition for Modification on each of the following, by placing same in an envelope(s) addressed as follows:

Office of the Attorney General  
Bill Lockyer, Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-3664  
(Respondent)

\_\_\_\_\_  
(Appellant)

Director, California Youth Authority  
4241 Williamsborough Dr.  
Sacramento, CA 95823-2088

\_\_\_\_\_, Deputy DA  
Office of the District Attorney  
400 County Center, 3rd Floor  
Redwood City, CA 94063

\_\_\_\_\_  
825 Schwerin  
Daly City, CA 94014

Each said envelope was sealed and the postage thereon fully prepaid. I am familiar with this office's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice each envelope would be deposited with the United States Postal Service in \_\_\_\_\_, California, on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

\_\_\_\_\_  
Declarant