BASIC JUVENILE CRIMINAL LAW AND PROCEDURE

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TABLE OF CONTENTS

Page

INTRODUCTORY NOTE REGARDING JUVENILE CRIMINAL PROCEDURE AND TERMINOLOGY 1

I. INITIATING JURISDICTION 2

A. Generally 2

B. The Section 602 Petition 4

C. Deferred Entry of Judgment (DEJ) 4

D. Dual Delinquency and Dependency Jurisdiction (Welfare and Institutions Code section 241.1) 8

E. The Jurisdictional Hearing 8

1. Timeliness 8

2. Burden of Proof 9

3. Procedural Rights 9

4. Necessary Findings/Orders 13

5. Admission of the Allegations 14

6. Transfer of Jurisdiction after the Jurisdictional Hearing 17

II. DISPOSITION 17

A. Right to a Hearing 17

B. Conduct of the Hearing 18

C. Dispositional choices available to the juvenile court 20

D. Probation Conditions 22

E. Necessary Findings/Orders 24

F. Calculation of Maximum Confinement Time and Credits 24

III. MODIFICATION OF ORDERS 28

A. Probation Violations (Welfare and Institutions Code § 777) 28

B. Petitions for Modification (Welfare and Institutions Code sections 775, 777, and 779) 31

IV. TERMINATION OF JURISDICTION 32

V. "DIRECT FILES" AND "UNFIT" JUVENILES 33

VI. APPEALS 35

INTRODUCTORY NOTE REGARDING JUVENILE CRIMINAL PROCEDURE AND TERMINOLOGY

Juvenile delinquency proceedings, sometimes called juvenile criminal proceedings, are different from adult criminal proceedings. Most of the rules governing juvenile criminal proceedings are found in the Welfare and Institutions Code. It is important to recognize the distinctions in procedure and in terminology and to use the correct terminology in your appellate briefs.

First, the juvenile criminal proceedings take place in the "juvenile court", a special branch of the "superior court". Second, the adjudication of the juvenile's criminal offenses is initiated by the filing of a "petition" rather than a "complaint" or "information". Third, if the juvenile challenges the admission of evidence, arguing that it was seized in violation of his Fourth Amendment rights, he files a motion pursuant to Welfare and Institutions Code section 700.1, rather than Penal Code section 1538.5. Fourth, the juvenile may "admit" that he committed the alleged criminal offenses or enter a no contest plea; the juvenile does not enter a "guilty plea". Fifth, if the juvenile does not admit the criminal allegations, the prosecution, called the "petitioner", must prove those allegations beyond a reasonable doubt at a contested "jurisdictional hearing", rather than at a "trial". Sixth, the juvenile is not found "guilty"; the criminal allegations are "found true" or "not true", of the allegations of the petition are "sustained". Finally, the juvenile court does not impose a "sentence". Rather, he imposes a "dispositional order" at a "dispositional hearing".

Of course, the major distinction between juvenile criminal and adult criminal proceedings is that juveniles charged with crimes, in juvenile court, have no right to a jury trial. Nevertheless, when the criminal allegations are adjudicated at a contested jurisdictional hearing, one sees many of the same issues that one finds in adult criminal appeals, including challenges to the sufficiency of the evidence and to the admission of evidence (hearsay issues, confrontation issues, involuntary confessions, etc.) There are also many types of jurisdictional and dispositional issues that only arise in juvenile criminal proceedings.

I. INITIATING JURISDICTION

A. Generally

1. There are two provisions governing the initiation of jurisdiction by the Juvenile Court over a minor under age 18 who has allegedly engaged in "delinquent" behavior:

a. Section 601: Any person under the age of 18 years, "who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or . . . violated any ordinance . . . establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court." (Welf. and Inst. Code § 601, subd. (a).)

b. Section 602: In addition, generally, any person under the age of 18 years who "violates any law . . . other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court." (Welf. and Inst. Code § 602, subd. (a).)

c. Note: At FDAP, we rarely see an appeal from an adjudication of wardship under Welf. and Inst. Code § 601. Almost all of our "juvenile criminal appeals" are from adjudications of wardship under § 602.

2. Competency

Under *Dusky v. United States* (1960) 362 U.S. 402, 402, a criminal defendant is deemed competent to stand trial only if he"'has sufficient present ability to consult with his lawyer with a reasonable

degree of rational understanding'" and "'has a rational as well as factual understanding of the proceedings against him.'" In 2010, Welfare and Institutions Code section 709 codified the *Dusky* standard for 601 and 602 cases. (Welf. & Inst. Code, § 709, subds. (a),(e).) Thus, if the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings must be suspended and the matter set for a hearing. (Welf. & Inst. Code, § 709, subd. (a).) The court must "appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency." (Welf. & Inst. Code, § 709, subd. (b).) The expert appointed must "have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence." (Welf. & Inst. Code, § 709, subd. (b).) The statute also calls for the development and adoption of rules implementing these requirements (not adopted as of April, 2011). (*Ibid*.) Incompetence is established by a preponderance of the evidence. If the minor is found to be incompetent, proceedings must remain suspended "for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction." (Welf. & Inst. Code, § 709, subd. (c).) While the minor is incompetent, the court may rule on motions "that do not require the participation of the minor in the preparation of the motions," including motions to dismiss, motions by the defense regarding a change in the placement of the minor, detention hearings, and demurrers. (*Ibid*.)

3. Venue

Generally, venue or territorial jurisdiction is established by reference to either where the criminal conduct occurred, where the minor is found, or the county of his legal residence (the county of residence of

the person with physical custody of the minor). (Welf. and Inst. Code § 651; Cal. Rules of Ct., rule 5.610.)

B. The Section 602 Petition

1. Juvenile delinquency actions are begun by the filing of a petition under Welfare and Institutions Code section 602. (Welf. and Inst. Code § 602; § 630; § 650.) If the minor has been held in detention, the petition must be filed within 48 hours of the time he was taken into custody. (Welf. and Inst. Code § 626, subd. (d); *Id*., § 626.5, subd. (b); § 631, subd. (a).) The petition must state the code section under which it is brought, identify the minor and include notice to the minor's parents. (Welf. and Inst. Code § 656.)

2. A petition under section 602, alleging criminal offenses, is brought by the District Attorney. (Welf. and Inst. Code § 650, subd. (c).) It must contain a concise statement of the facts on which the petition is based. (Welf. and Inst. Code § 656, subd. (f).) The petition must identify the alleged offense and state whether the alleged offense is a misdemeanor or a felony. (Welf. and Inst. Code § 656.1.)

3. If the petition is the minor's first section 602 petition, it may be called an "Original Petition". If previous section 602 petitions have been filed against the minor, and he or she is already a ward of the juvenile court, the petition may be called a "Subsequent Petition". The Subsequent Petition will usually list the minor's offenses that have been previously sustained.

