YOUTHFUL OFFENDERS IN ADULT AND JUVENILE COURT

By Jonathan Grossman

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 sentencing. Similar issues can arise with defendants who are developmentally delayed or mentally ill.

1. Police Questioning

In determining whether a police interrogation is coercive in violation of the defendant's Fifth Amendment rights or if there was a voluntary waiver of rights under *Miranda v. Arizona* (1966) 384 U.S. 436, 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 false 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 also 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 invoking any rights under the Fifth or Sixth 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].)

2. Search 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 search their child's room was 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].)

The Fourth Amendment, and maybe the due process clause, applies to school detentions. (*Doe v. Hawaii Dept. of Ed.* (9th Cir. 2003) 334 F.3d 906, 909-910 [should not tape an 8 year-old student's head to a tree for disciplinary reasons].) 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 is truant under Education Code section 48264. (*In re James D.* (1987) 43 Cal.3d 903, 915.) 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; *In re K. S.* (2010) 183 Cal.App.4th 72, 77-83 [a police search of a student at school]; *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, __ [129 S.Ct. 2633, 2641] [can search a student on another student's accusation she possessed prescription-strength ibuprofen]; but see *id.* at p. __ [129 S.Ct. at pp. 2641-2643] [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 Joseph G.* (1995) 32 Cal.App.4th 1735, 1740-1741.) A school can search a

student arriving on campus late. (*In re Sean A.* (2010) 191 Cal.App.4th 182, 188-190.) 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].)

3. Sentencing

a. Juvenile strikes

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 be considered to 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].) 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 qualifies because Pen. Code, § 288 is listed] with an offense listed in section 707 but is adjudicated to be a misdemeanor is not a section 707 offense. (*In re Sim J.* (1995) 38 Cal.App.4th 94, 96-99.)

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.)

b. Cruel and unusual punishment

The Eighth Amendment prohibits the death penalty for people who committed the

capital crime as minors. (*Roper v. Simmons* (2005) 543 U.S. 551, 568.)

The Eighth Amendment prohibits the execution of retarded people. (*Atkins v. Virginia* (2002) 536 U.S. 304, 306.)

Life without parole (LWOP) for a minor committing a non-homicide offense violated the Eighth Amendment. (*Graham v. Florida* (2010) 560 U.S. __ [130 S.Ct. 2011, 2023-2033].) LWOP for kidnapping for ransom by a defendant less than 16 years old was unconstitutional as applied. (*In re Nunez* (2009) 173 Cal.App.4th 709, 734-738.)

The California Supreme Court is considering whether a sentence of more than 100 years to life for committing a non-homicide offense violates the Eighth Amendment. (*People v. Caballero* (2011) 191 Cal.App.4th 1248, review granted Apr. 13, 2011, S190647.) The United States Supreme Court is currently considering whether LWOP for a minor convicted of homicide in adult court violates the Eighth Amendment. (*Miller v. State* (Ala. Ct. Cr. App. 2010) 63 So.3d 676, cert. granted sub nom. *Miller v. Alabama,* Nov. 7, 2011, No. 10-9646; *Jackson v. Norris* (2011) 2011 Ark. 49, cert. granted sub nom. *Jackson v. Hobbs,* Nov. 7, 2011, No. 10-9647.)

25 years to life for a minor convicted of murder can be cruel or unusual punishment under the California Constitution. (*People v. Dillon* (1983) 34 Cal.3d 441.) But most often courts do not find a constitutional violation. (See, e.g., *People v. Murray* (2012) 203 Cal.App.4th 277, 282-284 [LWOP for multiple murder special circumstance]; *People v. Blackwell* (2011) 202 Cal.App.4th 144, 155-159 [LWOP]; *People v. Johnson* (2010) 183 Cal.App.4th 253, 286-299 [LWOP for robbery murder with special circumstances for a getaway driver]; *People v. Em* (2009) 171 Cal.App.4th 964, 972-976 [50 years to life for aiding in robbery murder]; *People v. Demirdjian* (2006) 144 Cal.App.4th 10, 13-16 [50 years]; *People v. Guinn* (1994) 28 Cal.App.4th 1130, 1147.)

c. Immaturity as a mitigating factor

"[A]s any parent knows and as the scientific and sociological studies . . . tend to confirm, '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.' [Citations.]" (*Roper v. Simmons* (2005) 543 U.S. 551, 569.) "[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly 'during the formative years of childhood and adolescence, minors often lack the

experience, perspective, and judgment' expected of adults." (*Eddings v. Oklahoma* (1982) 455 U.S. 104, 115, internal quotation marks omitted.)

