

**DELINQUENCY
LEGAL UPDATE**

**Beyond the Bench
2012**

Judge Kurt E. Kumli

UPDATE ON 2011 DELINQUENCY CASES¹

Jeff Bryant, Deputy Attorney General

New Juvenile Cases.

Supreme Court avoids question whether school interview of suspected child abuse victim is a Fourth Amendment seizure but vacates Ninth Circuit opinion to that effect. *Camreta v. Greene* (2011) 564 U.S. ____ [131 S.Ct. 2020; 179 L.Ed.2d 1118].

Facts: Nine-year-old S's "father" (F) was arrested for sexually abusing an unrelated child. That child's parents told police they suspected F had molested S. The police informed the Department of Human Services, who assigned Child Protective Services worker Camreta to investigate. Several days later Camreta went to S's school accompanied by Deputy Alford and interviewed her. They did not have a warrant or parental consent. S first denied any sexual abuse had occurred, but eventually told Camreta she had been abused. The father was tried for sexual abuse, but the jury hung, and later the charges were dismissed. The mother sued Camreta and Alford on behalf of herself and S, alleging the interview had been an unreasonable seizure. The district court granted summary judgment for Camreta and the deputy based upon qualified immunity. The Ninth Circuit first addressed the Fourth Amendment question for the later "guidance" to authorities, finding Camreta and Alford improperly "seized" S in the absence of a warrant, court order, exigent circumstances, or parental consent. However, the court found that both men had qualified immunity because their actions had not violated clearly established law. While the Ninth Circuit found in their favor, Camreta and Alford sought review on the Fourth Amendment question.

Held: (1) Despite the judgment in their favor, Camreta and Alford could properly seek review of the Fourth Amendment ruling, especially where, as here, the ruling would have a prospective effect on Camreta and other interested parties; however (2), the case was moot because S had moved to Florida and would soon turn 18; and (3) since defendants' Fourth Amendment claims could not be adjudicated by the Supreme Court because of mootness, the Court vacated that part of the Ninth Circuit's opinion holding that the interview was a Fourth Amendment seizure.

¹ Unspecified statutory references are to the Welfare and Institutions Code. Rule references are to the California Rules of Court.

Minor's age relevant to *Miranda* determination. *J.D.B. v. North Carolina* (2011) 564 U.S. ____ [131 S.Ct. 2394, 180 L.Ed.2d 310].

Facts: Police stopped and questioned 13-year-old M, a seventh-grade student, after he was observed behind one of two burglarized residences. Five days later, a camera stolen in one of the burglaries was found at M's school. M had been observed possessing it. A uniformed school resources officer took M from his classroom to a conference room where, in a closed-door environment, police and school administrators questioned him for over 30 minutes. Initially, they did not advise M of his *Miranda* rights, that he could call his grandmother (his legal guardian), or that he was free to leave. Initially M denied involvement. He later confessed after school officials urged him to tell the truth and the detective told him about the possibility of pre-jurisdiction detention. After he confessed, the investigating detective advised the child that he could refuse to answer questions and was free to leave. At that point, the child indicated that he understood, and then provided further details of the offense, including the location of other stolen property. He wrote out a statement. He was then allowed to leave - - but was later charged with the burglaries.

The juvenile court denied M's motion to suppress premised on both *Miranda* and voluntariness grounds and ultimately sustained the petition. The state appellate courts affirmed that denial, with the intermediate appellate court holding that age is not a consideration in making the objective determination whether M was in custody for the purposes of *Miranda*.

Held: "It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child's age properly informs the [objective reasonableness] *Miranda* custody analysis [where the child's age is known]."

Notes: (1) The majority opinion noted that recent studies show a "heightened risk of false confessions from youth"; and (2) repeats language that "[d]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."

Intent to cause fire not necessary to establish malice mens rea for arson. *In re V.V.* (2011) 51 Cal.4th 1020.

Facts: V.V., J.H. (both 17) and a friend climbed up into a wooded area behind a Pasadena neighborhood. They lit a large firecracker, which J.H. threw into the brush-covered hillside. The firecracker exploded, causing a five-acre fire. Shortly after observing the start of the fire, a resident saw the youths running from the source of the explosion. Another neighbor heard youths laughing, yelling and “having a good time.” He heard the youths exclaim, “‘Wow,’ ‘Look,’ ‘Did you see that,’ and ‘Fire.’” When that neighbor went outside he saw the youths laughing and “‘high-fiving.” When he asked what the youths were doing, they fled. Responding officers detained the youths. V.V. had a lighter and a large “cherry bomb.” He said, “That’s what caused the fire.” He admitted he had caused the fire by setting off the firecracker. An officer saw what appeared to be gunpowder on J.H.’s fingers.