C. Deferred Entry of Judgment (DEJ)

1. Under Welfare and Institutions Code sections 790, et seq., the juvenile court, <u>without adjudicating the petition</u>, may grant certain minors deferred entry of judgment (DEJ). The purpose

of the DEJ program, put into effect by Proposition 21 (a 2000 initiative approved by California voters) is to provide an informal juvenile court alternative for first-time non-violent offenders. They are given a "non-custodial opportunity" to demonstrate through good conduct and compliance with a court-monitored treatment and supervision program that their record should be justly expunged. (See *In re Martha C.* (2003) 108 Cal. App. 4th 556, 561.)

2. The minor admits the allegations of the section 602 petition, but a jurisdictional and dispositional hearing is not held. Instead, entry of judgment is deferred and the minor is required to comply with certain conditions. If he or she complies with those conditions, for a period of 12 to 36 months, the charges in the section 602 petition are dismissed, the arrest is deemed never to have occurred and the minor's juvenile record is sealed. (See Welf. & Inst. Code, §§ 790-794; Cal. Rules of Court, Rule 5.800.) The minor may not appeal after a grant of DEJ, because there is no judgment.

3. The DEJ statute imposes mandatory duties on both the prosecutor and the juvenile court. The prosecutor must determine if the minor is <u>eligible</u> for DEJ (i.e. does he/ she meet the qualifications set forth in Welf. & Inst. Code, § 790) and notify the minor and his/ her attorney. Then, the juvenile court must determine if the minor is <u>suitable</u> for DEJ; the court must examine the record, conduct a hearing, and make the final determination of whether the minor will derive benefit from education, treatment and rehabilitation, rather than from a more restrictive commitment. (Welf. & Inst. Code, § 791, subd. (b); Rule 5.800: *In re Luis B.* (2006) 142 Cal. App. 4th 1117, 1121-1123; *In re Sergio R.* (2003) 106 Cal. App. 4th 597, 605, 607.)

4. The juvenile court need not make a suitability determination for each and every minor who is eligible for DEJ. If a minor

receives notice of DEJ eligibility, but he/she does not waive his/her right to a speedy jurisdictional hearing and admit all of the allegations of the petition, but instead contests the allegations at a jurisdictional hearing, the minor may be deemed to have rejected DEJ. (*In re Kenneth J.* (2008) 158 Cal. App. 4th 973.) According to Divisions Two and Three of the First District Court of Appeal, the juvenile court has no duty to determine an eligible minor's suitability for DEJ unless and until the minor admits all of the allegations of the petition. (*In re Kenneth J., supra* [Division Two]; *In re Usef S.* (2008) 160 Cal. App. 4th 276 [Division Three].) The DEJ statutory scheme requires the minor to admit each allegation of the petition in lieu of a contested jurisdictional hearing. If a minor contests some allegations but not others or contests an element of an allegation, he/she is not entitled to DEJ. (*In re T.J.* (2010) 185 Cal. App. 4th 1504 [Third District].)

5. A minor who is eligible for DEJ does not "reject" DEJ or waive his right to a determination of DEJ suitability by litigating a motion to suppress evidence. After that motion is denied and before the commencement of a contested jurisdictional hearing, the minor may request DEJ. (*In re A.I.* (2009) 176 Cal. App. 4th 1426.) An eligible minor is entitled to a determination of his/her eligibility for DEJ after he/she unsuccessfully litigates a motion to suppress evidence and then admits a reduced charge. (*In re Joshua S.* (2011) 192 Cal. App. 4th 670 [First District, Division Two].) "[A] minor is not required to forego the right to a suppression hearing in order to accept DEJ". (*Joshua S., supra*.)

6. Qualifications: "To be admitted to the DEJ program, a minor must be eligible under section 790, subdivision (a)." (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 560.) A minor is eligible for DEJ if <u>all</u> of the following apply:

a. The minor is 14 years or older at the time of the hearing

on the application for deferred entry of judgment;

b. The offense alleged is not listed in section 707(b);

c. The minor has not been previously declared a ward of the court based on the commission of a felony offense;

d. The minor has not been previously committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice;

e. If the minor is presently or was previously a ward of the court, probation has not been revoked before completion;

f. The minor meets the eligibility standards stated in Penal Code section 1203.06 for probation; and

g. The minor admits all of the allegations in the petition, waives his right to speedy adjudication and pronouncement of judgment.

7. When a minor meets the qualifications set forth in section 791(a) and is thus eligible for DEJ, the juvenile court may summarily grant deferred entry of judgment or refer the matter to the probation department for a report on the minor's suitability. In assessing the minor's suitability, both the probation department and the juvenile court must consider the minor's age, maturity, educational background, family relationships, demonstrable motivation, treatment history, and other mitigating and aggravating factors in determining whether the minor is a person who would be benefitted by education, treatment and rehabilitation. (Welf. & Inst. Code, § 791, subd. (b); Rule 5.800; *In re Sergio R., supra.*, at 603-607.)

8. Upon a determination of unsatisfactory performance during the deferral, the juvenile court may "lift" the DEJ and schedule

a dispositional hearing. (Welf. and Inst. Code § 793, subd. (a).)

D. Dual Delinquency and Dependency Jurisdiction (Welfare and Institutions Code section 241.1)

Section 241.1 requires that whenever a minor appears to fall within the description of both a dependent child and a delinquent ward, the child welfare department and the probation department must jointly "initially determine which status will serve the best interests of the minor and the protection of society." (§ 241.1, subd. (a).) Both departments present their recommendations to the juvenile court, which must then determine the minor's appropriate status. (Ibid.) With few exceptions, a minor may not be both a dependant child and a delinquent ward. (§ 241.1, subds.(d) & (e).) "Section 241.1, subdivision (a) requires the recommendations of the probation and welfare departments to be submitted to the juvenile court 'with the petition that is filed on behalf of the minor.'" (*In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1013.) A court's section 241.1 determination that the minor should be treated as a delinquent ward is an appealable order. (*In re Henry S.* (2006) 140 Cal.App.4th 248, 256.)

E. The Jurisdictional Hearing

1. Timeliness

The hearing must be held within 15 days of the filing the petition if the minor is detained, or within 30 days of the filing, if the minor is not detained. (Welf. and Inst. Code § 657, subd. (a).) The sole question before the court is whether the minor comes within section 602 by virtue of his or her conduct. (Welf. and Inst. Code § 701.) Note: Failure to hold the hearing within the statutory period is not an appealable order. The error needs to be addressed by filing a writ.