"As compared to adults, juveniles have a lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed." (*Graham v. Florida* (2010) 560 U.S. __ [130 S.Ct. 2011, 2026], internal quotation marks omitted; *Roper, supra*, 543 U.S. at p. 569.) " '[I]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.' " (*Ibid*., quoting *Roper, supra,* at p. 573.) Juveniles "lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions . . . ." (*Johnson v. Texas* (1993) 509 U.S. 350, 367.)

Youth as a mitigating factor has been successfully raised in habeas petitions seeking reversal of the denial of parole for prisoners who murdered when they were young adults. (See, e.g., *In re Rico* (2009) 171 Cal.App.4th 659, 675-686; *In re Baker* (2007) 151 Cal.App.4th 346, 376-377; *In re Elkins* (2006) 144 Cal.App.4th 475, 495-502; *Rosenkrantz v. Marshall* (C.D. Cal. 2006) 444 F.Supp.2d 1063, 1083-1086.)

Mental illness is a mitigating factor: "[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse. This emphasis on culpability in sentencing decisions has long been reflected in Anglo-American jurisprudence." (*California v. Brown* (1987) 479 U.S. 538, 545 (concurring opn. of O'Connor, J.); see also *Zant v. Stephens* (1976) 462 U.S. 862, 885 [mental illness may militate in favor of a lesser penalty].)

d. Conditions of probation

A probation condition should expressly state the defendant act with knowledge or willfulness. (See, e.g., *In re Victor L.* (2010) 182 Cal.App.4th 902, 931; *People v. Leon* (2010) 181 Cal.App.4th 943, 954; *In re Vincent G.* (2008) 162 Cal.App.4th 238, 247-248; *People v. Lopez* (1998) 66 Cal.App.4th 615, 634; cf. *People v. Barajas* (2011) 198 Cal.App.4th 748, 756-760 [condition to stay away from areas defendant knows or was informed by the probation officer was permissible]; but see *People v. Kim* (2011) 193 Cal.App.4th 836, 843-847 [not own guns or ammunition impliedly requires knowledge].)

The knowledge requirements of probation conditions "should not be left to

implication." (*People v. Garcia* (1993) 19 Cal.App.4th 97, 102.) But the Third District now "construes every probation condition prescribing a petitioner's presence, possession, association, or similar action to require the action to be taken knowingly." (*People v. Patel* (2011) 196 Cal.App.4th 956, 959.) Unlike the Third District, the Fourth District, Division One, will continue to modify probation conditions to require knowledge. (*People v. Moses* (2011) 199 Cal.App.4th 374, 381.)

The term "gang" is vague and should be specified to be a a criminal street gang. (*In re H.C.* (2009) 175 Cal.App.4th 1067, 1070-1072.)

A curfew order for gang members, even those who were adults, was proper. (*People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 889-891.) The court can prohibit associating with other gang members in public places, even if the other person was a family member. (*Id.* at pp. 885-886.)

An order to stay 150 feet away from a school was unreasonable. (*People v. Barajas* (2011) 198 Cal.App.4th 748, 760-762 ["adjacent" might be vague but 50 feet is permissible]; see *In re D.G*. (2010) 187 Cal.App.4th 47, 54.)

An order to stay away from people named by the probation officer was sufficient clear. (*In re Ramon M.* (2009) 178 Cal.App.4th 665, 677; but see *People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1357 [condition to stay away from anyone the probation officer designates was vague and overbroad because it did not require knowledge or give the probation officer guidance of whom to restrict].)

The court can prohibit gang members from being in court proceeding where other gang members are present or in proceedings concerning gangs unless the person is a defendant, party, witness, or victim. (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153-1158 [current condition was overbroad because it interfered with right as victim to be in court]; *People v. Leon* (2010) 181 Cal.App.4th 943, 952-954 [cannot ban a defendant from the entire courthouse or from proceedings which were not gang related]; *In re Laylah K.* (1991) 229 Cal.App.3d 1496; but see *People v. Perez* (2009) 176 Cal.App.4th 380, 383-386 [condition overbroad and failed the *Lent* test].)