When interviewed, V.V. and J.H. both admitted having the idea to light a firecracker while on the hill. Ms told the police that J.H. held a firecracker, V.V. lit it with J.H.’s lighter, and J.H. threw it. V.V. stated they tried to throw the firecracker into a green area, which he did not believe would ignite. He said he lit the firecracker “[j]ust to make noise.” J.H. said he told V.V. he was going to throw the firecracker into a concrete drainage area. The fire’s point of origin had been below the minors and the concrete area was even further down the hill, 150 yards below the fire’s point of origin.

The juvenile court found the minors did not intend to set the hill on fire, but had intentionally lit and threw the firecracker. The court sustained an arson allegation, concluding the necessary mens rea was the intent to light the firecracker.

Held: (1) Arson is a general intent crime; the specific intent to set a fire to burn, or caused to be burned the structure or land is not an element of arson even though the statute requires a “malicious” act; (2) maliciousness in the context of the arson statute only requires an intent to do an unlawful act without justification, excuse, or mitigating circumstances; and (3) the fact they did not intend to set the fire and tried to avoid setting a fire was irrelevant to establishment of the mens rea since they knew their actions created a substantial risk that fire would result.

Note: Summarizes substantial evidence standard of review in delinquency cases.

Court may not automatically impose suspended DJJ commitment. *In re Jose T.* (2011) 191 Cal.App.4th 1412

Facts: In 2009 M admitted a DJJ-eligible offense (felony assault). The court imposed a suspended DJJ commitment and placed M at Rite of Passage (ROP). M absconded and subsequently admitted a section 777 notice. At disposition the court was amenable to probation's recommendation to return M to ROP until the prosecutor pointed out the suspended DJJ commitment. The court then stated: "Well, I think that's where his going then, . . . I'm sorry to say that. I usually keep my promises."

Held: (1) A stayed DJJ commitment is "generally valid unless lifting of the stay is automatic upon violation of probation" (disagreeing with *In re Ronnie P.* (1992) 10 Cal.App.4th 1079, but agreeing with post *Ronnie P.* case on this point); (2) before deciding whether to impose a suspended commitment, the court must reassess *on the record* whether a DJJ commitment is necessary, taking into consideration all present relevant factors (including M's failure to heed the court's warning in imposing the suspended commitment); and (3) the court abused its discretion since it did not exercise that discretion when it "automatically" executed the suspended commitment.

Note: Provides an informative "script" for what would constitute a proper present analysis of circumstances.

A butter knife was not a deadly weapon. *In re Brandon T.* (2011) 191 Cal.App.4th 1491

Facts: After the two earlier had a verbal argument, M approached V from behind and put his arm around V's neck. Two other males also approached V from behind, pushed him to the ground, and restrained him, face up. M stood over V with a "long" knife." The knife had a 3-1/4 inch blade with a rounded end and "slight serrations on one side." M "touched" the knife to V's cheek and throat. He moved the knife up and down V's cheek "in a slashing motion." Twice M tried to cut V's face with the knife. He then tried to cut V's throat, but the knife handle broke off. V testified M was trying to cut him, but the knife would not cut. The school resources police officer observed a small scratch on V's face. The evidence characterized the knife as a butter knife. The court sustained an allegation of assault with a deadly weapon.

Held: (1) While certain items are deadly weapons per se, others are deadly weapons when they are used in a manner which is capable of producing or likely to produce death or great bodily injury; (2) this knife was not per se a deadly weapon; (3) there is insufficient evidence to support a finding that M used it—or that anyone could use it—in a manner capable of producing great bodily injury since it did not draw blood, and broke when M tried to cut V. The DCA reduced the finding to simple assault.

Court must consider DEJ suitability despite suppression motion. *In re Joshua S.* (2011) 192 Cal.App.4th 670

Circumstances: A petition was filed in San Francisco alleging, among other things, possession of crack for sale. The minor was deemed DEJ eligible. Two weeks later, a petition was filed in Contra Costa alleging resisting an executive officer (Penal Code sec. 69 as a felony) and the child was again deemed DEJ eligible. M admitted two misdemeanor counts of resisting arrest (PC 148(a)(1)) and the PC 69 felony was dismissed. Wardship was established and M was placed home on probation.