2. Burden of Proof

For the allegations of a petition brought under section 602, proof beyond a reasonable doubt is necessary. (Welf. and Inst. § 701; *In re Winship* (1970) 397 U.S. 358, 368.) The prosecution (the petitioner) must prove each and every element of the charged crime(s) beyond a reasonable doubt. This is required by the due process clause of the Fourteenth Amendment. (*In re Winship , supra.*)

3. Procedural Rights

a. The cause is tried to the Juvenile Court judge. The hearing is an adversary proceeding analogous to an adult criminal trial (though without a jury). The minor has many, though not all, of the rights guaranteed to an adult being tried for a crime, including the right to present a defense. (*In re Winship*, *supra*, 397 U.S. 358; *In re Gault* (1967) 387 U.S. 1.)

b. In addition to the protection of the due process clause of the federal constitution, California provides by statute that the minor has a right to a contested hearing before the court (Welf. and Inst. Code § 701; Cal. Rules of Ct., rule 5.778; *Id.*, rule 5.780), to be represented by counsel (Welf. and Inst. Code § 679), to have notice of the charges and any intended aggregation of confinement time from previously sustained petitions (Welf. and Inst. Code § 726), to confront and cross-examine witnesses (Welf. and Inst. Code § 702.5), to remain silent (*ibid.*), to the presence of parents or guardians throughout the proceedings -- even if they are to be called as witnesses (Welf. and Inst. Code § 656; *id.*, § 658), and to dismissal of the petition upon the government's failure of proof (Welf. and Inst. Code § 701.1).

c. Legal rules governing the burden of proof and the admissibility of evidence (e.g. hearsay rules) are substantially the same in juvenile and adult criminal proceedings. "The admission and exclusion of evidence shall be pursuant to the rules of evidence established by the evidence code and by judicial decision". (Welf. And Inst. Code, § 701).

d. *Crawford v. Washington* (2004) 541 U.S. 36 applies: Confrontation Clause guarantees a defendant's right to confront those "who 'bear testimony'" against him. (*Id.*, at p. 51.) It attaches to a testimonial out-of-court statement offered against the accused in a criminal prosecution, rendering testimonial statements by a nontestifying witness inadmissible unless the witness is unavailable and was previously subject to cross-examination by the defendant.

e. Most of the same rules regarding privileges (e.g. the attorney-client privilege) apply in juvenile court. However, there is no recognized parent-minor privilege. Thus, the prosecutor may call the parents to testify regarding the minor's capacity to commit the crime, and statements made by the minor to his/her parents, including statements regarding the alleged crime , may be admissible, subject to hearsay and other evidentiary rules. (See *In re Terry W.* (1976) 59 Cal. App. 3d 745; but see *De Los Santos v. Superior Court* (1980) 27 Cal. 3d 677 [allowing parent acting as the minor's guardian ad litem to evoke the attorney-client privilege].) Nevertheless, a communication from a child to a parent may be protected by the pertinent statutory privilege, for example, where the statement is necessary to the transmission of information to the minor's attorney, physician or psychotherapist. (See *In re Terry W.*, *supra*)

f. "An extrajudicial identification that cannot be confirmed by an identification at the trial is insufficient to sustain a conviction in the absence of other evidence tending to connect the defendant with the crime." (*In re Miguel L.* (1982) 32 Cal.3d 100, 105, quoting *People v. Gould* (1960) 54 Cal.2d 621, 631[overruled in *People v. Cuevas* (1995) 12 Cal. 4th 252].)

g. The corpus delicti rule, requiring proof of the offense independent of the accused's extrajudicial statement applies in juvenile delinquency proceedings. (*In re Linda D*. (1970) 3 Cal.App.3d 567, 572. See also, *People v. Ochoa* (1998) 19 Cal.4th 353, 450 [rule defined in adult criminal case].)

h. The accomplice-corroboration rule of Penal Code section 1111 does not always apply in juvenile criminal proceedings. *In re Mitchell P.* (1978) 22 Cal.3d 946, 949, held that section 1111, prohibiting a conviction upon the testimony of an accomplice unless the testimony is corroborated by other evidence tending to connect the defendant with the commission of the offense, does *not* apply to juvenile court proceedings. (Aff'd per *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 in *In re Christopher B.* (2007) 156 Cal.App.4th 1557, 1563 [stating that "with the passage of nearly 30 years and attendant significant changes in juvenile law, the rule of *Mitchell P*. is well positioned for reassessment."]. Moreover, unreliable uncorroborated accomplice testimony is not sufficient to sustain an adjudication for having committed an offense. (*In re Miguel L.* (1982). 32 Cal.3d at 100, 109.) Note however, *Miguel* did not overrule *In re Mitchell P*.,*supra*. (But see, *In re E.L. B*.

(1985) 172 Cal.App.3d 780, 785-786 [questioning the continued validity of *Mitchell* in light of growing similarity between juvenile delinquency and adult criminal actions].)

i. The juvenile court may sustain a petition based on a lesser offense included in the charged offense, but may not, without the juvenile's consent, sustain the petition on an offense not included in the charged offense. (*In re Robert G.* (1982) 31 Cal.3d 437, 445; *In re Johnny R.* (1995) 33 Cal.App.4th 1579, 1583-1584.)

j. The bar against being placed twice in jeopardy for the same conduct applicable to adult criminal trials, is equally applicable in juvenile delinquency cases. (*Breed v. Jones* (1975) 421 U.S. 519, 541; *Barker v. Estelle* (9th Cir. 1990) 913 F.2d 1433, 1439-1440 [in California, jeopardy attaches at the adjudication hearing]; *In re Henry G.* (1985) 161 Cal.App.3d 646, 650-651.)

k. Because the court is the trier of fact, there is some limitation on the information it may review prior to making jurisdictional findings on the petition. The court must respect the statutory procedure bifurcating the jurisdictional hearing from the dispositional hearing. (See, Welf. and Inst. Code § 701; *In re Eddie M.* (2003) 31 Cal.4th 480, 488; *In re Gladys R.* (1970) 1 Cal.3d 855.) Thus, the Juvenile Court may not review the probation department's social report prior to adjudicating the petition. Doing so undermines the fundamental fairness of the proceeding and violates the minor's right to due process. (*In re Gladys R.*, *supra*, 1 Cal.3d at pp. 859-861.)