A requirement to leave the country or a condition not to return to the United States was illegal. (*In re James C.* (2008) 165 Cal.App.4th 1198; *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084.) But a ban on re-entering the United States except for school, medical, work, or family purposes was permissible, though the minor was a United States citizen, when he lived and went to school in Tijuana and was convicted of smuggling. (*Alex O. v. Superior Court* (2009) 174 Cal.App.4th 1176, 1181-1183.) A ban on traveling out of

the country was illegal. (*People v. Smith* (2007) 152 Cal.App.4th 1245, 1251-1252; *In re Daniel R.* (2006) 144 Cal.App.4th 1, 6-8.)

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.)

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 protection in the Bill

of Rights apply to minors in juvenile court through the due process clause of the Fourteenth Amendment. (*In re Gault* (1966) 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. (*In re Gault* (1966) 387 U.S. 1, 44-56.)

- The Sixth Amendment right to counsel. (*In re Gault* (1966) 387 U.S. 1, 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 *In re Gault* (1966) 387 U.S. 1, 56-57.)

- The Sixth Amendment right to confrontation and cross-examination. (*In re Gault* (1966) 387 U.S. 1, 56-57.)

- Not the Sixth Amendment right to an indictment. (*Kent v. United States* (1966) 383 U.S. 541, 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. (*In re Gault* (1966) 387 U.S. 1, 31-34.)

- Not the Eighth Amendment right to bail. (*Kent v. United States* (1966) 383 U.S. 541, 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 v. United States* (1966) 383 U.S.

541, 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. (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 718; see *Kent v. United States* (1966) 383 U.S. 541, 557; *Manduley v. Superior Court* (2002) 27 Cal.4th 567, 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

There are three statutory schemes for placing a minor on informal supervision 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.)

3. Fitness to be in Juvenile Court

Generally, a person who is accused of committing a crime before he or she was 18 years old is entitled to be tried in juvenile court, though there are numerous exceptions. (See Welf. & Inst. Code, §§ 602, 707; Pen. Code, §§ 1170.17, 1170.19.) A defendant is properly tried as an adult when he commits a continuing crime that started before his 18th birthday but continued afterward. (*People v. Quinoz* (2007) 155 Cal.App.4th 1420, 1426-1430.)

A defendant who reveals his minority after arraignment but before trial is entitled to transfer of the matter to the juvenile court. (*In re Jermaine B.* (1999) 69 Cal.App.4th 634, 640-641.)

At a hearing to determine if the minor is fit to be adjudicated in juvenile court, the court may presume the minor committed the alleged offense. (See *Edsel P. v. Superior Court* (1985) 165 Cal.App.3d 763, 768.) However, the minor can demand the prosecution show there is a prima facie case to support the allegation before the presumption would apply. (*Edsel P., supra,* 165 Cal.App.3d 763, at pp. 786-787.)

The decision whether a minor is fit for juvenile court adjudication cannot 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.)

4. 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. (Cal. Rules of Court, rule 5.645(d); *Timothy J., supra,* 150 Cal.App.4th at pp. 857-858; see also *Tyrone B. v. Superior Court* (2008) 164 Cal.App.4th 227, 230-231; *James H. v. Superior Court* (1978) 77 Cal.App.3d 169, 172-178.) The right under Penal Code section 1369 to a developmental disability evaluation did not apply to juveniles and is not required by due process. (*In re Christopher F.* (2011) 184 Cal.App.4th 462, 470-471.) This case appears to be superseded by amendments to Welfare and Institutions Code section 709, effective June 30, 2011. (See Stats. 2011, ch. 37, § 3, ch. 471, § 4.) A minor 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. (*Timothy J., supra,* 150 Cal.App.4th at pp. 856-862.)

5. 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.)

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 the same. (*In re Maurice E.* (2005) 132 Cal.App.3d 474, 480.)

6. 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. (*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.)

7. Dispositional Hearings

a. Generally

The appealable judgment in juvenile cases is the dispositional order. (*In re Gerald B.* (1980) 105 Cal.App.3d 119, 123.)