The day after wardship was established, the minor denied the allegations of the SF petition. The matter was continued a number of times and, approximately four months after petition was originally denied, a motion to suppress was filed on the child's behalf. Two months later, that motion was denied. M then admitted to being an accessory to a felony (as well as another misd. charge) and the matter was transferred to Contra Costa County for disposition.

Approximately a month later, a petition was filed in Alameda County alleging possession of marijuana for sale, transportation of marijuana, and carrying a loaded firearm. M was again deemed to be DEJ eligible. Again, a motion to suppress was filed but before it was heard M admitted one count of possessing concentrated cannabis (the other charges were dismissed) and the matter was transferred to Contra Costa County for disposition. In Contra Costa County, the San Francisco and Alameda County petitions were consolidated for disposition. The Contra Costa County court imposed a camp commitment. On appeal, M claimed the court erred by failing to "exercise its mandatory discretion" (????) to determine whether to grant DEJ on the SF and Alameda County petitions.

Held: (1) The DEJ procedures reflect "a strong preference for rehabilitation of first-time nonviolent juvenile offenders" and the court may only deny DEJ where "the minor would not benefit from education, treatment, and rehabilitation" rather than a more restrictive commitment; (2) if the court does not summarily grant DEJ, it must hold a suitability hearing and exercise its discretion whether to grant DEJ; (3) a motion to suppress and decision thereon does not excuse the court from holding a DEJ suitability hearing; and (4) M is not required to admit the original charges before DEJ may be considered since he did not "contest the allegations against him" but accepted a negotiated admission to reduce charges (§ 791 "does not specify the petition cannot be amended").

Note: In regard to the final holding, while section 791 does not prohibit a reduction in charges prior to a DEJ determination, the holding is contrary to the plain language of section 791(a)(3).

Restitution may be the cost of repair and not actual value. *In re Alexander A.* (2011) 192 Cal.App.4th 847

Facts : Alexander damaged a school mural and a car. As a result of vandalism, the car was inoperable. M admitted felony vandalism. At the restitution hearing, the court ordered restitution to the school in the amount of \$235, the cost to paint over the mural. The owner of the car sought \$8,220 - - the estimated cost of repairing the car. The Blue Book value of the vehicle was between \$1,800 and \$5,300. V wanted to keep the car. The court ordered restitution in the amount of the cost of repair. No appeal was taken by the People. On M's appeal, he claimed the amount was limited to actual present value of the car. .

Held: (1) juvenile restitution also takes into account the goals of providing rehabilitation and to deter future criminality; (2) and following *In re Dina V.* (2007) 151 Cal.App.4th 486, and rejecting the contrary holding in *People v. Yanez* (2005) 38 Cal.App.4th 1622 (amount determined applying tort principles), the court may order restitution in the amount necessary to repair; (3) in determining restitution, the court may consider the impact of the restitution order on the victim, as long as the order is consistent with the goals of the Juvenile Court law (help M understand consequences of his actions); (4) in some extreme cases, the cost of repair over cost of replacement "is not rational in that it results in a windfall to the victim and does not serve a rehabilitative purpose"; and (4) here the school district and the prosecutor stipulated to an amount of restitution to be paid the district, and therefore, any claim regarding the actual amount of loss suffered by the school district is forfeited.

Notes: Boilerplate regarding juvenile restitution.

Gang enhancement may be charged if Ms publicly display gang signs. *In re Cesar V.* (2011) 192 Cal.App.4th 989

Facts : A police officer in civilian clothes driving an unmarked vehicle, observed minors making gang signs as their attention was directed towards sluggish traffic. It appeared that the minors' demonstrations were becoming increasingly "aggressive." Although the officer could not determine which car the was the object of the gestures he believed they were moving in the direction of challenging somebody. Subsequent to their arrest, the minors told the officer that someone in a car had "thrown" them a Norteno gang sign. They admitted making Sureno gang signs and admitted association with a Sureno gang. One minor indicated he had to "stand up" for his friends and that the area was one where both Surenos and Nortenos could be present.

Petitions were filed alleging violations of 415(1) PC which could be charged as a felony or misdemeanor because it was alleged that the offenses which committed at the direction of, furtherance of, or to benefit a criminal street gang (pursuant to 186.22(d) PC).