4. Necessary Findings/Orders

a. The court must find whether one or more criminal allegations are proven beyond a reasonable doubt and whether based on that finding, the minor comes within the definition of section 602. (Cal. Rules of Ct., rule 5.780(e); rule 5.780.(g).) These findings are subject to review by the Court of Appeal. When a juvenile court has sustained the allegations of a section 602 petition, a challenge to the sufficiency of the evidence supporting that ruling is governed by the substantial evidence rule. (*In re Andrew I.* (1991) 230 Cal. App. 3d 572, 577; *In re Roderick P.* (1972) 7 Cal. 3d 801, 808-09.) The appellate court must view the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence such that a reasonable trier of fact could have found the minor guilty beyond a reasonable doubt. (*In re Andrew I.,supra..*, at 577.)

b. The court also must find whether notice was properly given and determine the minor's correct birth date and county of residence. (*Ibid*.)

c. If the minor is under 14, the court must make a finding as to capacity – i.e. that the minor understood the wrongfulness of his/her conduct. A minor under the age of 14 years is presumed incapable of committing a crime "in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." (Pen. Code § 26.) The standard of "clear proof" is the equivalent of clear and convincing evidence. (*In re Manuel L.* (1994) 7 Cal.4th 229, 238; *In re Jerry M.* (1997) 59 Cal. App. 4th 289, 297.) The prosecution may rebut the presumption of incapacity by evidence regarding the nature of the crime, the manner

in which it was committed, the proximity of the child's age to 14 and the child's history of committing similar offenses. The prosecution may also rely on testimony by parents and others who know the child as well as psychological experts. (*In Tony C.* (1978) 21 Cal.3d 888, 900; *In re Nirran W.* (1989) 207 Cal.App.3d 1157, 1160-1161; *In re Clyde H.* (1979) 92 Cal.App.3d 338, 344; *In re Marven C.* (1995) 33 Cal. App. 4th 482; *In re Michael B.* (1983) 149 Cal. App. 3d 1073; *In re Billy Y.* (1990) 220 Cal. App. 3d 127; *In re Paul C.* (1990) 221 Cal. App. 3d 43.)

d. In a section 602 matter, the court must find whether the offense is a misdemeanor or a felony, and it must determine the degree of the offense, if applicable. (Cal. Rules of Ct., rule 5.780(e); *In re Manzy W.* (1997) 14 Cal.4th 1199, 1203-1204.)

e. If the court determines the allegations were not proven beyond a reasonable doubt, it must dismiss the petition and terminate any detention orders pertaining to it. (Cal. Rules of Ct., rule 5.780(g).)

5. Admission of the Allegations

a. At the jurisdictional hearing, the minor may either admit the allegations of the petition or plead no contest, subject to the approval of the court. (See Cal. Rules of Ct., rule 5.778(e).)

b. The *Boykin-Tahl* rules, as applicable to juveniles, have been codified and extended in the juvenile court rules. (See *In re Ronald E.* (1977) 19 Cal. 3d 325; *In re Regina N.* (1981) 117 Cal. App. 3d. 577, 583-584.) Rule 5.778 of the California Rules of Court sets forth the principles that apply when the minor elects to admit the allegations of

the petition or plead no contest.

1. The minor must be told of the following four constitutional rights: his/her right to a hearing by the court on the issues raised in the petition; his/her right to assert the privilege against self-incrimination; his/her right to confront and cross-examine any witness called to testify against the child; and his/her right to use the process of the court to compel the attendance of witnesses on the child's behalf. (See Rule 5.778(b); Welf. & Inst. Code, § 702.5.)

2. If the minor wishes to admit the allegations, the court must find and state on the record that it is satisfied that the minor understands the nature of the allegations and the direct consequences of the admission. The court must also find and state on the record that the minor understands and waives the four rights listed above. (Rule 5.778(c).)

3. The minor's counsel must consent to the admission, which must be made personally by the minor. (Rule 5.778(d).)

4. On an admission or no contest plea, the court must make the following findings noted in the minutes of the court: notice has been given as required by law; the child has knowingly and intelligently waived the four rights listed in Rule 5.778(b); the child understands the nature of the conduct alleged in the petition and the possible consequences of an admission or no contest plea; there is a factual basis for the admission or no contest plea; the allegations of the petition as

admitted are true as alleged; and the child is a person described by section 601 and 602. In a section 602 proceeding, the court must also designate the degree of the offense and whether it is a felony or misdemeanor. (Rule 5.778(f); Welf. & Inst. Code, § 702.)

c. The rule requires that the court advise the minor and satisfy itself that the minor personally understands each of the enumerated rights, the nature of the conduct alleged and admitted, and the possible consequences of an admission. Moreover, the court must make specific findings on each point. These requirements cannot be satisfied by having the minor sign a pre-printed form, even if the court asks the minor if he/she signed the form and understood it. (See *In re Regina N.* (1981) 117 Cal. App. 3d 577.) Nor is this requirement satisfied by asking the minor's parents or his/her attorney whether the minor understands these rights and the charges. (*In re Regina N., supra.*)

d. In finding a factual basis for the admission or no contest plea, the court must satisfy itself that the minor is admitting the truth of the allegations because the minor did, in fact, commit the acts alleged. However, since ascertaining a factual basis for the admission is not constitutionally required, the minor must establish that he/she was prejudiced by the court's failure to find a factual basis for the admission or plea. (See *In re Regina N.* (1981) 117 Cal. App. 3d 577 [prejudice shown by the minor's repeated insistence that she did not actually commit the conduct that she had admitted]\

e. A minor may appeal after an admission or no contest plea, and challenge the validity of the admission or plea

without obtaining a certificate of probable cause.

6. Transfer of Jurisdiction after the Jurisdictional Hearing

After a petition has been sustained in the county where the offense occurred or where the minor was found, and prior to the dispositional hearing, the court may transfer the matter to the county of the minor's legal residence for the dispositional hearing. (Welf. and Inst. Code § 750; *In re Ramona S*. (1976) 64 Cal.App.3d 945.) In such a case, the minor is entitled to a "transfer out hearing" to determine whether the transfer is in his/her best interest. (Cal. Rules of Ct., rule 5.610(e).) The minor is also entitled to a "transfer in hearing" in the receiving county to determine the validity of that county's territorial jurisdiction and to make an order for the minor's custody/placement pending the dispositional hearing. (Cal. Rules of Ct., rule 5.612.)

II. DISPOSITION

A. Right to a Hearing

1. If, at the jurisdiction hearing, the juvenile court finds that the minor is a person that comes within section 602, the minor is entitled to an evidentiary hearing regarding the appropriate disposition. (Welf. and Inst. Code § 702; Cal. Rules of Ct., rule 5.780(f); *Id*., rule 5.782(a).)

2. If the jurisdiction was established through the minor's admission of the alleged conduct, the minor has a right to have the same judge preside over his dispositional hearing. (*People v. Arbuckle* (1978) 22 Cal.3d 749; *In re Mark L*. (1983) 34 Cal.3d 171, 177.) However, where the record shows that the minor knew of the existence of the right, it must be expressly exercised either through request or objection to the presence of

a different judge, or it may be deemed implicitly waived. (*In re James H.* (1985) 165 Cal.App.3d 911, 918-919.)