The court must affirmatively declare if wobblers are felonies or misdemeanors. (Welf. & Inst. Code, § 702; *In re Manzy W.* (1997) 14 Cal.4th 1199 [remand for new dispositional hearing]; *In re Kenneth H.* (1983) 33 Cal.3d 616, 619; *In re Ricky H.* (1981) 30 Cal.3d 176, 183; *In re Cesar V.* (2011) 192 Cal.App.4th 989, 1000; *In re Ramon M.* (2009) 178 Cal.App.4th 665, 675; *In re Eduardo D.* (2000) 81 Cal.App.4th 545, overruled on other grounds in *In re Jesus O.* (2007) 40 Cal.4th 859, 867; *In re Jorge Q.* (1997) 54 Cal.App.4th 223.)

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.)

The court security fee does not apply to juvenile cases. (*Egar v. Superior Court* (2004) 120 Cal.App.4th 1306, 1309.)

The maximum confinement time under Welfare and Institutions Code section 726, subdivision (c) is set by determining the maximum possible sentence for an adult. (*In re Eddie L.* (2009) 175 Cal.App.4th 809, 814-815; *In re Christopher B.* (2007) 156 Cal.App.4th 1557, 1564-1565.) Add one-third of the maximum term for consecutive misdemeanor sentences. (*In re Eric J.* (1979) 25 Cal.3d 522, 537-538; accord, *In re Deborah C.* (1981) 30 Cal.3d 125, 140; *In re Claude J.* (1990) 217 Cal.App.3d 760, 764; *In re Fausto* (1985) 175 Cal.App.3d 909, 911-912.)

The court does not calculate the maximum confinement time when the minor is placed at home. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

If the minor is on probation when he 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 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., supra,* 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., supra,* at pp. 1505-1506.) The minor is not entitled to conduct credits. (*In re Ricky H.* (1981) 30 Cal.3d 176, 182-190.)

b. Conditions of probation

The rules concerning juvenile probation is governed by Welfare and Institutions Code section 730 et seq. The court has broader discretion in imposing conditions of probation for juveniles than for adults. (*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; *In re E.O.* (2010) 188 Cal.App.4th 1149, 1152-1153; *In re D.G.* (2010) 187 Cal.App.4th 47, 52-53.) Though the juvenile court's discretion is broader, the principle in *People v. Lent* (1975) 15 Cal.3d 481 that a probation condition must be reasonable applies to juvenile cases. (See, e.g., *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1035.)

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.)

If the only offense is a misdemeanor, punishable only by a fine, the court can place the minor on probation but cannot confine him. (*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].)

c. Department of Juvenile Justice commitment

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). (See http://www.prisonlaw.com/pdfs/OSM20Full.pdf (as of Apr. 3, 2012).

"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 error to commit the minor to DJJ solely because of the gravity of the offense. (See *Lawrence B.* (1976) 61 Cal.App.3d 671, 674, fn. 2, disapproved on other grounds in *In Re John H.* (1978) 21 Cal.3d 18, 24; but see *In re Carl N.* (2008) 160 Cal.App.4th 423, 433-435 [CYA commitment is appropriate when every other placement 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].) The court can "suspend" a DJJ commitment, but it can not execute the order and send the minor there without a hearing or new reasons. (*In re Jose T.* (2010) 191 Cal.App.4th 1142, 1146-1152; *In re Domanic B.* (1994) 23 Cal.App.4th 366.)

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 crime listed under Penal Code section 290.008(c). (*In re C.H.* 53 Cal.4th 94, 102; *In re G.C.* (2007) 157 Cal.App.4th 405, 409-410.) 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.) 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 the new 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. (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1467-1469.)

In a commitment to DJJ, the court can limit the time of physical confinement. (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.) Presume 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.) It is not clear if the time set must be consistent with the determinate sentencing law. (Compare with *In re Joseph M.* (2007) 150 Cal.App.4th 889, 896-897 with *In re A.G.* (2011) 193 Cal.App.4th 791, 799-806; *In re R.O.* (2009) 176 Cal.App.4th 1493, 1499; *In re H.D.* (2009) 174 Cal.App.4th 468, 776-779.) This provision does not apply to 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.)

8. Violations of Probation

After Proposition 21 (Prim. Elec. (Mar. 7, 2000)), the standard of proof is the preponderance of the evidence. (*In re Eddie M.* (2003) 31 Cal.4th 480, 508.) After Proposition 21, a violation of probation can be based on criminal conduct. (*In re Emiliano M.* (2003) 31 Cal.4th 510, 516; *Eddie M., supra,* 31 Cal.4th at p. 502.)

9. Supplemental Petitions

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.)

10. Transfers

The dispositional 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 dispositional hearing in the county to where the case has been transferred.