At the JH, a gang expert testified that a common response to a gang sign from rival gang members is violence, and there had been no other reasons for the display of gang signs by minors other than to challenge to the rival group to fight. The Sureno gang would benefit from the challenge in that it would further the violent reputation of that Sureno gang. The court sustained the petition. On appeal Ms claimed there was insufficient evidence to support the substantive charge and the gang enhancement.

Held: (1) The juvenile court could disbelieve that Ms were responding to a challenge to fight, but initiated the challenge; (2) Penal Code section 415(1) does not require a specific intent to cause a fight; (3) a challenge to fight is prohibited since it may provoke a violent response; (4) in regard to the gang enhancement, the prosecutor was not required to prove what criminal conduct Ms sought to advance, there was substantial evidence of the specific intent to benefit a gang by advancing the gang's violent reputation; and (5) the case must be remanded for a declaration as to felony or misdemeanor status.

Notes: Sufficiency of the evidence boilerplate.

Intoxicated M grabbing steering wheel of moving car causing it to swerve committed DUII. *In re F.H.* (2011) 192 Cal.App.4th 1465

Facts: M was intoxicated while the front seat passenger in a car. While the car was moving, she got into an argument with the driver, grabbed the steering wheel causing it to swerve and crash, causing injury. A PAS test (preliminary alcohol screening) test showed her BAC was over .08 %. A blood test obtained three hours later indicated a .10 % BAC. The court sustained allegations of DUII causing injury and driving with a BAC of .08% or greater causing injury. On appeal M she had not been driving the car.

Held: (1) A driver is one who either drives or has actual physical control of a vehicle; and (2) by grabbing the wheel and causing the car to change direction and crash, M exercised physical control.

Court may set DJJ term of physical confinement at less than the DSL mitigated term. *In re A.P.G.* (2011) 193 Cal.App.4th 791

Facts: Minor was robbed at gunpoint. He summoned his parents and they all went looking for the robber. Minor saw a group of four men he identified to his parents as the ones who had robbed him. When “V” attempted to escape to a park, he was cut off by the car. M’s father (F) shot V twice. V continued to run, firing back in the direction of the car. F ran over V. As V lay on the ground M got out of the car, walked over, and shot V from a distance of eight feet. As M returned to the car, F got out, yelling to M, “Kill him” or “Shoot the n” F then shot V again.

The court sustained allegations of assault with a deadly weapon and attempted voluntary manslaughter. The minor was committed to DJJ. At disposition, relying on *In re Joseph M.* (2007) 150 Cal.App.4th 889, the court concluded it could not set a section 731(c) term of DJJ physical confinement less than the lower DSL base term for those offenses and while intending to set that term at DSL mitigated term, actually imposed a DJJ term less than the DSL lower term.

Held: (1) The juvenile court erred by basing the DSL term on the attempted voluntary manslaughter count since the assault has a greater mitigated base term; (2) while the Legislature set determinative terms for adults pursuant to the DSL, the Legislature also intended that the section 726(c) maximum term of confinement for juveniles be set at the DSL upper term (?), plus enhancements if any; (3) however, with the addition of section 731(c) the court may set the section 731(c) term at less than and “independently” of the section 726(c) maximum; and (5) the plain language of section 731(c), which does not reference the DSL, therefore affords the court the discretion to set the section 731(c) term at less than the DSL minimum term.

Note: The DSL triad “can provide guidance . . . and . . . ‘the court’s discretion . . . is circumscribed by the rules of court, and perhaps by the types of materials listed in Penal Code section 1170.1, subdivision (b) (i.e., probation reports, victim impact statements).”

Adult procedures for determination of competency not applicable to delinquency proceedings. *In re Christopher F.* (2011) 194 Cal.App.4th 462

Facts: Christopher, a special education student, was charged with making criminal threats directed at his high school dean. Prior to adjudication, Christopher's counsel declared a doubt as to his mental competence. The court appointed a mental health expert from the USC Institute of Psychiatry - - and not the regional center director. Minors's expert, a psychologist who had formerly worked for the regional center, believed Christopher had "borderline" intelligence and that his language functioning was substantially limited. He opined that level of functioning would severely limit M's ability to assist his attorney in preparing a defense. The court rejected the psychologist's opinion and found Christopher to be competent. The court sustained the petition and established wardship.