3. At the dispositional hearing, the minor is entitled to representation by counsel and to present evidence. (Welf. and Inst. Code § 634 [right to counsel]; *In re Mikkelsen* (1964) 226 Cal.App.2d 467, 470-471 [construing section 706 to provide right to present evidence in defense].)

4. The exclusionary rule for illegally-obtained evidence is inapplicable to the dispositional hearing. (*In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1686, fn. 9, citing *In re Michael V.* (1986) 178 Cal.App.3d 159, 169-170.)

B. Conduct of the Hearing

1. The juvenile court has broad discretion to fashion a disposition that meets the needs of the minor and society. The court's discretion must be exercised in lighf of the purpose of the juvenile law. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395-1396.) Specifically, though rehabilitation remains an important goal, as currently written, the juvenile court law recognizes "punishment as a rehabilitative tool" and includes an "express 'protection and safety of the public'" goal. (*Ibid.*, quoting Welf. and Inst. Code § 202. See also, *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) The Court of Appeal reviews the juvenile court's disposition for abuse of discretion. (*In re Michael D., supra.*, at 1395-1397; *In re Michael R.* (1977) 73 Cal. App. 3d 327, 332-341.)

2. "The court shall receive in evidence the social study of the minor . . . and any other relevant and material evidence that may be offered, including any written or oral statement offered by the victim, the parent or guardian of the victim if the victim is a minor, or if the victim has died or is incapacitated, the

victim's next of kin." (Welf. and Inst. Code § 706.)

3. In determining the appropriate disposition for a minor found to come within section 602, the juvenile court must consider: "in addition to other relevant and material evidence, (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. and Inst. Code § 725.5.)

4. If the court has not done so at the jurisdictional hearing, the court must declare whether the offense committed was a misdemeanor or a felony. (Cal. Rules of Ct., rule 5.780(e); *In re Manzy W*. (1997) 14 Cal.4th 1199, 1203-1204.) This duty is mandatory, and the court's finding on this point may not be presumed. (*In re Manzy W*., *supra*, 14 Cal.4th at pp. 1207-1209.) Specifically, neither the fact that the offense was alleged as a felony, even if it was admitted, nor the calculation of a maximum term of confinement to correspond to that of imprisonment of an adult defendant convicted of a felony determine the matter. (*Ibid*.)

5. Similarly, if the court has not done so at the jurisdiction hearing, it must fix the degree of the offense. (Pen. Code § 1157; *Id*., § 1192; Cal. Rules of Ct., rule 5.780(e); *In re Jacob M*. (1987) 195 Cal.App.3d 58, 61.) "Upon the failure of the . . . court to so determine, . . . the crime . . . shall be deemed to be of the lesser degree." (Pen. Code § 1157; *Id*., § 1192.) This duty is mandatory, and its execution will not be inferred merely from factual findings that will support a determination the offense was of the greater degree. (*In re Jacob M*., *supra*, 195 Cal.App.3d at pp. 61-62. But see, *In re Dorothy B*. (1986) 182 Cal. App. 3d 509, 521-522 [no error in failing to determine whether murder was first or second degree, because in either case the maximum term of confinement is life].)

C. Dispositional choices available to the juvenile court:

1. Without declaring wardship, the Juvenile Court may dismiss the petition outright (Welf. and Inst. Code § 782) or, with enumerated exceptions (e.g., adjudications for 707(b) offenses, certain drug offenses and gang offenses absent unusual circumstances, the court may dismiss the petition and refer the minor to the probation officer for six months informal probation (Welf. and Inst. Code § 654; *Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 747).

2. Except where the minor has been adjudicated for an offense enumerated in section 654.3, the court - without declaring wardship - may place the minor on probation for six months (Welf. and Inst. Code § 725, subd. (a));

3. If the court declares the minor a ward, it may "make any and all reasonable orders for the care, supervision, custody, conduct maintenance and support" of the minor, "including medical treatment." (Welf. and Inst. Code § 727, subd. (a).)

a. The court may order the minor to be on probation without supervision by the probation officer unless the minor has been adjudicated a ward for committing enumerated offenses (e.g., 707(b) offenses, 707(d) offenses, burglary, drug possession)(*Ibid*.);

b. The court may place a minor in the home of his or her parent or guardian with probation conditions. (Welf. and Inst. Code § 729.2.)

c. The court may make a "general placement order" under which the minor is on probation under supervision of the probation officer who has discretion to place the minor in the home of

1. his parent or guardian, a relative, or a non-relative extended family member (Welf. and Inst. Code § 727, subd. (a), para. (1));

2. a licensed foster home or group home (*Id.*, § 727, subd. (a), para. (1));

d. The court may commit a minor declared to be a ward under section 602 to a local juvenile home, ranch, camp, forestry camp or institution, or to the county Juvenile Hall under supervision of the probation officer. (Welf. and Inst. Code § 730, subd. (a).)

e. Finally, the court may commit a minor, declared to be a ward under section 602, to the Department of Juvenile Justice (DJJ), formerly the California Youth Authority.

1. A juvenile court ward can be committed to DJJ <u>only if</u> he/she has committed an offense described in Welfare and Institutions Code section 707(b) and is not otherwise ineligible for commitment under Welfare and Institutions Code section 733. Section 733 states that a ward shall not be committed to DJJ if he/she meets any of the following three conditions: 1)The ward is under 11 years of age; 2)The ward is suffering from any infectious, contagious, or other disease that would probably endanger the lives or health of other inmates at any facility; 3)The most recent offense alleged in any petition and admitted or found to be true by the court is not described in section 707(b), unless the offense is a sex offense set forth in Penal Code section 290.008. (These restrictions

on DJJ commitments went into effect on September 1, 2007.)

2. There is conflicting authority as to whether a court has authority to dismiss a minor's non-DJJ-eligible most recent petition in order to commit a minor to DJJ (by reaching back to an earlier petition which did allege a DJJ eligible offense). *In re J.L.* (6th Dist, 2008) 168 Cal.App.4th 43 (yes); *V.C. v. Superior Court* (3rd Dist, 2009) 173 Cal.App.4th 1455 (no); *In re Greg F.* (1st Dist, 2011) 192 Cal.App.4th 1252 (no).

D. Probation Conditions

1. The court has broad discretion to impose conditions of probation that are reasonably designed to "enhance" "the reformation and rehabilitation of the ward." (Welf. and Inst. Code § 730, subd. (b); *In re Josh W.* (1997) 55 Cal. App. 4th 1, 5.)

2. However, the court's discretion to order probation conditions is not boundless. (*People v. Hackler* (1993) 13 Cal.App.4th 1049, 1058; *People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) In juvenile cases, as in adult criminal cases, the court's discretion is limited by the *Lent* test. (People v. Lent (1975) 15 Cal. 3d 481, 486; *People v. Beal* (1997) 60 Cal.App.4th 84, 86; *In re Josh W., supra.*, 55 Cal.App. 4th at 5-6.) When a probation condition "requires or forbids conduct which is not itself criminal", it is only valid if the conduct is "reasonably related to the crime of which the defendant was convicted or to future criminality". (*People v. Lent*, *supra.*, at 486; *In re Angel J., supra.*, 9 Cal. App. 4th at 1100.) In setting the conditions of a minor's probation, the juvenile court must consider not only the circumstances of the crime, but also the minor's entire social history. (*In re Frankie J.* (1998) 198 Cal.App.3d 1149, 1153; *In re Jimi A.* (1989) 209 Cal.App.3d

482, 488.) Each case must be taken on its own facts, and a probation condition must be tailored to fit the circumstances and meet the minor's particular needs. (*In re Tanya B.* (1996) 43 Cal.App. 4th 1, 7; *In re Binh L.* (1992) 5 Cal.App.4th 194, 203.)

3. The juvenile court's discretionary authority to order probation conditions is further circumscribed by constitutional considerations. (*People v. Bender* (1988) 205 Cal.App.3d 1277, 1279. Conditions which infringe on constitutional rights must be narrowly drawn, specifically tailored to meet the probationer's individual needs, and reasonably related to the compelling state interest in reformation and rehabilitation. (*People v. Hacker, supra.,* 13 Cal.App.4th at 1058; *People v. Bauer, supra.,* 221 Cal.App.3d at 942;; *In re Laylah K.* (1991) 229 Cal.App. 3d 1496, 1502.)

4. Statutorily authorized conditions include: requiring the minor to attend school; requiring the minor and parents to attend counseling; setting a curfew; requiring drug/alcohol testing, requiring drug treatment; ordering restitution; and requiring community service. (Welf. and Inst. Code § 729.2; § 729.3; § 729.7; § 729.8; § 729.9; § 729.10.)

5. Generally, one cannot challenge a probation condition as unreasonable or unconstitutional (given the facts and circumstances of the individual case) for the first time on appeal; the minor must object at the dispositional hearing to preserve the challenge for appeal. However, there is an exception for challenges asserting that a probation condition is vague or overbroad on its face as a matter of law, without reference to the specific facts of the case. (*In re Sheena K.* (2007) 40 Cal. 4th 875.)

6. For a discussion of challenges to probation conditions, see PROBATION CONDITIONS: ADULTS AND JUVENILES by Kimberly Fitzgerald (Revised and Updated by Richard Braucher, Kathryn Seligman, and Jeremy Price), January 2011, in the FDAP's online Articles Database at http://www.fdap.org/r-article_search.php?category=all

E. Necessary Findings/Orders

1. "[N]o ward . . . shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

(1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(2) That the minor has been tried on probation while in custody and has failed to reform.

(3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian."

(Welf. and Inst. Code § 726, subd. (a).)

2. The court must make provision for a responsible party to make educational decisions for the minor. (Welf. and Inst. Code § 726, subd. (b).)

F. Calculation of Maximum Confinement Time and Credits

1. In cases in which the minor is removed from his or her parent's custody and ordered into out-of-home placement, other than DJJ, the following rule applies: "If the minor is removed from the physical custody of his or her parent or

guardian . . ., the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses" the minor was found to have committed. (Welf. and Inst. Code § 726, subd. (c).)

a. This is calculated by first determining whether the term for any of the adjudicated offenses must be "stayed" under Penal Code § 654. (*In re Billy M.* (1983) 139 Cal. App. 3d 973, 978.) However, as a practical matter, whether the term is "stayed" or simply considered "concurrent" with another term, the resulting maximum term calculation will be the same. (*Ibid.*)

b. Next, the court chooses a "base term" from among the offenses found true -- the felony offense with the greatest upper term, or the misdemeanor with the longest term. If the petition provided notice (*In re Michael B.* (1980) 28 Cal.3d 548, 553-554), this offense may be from a previous adjudication. (Welf. and Inst. Code § 726; Pen. Code § 1170;§ 1170.1; § 654; *In re Eric J.* (1979) 25 Cal.3d 522.)

c. Third, the court adds any applicable enhancement to the base term for the chosen offense. In adult sentencing, this is called the "principal term." (Pen. Code § 1170; *Id.*, § 1170.1.)

d. Fourth, the court may add any consecutive subordinate terms for other offenses found true along with any applicable enhancements. This includes other offenses charged in the same petition, as well as offenses from other petitions that were previously sustained. If the petition provided notice (*In re Michael B.*, *supra*, 28 Cal.3d at pp. 553-554), these terms may include the "unserved"

portions of terms from previous adjudications if the wardship based on the previous adjudication has not been terminated (*In re Dana G.* (1983) 139 Cal.App.3d 678, 680-681). Subordinate terms, are calculated at 1/3 the middle term for felonies and 1/3 the full term for misdemeanors. (Pen. Code § 1170.1; *In re Eric J., supra*, 25 Cal.3d at pp. 537-538.) "Specific," or "conduct" enhancements (e.g. use of a gun (Pen. Code § 12022.5) or infliction of great bodily injury (Pen. Code § 12022.7) appended to subordinate terms are imposed at 1/3 as well. The resulting term is called the "aggregate term."

e. The juvenile court has some limited discretion in calculating the maximum term of confinement. If the juvenile court "elects to aggregate the maximum term of confinement' (Welf. & Inst. Code, § 726(c)), the court has the discretion whether to run the terms for other current or prior offenses consecutively or concurrently. The court need not state reasons for its discretionary decision. (*In re Jesse F.* (1982) 137 Cal. App. 3d 164, 167-169.) The juvenile court may elect not to aggregate the period of physical confinement on a previously sustained petition. Aggregation is not mandatory or automatic, but rests within the sound discretion of the juvenile court. (*In re. Alex N.* (2005) 132 Cal. App. 4th 18.)

f. Finally, the court reduces this term by subtracting credit for any time spent in a locked facility. (*In re Eric J., supra*, 25 Cal.3d at pp. 535-536; *In re Randy J.* (1994) 22 Cal.App.4th 1497.) Juveniles only get actual time credit; they are not entitled to "conduct credit" under Penal Code section 4019. (*In re Ricky H.* (1981) 30 Cal.3d 176, 185-190.)

g. Note: in a practical sense, the calculation of maximum

confinement time often makes little real difference. Most local or less restrictive facilities and programs have a program term (e.g. six months, nine months) that is far shorter than the maximum confinement time as well. However, it is important that the maximum time be correctly calculated as an upper limit, especially if probation violations later result in re-commitment.