On appeal M claimed:

(1) the court erred by not appointing the regional center director to conduct the evaluation in accord with Penal Code section 1369(a); and

(2) there was insufficient evidence to establish competency.

Held: (1) Penal Code section 1369(a) does not apply to juvenile proceedings;

(2) Due Process does not require reference to Penal Code section 1369(a) as long as the appointed expert is familiar with developmental disabilities (*see also new § 709(b)*);

(3) rule 5.645(d) governs;

(4) since 5.645(d) does not require appointment of the regional director, the court did not err in failing to appoint the director;

(5) the traditional adult presumption of competency does not apply in delinquency cases (but see new § 709(b) ["If the minor is found to be incompetent by a preponderance of the evidence"]); and

(6) the evidence was sufficient to support the court's determination of competency .

Notes: (1) A juvenile must have the same competency as would an adult: "*Does the individual have the sufficient present ability to consult with [counsel] with a reasonable degree of rational understanding and a rational, as well as a factual, understanding of the proceedings?*"; and (2) the court uses the traditional, adult criminal and juvenile delinquency standard to determine competency; and (3) new section 709 allows the court to appoint an expert in possibly developmentally-compromised circumstances .

Twelve plus hour interrogation of foreign-born, noncriminally-sophisticated 17 year old violated *Miranda* and was involuntary confession. *Dood v. Ryan* (9th Cir. 2011) 649 F.3d 986, cert den. Oct. 11, 2011, No. 11-175, ___ U.S. ___ [2011 U.S. LEXIS 7217; 80 U.S.L.W. 3219].

Facts: D, 17, an immigrant, and three other persons broke into a Buddhist temple and executed nine monks and other residents to avoid any witnesses. They ransacked the temple and took property. After being identified as a possible suspect, D voluntarily went to the police station for an interview. Two investigators started the interview. When asked if he had heard of *Miranda* warnings, D said no. Using an admonishment form, the detectives ad-libbed those warnings, qualifying those warnings, telling D the warnings were a formality and technical, “not meant to scare” him and he should not take those warnings “out of context.” He was told the warnings were for the “benefit” of both he and the police. Essentially D was told that he did not need a lawyer if he was not culpable.

A 12-1/2 hour interview lasted throughout the night. D repeatedly denied involvement. The detectives told D he was required to tell the truth and repeatedly told him to cooperate. They repeatedly accused D of lying and told him “you have to tell us. You have to.” D admitted having the rifle that was used to kill the victims, but claimed he had returned it prior to the murders. Additional detectives joined in interrogation. In the middle of the night, D stopped answering questions and looked at the floor as the same questions were repeated. A detective used D’s status as a member of the ROTC and his connection to his family to urge D to confess. After six more hours, D admitted involvement. Thirty minutes later, after continued questioning, D told the detectives he and three others had committed the murders.

D was convicted of murder as an adult (which is why D and not M). Arizona courts found that *Miranda* had been complied with and that D’s confession was voluntary. The federal district court agreed. The Ninth Circuit disagreed. *The Supreme Court reversed, telling the Ninth Circuit to review to the case in light of its precedent which had approved of substantial compliance with Miranda.* On remand, nine circuit judges continued to hold the confession had been involuntary, and eight ruled *Miranda* has been violated.

Held: (1) the detective’s *Miranda* warnings were “far from” clear and understandable; (2) the advisement could lead D to believe he only had a right to counsel if he was guilty; (3) the form of the advisements denigrated their importance; (4) the confession was involuntary since D’s will was “overborne” under the totality of the circumstances standard; (5) “the fact [D] was a juvenile is of critical importance” in determining voluntariness; (6) D’s sleep deprivation was relevant; (7) so was the fact that D was an unsophisticated youth.

Gang expert's opinion regarding specific intent must have factual support. *In re Daniel C.* (2011) 195 Cal.App.4th 1350 (request for depub. den.).

Facts: M and two others entered a supermarket around midnight. The three paced around inside the market. They all wore red clothing. After the other two left the store, M attempted to steal a bottle of Jack Daniels. Outside, one of M's companions started their vehicle. M was confronted by an employee at the door, attempted to flee. Unable to escape, M hit the employee with a broken bottle, causing a head wound. M then got into the waiting pickup and all fled. At the juris hearing, there was no evidence that the three identified themselves as gang members while in the store - - or that employees knew of their gang status. When officers stopped the pickup, it was occupied by M.. A fourth person was driving. All four were wearing red. Officers found two crowbars and an 18-inch baseball bat in the vehicle.