2. If the ward is committed to the DJJ, the juvenile court has the discretion to commit him or her for less than the maximum term based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court. (Welf. and Inst. Code § 731, subd. (b).) In other words, when a minor is committed to DJJ, the juvenile court has the discretion to set a lesser maximum term of confinement – less than the maximum term that could be imposed upon an adult convicted of the same offenses. This provision was passed in 2003 and went into effect on January 1, 2004. For interpretation of this provision, see *In re Sean W.* (2005) 127 Cal. App. 4th 1177; *In re Carlos E.* (2005) 127 Cal. App. 4th 1529; *In re Jacob J.* (2005) 130 Cal. App. 4th 429; In re *Alex N.* (2005) 132 Cal. App. 4th 18.

a. There is a disagreement as to whether a court may set a maximum term of confinement below the mitigated term authorized for an adult convicted of the same offense. *In re Joseph M.* (2nd Dist. 2007) 150 Cal.App.4th 889 held that just as the maximum term of imprisonment sets a ceiling on the maximum term of confinement, the minimum term of imprisonment, calculated using the mitigated sentencing term, establishes a floor. *In re A.G.* (1st Dist, 2011) 193 Cal.App.4th 791 disagrees, holding that a juvenile court is not precluded from setting maximum term of confinement below the mitigated term.

b. In the case of an indeterminate sentence, a court has discretion to impose a lesser sentence. (*In re R.O.* (2009) 176 Cal.App.4th 1493.)

III. MODIFICATION OF ORDERS

A. Probation Violations (Welfare and Institutions Code § 777)

1. A notice , in lieu of a formal petition, may be filed by the probation officer or the District Attorney under Welfare and Institutions Code 777, alleging that the ward has violated a condition of probation by conduct "not amounting to a crime". (§ 777, subd. (a).) The notice must contain a concise statement of facts to support this contention.

2. The provision allowing juvenile probation revocation proceedings to be initiated by a notice, rather than by a formal "supplemental petition", resulted from Proposition 21, an initiative passed by the voters in 2000. Among other things, Proposition 21 amended Welfare and Institutions Code section 777 to make it substantially easier to move a minor into a more restrictive placement for violation of probation. For a discussion of these changes, see **HOW PROPOSITION 21 AMENDED WELFARE AND INSTITUTIONS CODE SECTION 777 AND CHANGED PROBATION VIOLATION PROCEDURES FOR JUVENILE WARDS**, by Kathryn Seligman, FDAP Staff Attorney, January 2004, in the Delinquency library of our Articles Database at http://www.fdap.org/r-article_search.php.

3. Juvenile probation revocation proceedings are now similar to adult probation revocation proceedings and the ward is generally entitled to the same due process protections provided

adults in those proceedings. (See *In re Eddie M*. (2003) 31 Cal. 4th 480, 501-502.)

4. Specifically, however, the allegations need only be proven true by a preponderance of the evidence. (Welf. and Inst. Code § 777, subd. (c).) (*In re Eddie M.,supra.,* 31 Cal.4th at 501, 508.)

5. Section 777, subd. (c) states: "[R]eliable hearsay evidence" is admissible insofar as it would be "admissible in an adult probation revocation hearing [under] *People v. Brown* [(1989)] 215 Cal.App.3d 452 and any other relevant provision of law." Essentially, the rules governing the admissibility of hearsay in adult probation revocation proceedings apply to juvenile probation revocation proceedings. (See *In re Kentron D.* (2002) 101 Cal. App. 4th 1381; *In re Eddie M., supra*., 31 Cal. 4th at 501-502.) These rules, which basically provide different standards for determining the reliability and admissibility of documentary hearsay as opposed to testimonial hearsay are set forth in *People v. Winson* (1981) 29 Cal. 3d 711; *People v. Maki* (1985) 39 Cal. 3d 707, and *People v. Arreola* (1994) 7 Cal. 4th 1144; see also *People v. O'Connell* (2003) 107 Cal. App. 4th 1062.) Note that *Crawford v. Washington* (2004) 541 U.S. 36 held that "testimonial hearsay" is inadmissible against an adult criminal defendant. However, Division 3 of the First District Court of Appeal has held that *Crawford* does not apply to adult probation revocation proceedings. (*People v. Johnson* (2004) 121 Cal.App.4th 1409, 1411.)

6. What if the juvenile ward commits a violation of probation which also constitutes a crime – for example, the ward commits an assault or escapes from the juvenile ranch? Any probation violation, including conduct that is inherently criminal in nature, can be alleged in a section 777 notice, filed by either the district attorney or the probation officer. (See I*n re Eddie M.,*

supra., 31 Cal. 4th at 490-502; *In re Emiliano M.* (2003) 31 Cal. 4th 510, 516-517.) Therefore, if a juvenile ward on probation commits a crime (e.g. escapes from the ranch), the government has three options:

a. The district attorney or the probation officer can file a section 777 notice alleging that the ward violated probation by "failing to obey all laws", "escaping from the ranch", or "leaving the ranch without permission". However, in that notice, the prosecutor cannot formally allege a violation of Welfare and Institutions Code section 871. The allegation that the ward violated probation by escaping from the ranch would needed to be proved by a preponderance of the evidence, and reliable hearsay would be admissible. If the prosecution prevails, the ward can be moved into more restrictive custody, but he would not have a new crime on his juvenile record.

b. The district attorney can file a formal section 602 petition alleging the new crime - escaping from a juvenile facility in violation of Welfare and Institutions Code section 871. Under this option, the prosecutor must prove the criminal allegation beyond a reasonable doubt. If the district attorney prevails, the ward has this new crime on his record and his maximum confinement time is increased.

c. The district attorney can file both a formal section 602 petition (alleging the new crime) and a section 777 petition (alleging a probation violation).

B. Petitions for Modification (Welfare and Institutions Code sections 775, 777, and 779)

1. Section 775 invests the juvenile court with continuing jurisdiction over its wards and provides the juvenile court judge with the power to change, modify or set aside any prior order, including a dispositional order. The juvenile court has jurisdiction to hear and determine any prior order, including an order declaring wardship, even though an appeal is pending from that order. (*In re Corey* (1964) 230 Cal. App. 2d 813, 819.)

2. Section 778 and 779 set forth the procedures for petitioning the juvenile court for modification of a previous order, specifically including an order committing the juvenile ward to DJJ. The probation officer, the ward, or "any . . . person having an interest" in the ward may petition the juvenile court to modify an existing order. (Welf. and Inst. Code § 778 [any order]; *Id.*, § 779 [an order committing the ward to the California Department of the Corrections and Rehabilitation, Division of Juvenile Justice ("DJJ")].)

3. If the verified petition alleges facts from which it may be concluded that "the best interests of the minor may be promoted by the proposed change of order," the court must grant the petitioner a hearing. (Welf. and Inst. Code § 778; Cal. Rules of Ct., rule 5.570(e).)

4. The juvenile court must determine whether "changed circumstances" or "new evidence" warrant the modification of the existing order. (Cal. Rules of Ct., rule 5.570(e); *In re Corey* (1964) 230 Cal.App.2d 813, 831.)

5. Again, the allegations need only be proven true a preponderance of the evidence. (Cal. Rules of Ct., rule 5.570(i);

In re Glen J. (1979) 97 Cal.App.3d 981, 987.)

6. As noted, a juvenile ward or his representative can file a "petition for modification" requesting that any dispositional order be modified because of changed circumstances or new evidence. (See Welf.& Inst. Code, § 778) Most significantly, a juvenile ward can file a petition to modify or vacate his commitment to the DJJ. (See Welf. & Inst. Code, §778 and 779) The ward can make this request based on changed circumstances or new evidence. The ward can also allege that he is unlikely to benefit from the education and treatment provided by the DJJ, consistent with Welfare and Institutions Code section 734. (See Welf. & Inst. Code, §§ 734, 779; *In re Antoine D.* (2006) 137 Cal. App. 4th 1314, 1322-1323.)

IV. TERMINATION OF JURISDICTION

A. In most cases, the juvenile court retains jurisdiction over the section 602 ward until the ward is 21 years old: Generally, "[t]he court may retain jurisdiction over any person who is found to be a ward or dependent minor of the juvenile court until the ward or dependent minor attains the age of 21 years." (Welf. and Inst. Code § 607, subd. (a), emphasis added.)

B. However, in some cases, the juvenile court retains jurisdiction until the section 602 ward is 25 years old: If the wardship is based on commission of an enumerated serious felony under subdivision (b) of section 707 ("section 707(b) offense"), and the ward is sent to the DJJ, or to a mental health facility upon a plea of insanity (Welf. and Inst. Code § 702.3), the court may retain jurisdiction until the ward reaches the age of 25 years. (Welf. and Inst. Code § 607, subd. (b) and (d).) However, the court may not terminate jurisdiction, leaving the ward in custody of or under supervision of the DJJ. (Welf. and Inst. Code § 607, subd. (c).)

B. The DJJ maintains jurisdiction over a ward committed to it until the ward reaches the age of 21 years, unless the commitment is based on a section 707(b) offense, in which case, DJJ jurisdiction lasts until age 25. (Welf. and Inst. Code § 1769.)

C. The juvenile court shall not discharge any person from its jurisdiction who has been committed to the DJJ, so long as the person remains under the jurisdiction of the DJJ. (Welf. And Inst. Code § 607, subd. (c). The juvenile court retains jurisdiction even if the ward's commitment to the DJJ is vacated. (*In re Antoine D.*(2006) 137 Cal. App. 4th 1314, 1323.)

D. Notwithstanding the court's general power to retain jurisdiction until these age limits, the juvenile court can dismiss a petition or set aside findings at any time, even after proof beyond a reasonable doubt, in the interest of justice. (Welf. and Inst. Code § 775; § 782.)

E. When a juvenile ward is committed to the DJJ, the juvenile court retains jurisdiction over that ward. However, the juvenile court does not have direct supervision over that ward's rehabilitation. Thus, for example, the juvenile court cannot control the ward's behavior at the DJJ by imposing conditions of probation. (See *In re Allen N.* (2000) 84 Cal. App. 4th 513.)

V. "DIRECT FILES" AND "UNFIT" JUVENILES

A. As an exception to the jurisdiction of the Juvenile Court over those minors who commit criminal offenses, the prosecutor must prosecute a juvenile in adult court for specific enumerated offenses (e.g. capital murder and under certain conditions forcible sex offenses) if the minor is at least 14 years of age or older at the time of the alleged offense, and the minor is alleged to be the actual perpetrator. (Welf. and Inst. Code § 602, subd. (b).) NOTE: an order finding a juvenile unfit for treatment through juvenile court is not an appealable order

(reviewable by extraordinary writ) (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 709)

B. Further, the prosecutor may "direct file" a case in adult criminal court in several situations unless the minor and offense qualify for mandatory adult prosecution under subdivision (b) of section 602:

1. where the minor is 16 years of age or older and

a. is alleged to have committed an offense enumerated in subdivision (b) of section 707 (serious and violent felonies) (Welf. and Inst. Code § 707, subd. (d), para. (1));

b. is alleged to have committed any felony against an elderly or disabled victim (Welf. and Ins. Code § 707, subd. (d), para. (3)) having been previously adjudicated for such an offense;

c. is alleged to have committed a hate crime or a crime to benefit a criminal street gang (Welf. and Inst. Code § 707, subd. (d), para. (3)).

2. and where the minor is at least 14 years of age and

a. it has been alleged the minor personally used a firearm in the commission of the offense (Welf. and Inst. Code § 707, subd. (d), para. (2));

b. it has been alleged the minor committed a 707(b) offense having been previously adjudicated for such an offense, or the offense was allegedly committed to benefit a criminal street gang, or the offense constituted a hate crime, or the alleged victim was elderly or disabled (Welf. and Inst. Code § 707, subd. (d), para. (2)).

C. Finally, the prosecution can seek a "fitness hearing" in two situations:

1. where the minor is 16 years or older, and is alleged to come within subdivision (a) of section 602 based on any offense, except those enumerated in subdivision (b) of section 707 (Welf. and Inst. Code § 707, subd. (a));

2. and where the minor is 14 years or older, and is alleged to come within subdivision (a) of section 602 based on a 707(b) offense (Welf. and Inst. Code § 707, subd. (c)).

D. The procedures applicable to "direct files," fitness hearings and "unfit" juveniles can be found in sections 707, 707.1, 707.2 and 707.4.

VI. APPEALS

A. The initial dispositional order is the "judgment" for purposes of the appeal. (See, *In re Eli F.* (1989) 212 Cal.App.3d 228, 232-233 [a dependency case discussing the genesis of the right to appeal in juvenile cases].) It, and any subsequent "order after judgment" are appealable. (Welf. and Inst. Code § 800, subd. (a); Cal. Rules of Ct., rule 5.585.)

B. An appeal is taken by filing a notice of appeal in the juvenile court within 60 days of the order from which the appeal is taken. (Welf. and Inst. Code § 800.)

C. Although there is no provision for bail for juvenile offenders pending appeal, the juvenile court has discretion to release the ward pending appeal. (Welf. and Inst. Code § 800.)

D. A minor appealing from an order of the juvenile court is entitled to appointment of counsel on appeal. (Welf. and Inst. Code § 800.)