At the JH, a gang expert testified he knew two of M's companions, one was an active Norteno gang member and the other a Norteno affiliate. The expert did not personally know M, but he related three specific instances between 2007 and 2009 involving M, which the expert considered gang-related activity. On that basis he believed M was actively involved in the Norteno gang. Based upon the gang affiliation of M and two others in the pickup, that the pickup contained the crowbars and bat, that all three individuals wore red, that robberies are violent crimes the commission of which earns a gang respect and intimidates others, and according to the expert, the three coordinated their activities, the expert opined M committed the robbery in association with and for the benefit of the gang.

M testified he got a ride when the driver saw him and that there was mention of robbery. M said he stole the Jack Daniels on impulse, after entering the store to use the bathroom. He denied gang affiliation. Relying upon the evidence at the trial and M's juvenile court file, the court believed M was a Norteno affiliate but that the robbery had not been planned. The court sustained a robbery with a gang allegation, finding the entry into the market was done in concert and that M "knew full well that he was involved in gang related activity . . . when he went in there."

Held: (1) There was sufficient evidence to support the conclusion M was a gang affiliate; (2) there was no evidence the three committed any crime for the benefit of a gang or that the robbery (a violent felony) was planned; (3) specific intent to benefit the gang itself is not an element of the enhancement; **but** (4) gang affiliation by itself does not establish M committed the robbery for the purpose of, and with the specific intent to promote, further, or assist in gang conduct. "[T]he underlying premise of [the expert opinion] that [M and the others planned and] executed a violent crime in concert to enhance their respect in the community, or to instill fear, was factually incorrect. An "expert's opinion is not better than the facts on which it is based"" Gang enhancement reversed.

Referee cannot be assigned from onset for all purposes. *D.M. v. Superior Court* (2011) 196 Cal.App.4th 879

Circumstances: D.M. was charged with assault upon a school official and resisting arrest. The first court appearance, in December 2009, was before a referee. That referee granted DM's *Pitchess* motion in April 2010. On July 23, 2010, the presiding juvenile court issued an order designating certain bench officers, including said referee, as bench officers "for all purposes." *The order indicated that a party must file a preemptory challenge within 10 days of the party's first appearance in an "all purposes" court, following issuance of the order.* Three days later, that referee declared a doubt as to DM's mental competence and set a competency hearing for October 2010.

Nine days before the competency hearing, DM sought to peremptorily challenge the referee. At the time of the competency hearing, the referee denied the challenge as untimely since it was not made within ten days of the first hearing or initial assignment. (Code Civ. Proc., § 170.6, subd. (a)(2).) DM filed an application for rehearing before a judge, which was denied. DM then filed a petition for a writ of mandate in the DCA, which summarily denied the petition.

On DM's petition, the Supreme Court granted review and transferred the case back to the DCA with directions to issue an alternative writ. The DCA did so, directing the court to show cause why a preemptory writ should not issue. The court answered, The DA also responded, conceding the challenge itself was timely and would have been proper, but arguing writ petition itself was untimely since it was filed 20 days after the referee's denial (petition must be filed within ten days after service of written notice of entry of the order denying the challenge [Code Civ. Proc., § 170.3, subd. (d)]). M moved to strike the court's response.

Held: (1) Since the issue before the court dealt with operating procedures and not the more narrow question whether the denial of the preemptory writ in this case the local court review of the matter was proper, and it had standing to respond; (2) since the record does not indicate that service of entry of the order denying the challenge was made, the writ petition was timely; (3) a court order/rule contrary to the preemptory challenge statute dealing with timeliness of the challenge is void; (4) *since section 248, subdivision (a), precludes a referee from deciding contested jurisdictional matters absent a stipulation, the court may not assign a case to a referee for "all purposes including trial," and therefore the "all purposes" portion of the preemptory challenge statutes is inapplicable;* and (5) in regard to the alternative 10-day/five day rule (if the bench officer assigned to hear the case is known at least 10 days before the hearing, the challenge must be made at least five days before that hearing), since the challenge was made more than five days before the competency hearing, it was timely since the referee had not yet decided any contested facts.

Prosecutor may appeal court's "plea bargain" resulting in probation. *In re Jeffrey H.* (2011) 196 Cal.App.4th 1052 (rev. den.).

Facts: The district attorney filed three separate delinquency petitions, the first two alleging possession of methamphetamine and marijuana for sale, transporting Ecstasy, and possessing drug paraphernalia. The third petition alleged robbery. When the case was called for a contested jurisdictional hearing on the fifth of the seven days allowed for continuance following the originally scheduled date, there were no courtrooms available and the court continued the matter to the "seventh" day. On that day, again no courtrooms were available.

Over the prosecutor's objection the court added a grand theft allegation to the third petition and dismissed the robbery allegation. In doing so, the court told the prosecutor that since no courtrooms were available its only other alternative was to dismiss the petitions.

Jeffrey admitted the allegations and the court placed him on probation. The prosecutor appealed. Jeffrey did not dispute the prosecutor's appellate claims that the court may not engage in plea negotiations over the prosecutor's objection, but responded the prosecutor could not appeal since the order adding and dismissing counts was the basis for the court's dispositional order granting probation.

Held: (1) Section 800 authorizes a People's appeal from an order, which as here, terminates a part of the proceeding; (2) however, while the appeal may be authorized, the question is whether the appeal is "proper"; (3) section 800(c) specifically prohibits a People's appeal from an order granting probation; (4) per section 800(c) the prosecutor must proceed by way of a writ petition to challenge the grant of probation; (5) the purpose of section 800(c) is to timely hear a challenge to the probation order; (5) per section 800(c), the writ review includes review of any order underlying the probation grant, therefore the prosecutor cannot challenge on appeal an order which "in substance" grants probation; (6) relying on case law interpreting Penal Code section 1238(d), this appeal is cognizable: "[I]t is only when the People effectively mount a direct threat to the defendant's probation" that appeal is prohibited; and (7) the court exceeded its authority by entering into the plea agreement with M. The court's order amending the robbery petition is reversed.

Court may not order prosecutor to negotiate a discount on V's hospital bills.
People v. Superior Court (Lauren M.) (2001) 196 Cal.App.4th 1221

Facts : Lauren admitted punching V several times, causing injury. Petition was sustained. The court ordered restitution in the amount of \$6,2620 to V for her medical bills. A year later, Lauren moved to modify the restitution order, arguing that because of her "difficult" financial situation, V should be required to mitigate her damages by negotiating a discount with the hospital. At the hearing, V argued that the DA should be required to assist V in seeking that mitigation. The court stated it did not have that authority and reconfirmed the restitution order. However, the same day, the court rescinded that order without explanation. At a subsequent hearing, the court found that it was in the best interests of V to negotiate the bill. The court ordered the DA to assist V, and made a different order that it would later set the restitution amount after "appropriate negotiations" pursuant to the Hospital Fair Pricing Act (Act). The DA petitioned for a writ of mandate.

Held: (1) As M conceded, the juvenile court "acted beyond the scope of its authority" when it rescinded the restitution order and ordered the DA to negotiate with the hospital to discount V's bills; (2) nothing in the Act requires a patient to seek a discount or suggests the court has the authority to require V or the DA to do so; (3) the appellate court rejected M's claim there were "compelling and extraordinary reasons" (§ 730.6, subd. (h)), which allow the court to withhold a restitution order pending negotiation, saying V had met her prima facie burden and appellant offered no contrary evidence.

Note: *While section 730, subdivision (h) still includes the "extraordinary circumstances" language, in 2008, Marsy's Law removed the "compelling and extraordinary reasons" language from article 1, section 28, and the history underlying Marsy's Law indicated a deliberate decision to do so to require full restitution.*

Use of other's password to defame on social website criminal. *In re Rolando S.* (2011) 197 Cal.App.4th 936 (rev. den.).

Facts: Rolando, along with several others, obtained a 17-year-old girl's email password through an unsolicited text message. He used the password to access V's email account and was able to change V's Facebook password. After doing so, he accessed V's Facebook page and altered her profile in a vulgar manner and posted three obscene and defamatory messages allegedly from V to two male friends' on their Facebook walls" M admitted he had done so. The court found M had violated Penal Code section 530.5, subdivision (a) ("willfully obtains personal identifying information . . . and uses it for any unlawful purpose"). M appealed, claiming the statute was inapplicable because: (1) he did not "willfully" obtain the password; and (2) while he may have committed the civil tort of defamation, he did not use the password for "any unlawful purpose."

Held: (1) Since V "chose to remember V's email account password and then later acted as a "free agent" when used that password to change the password for V's Facebook site and then accessed the site to make the changes, he "willfully obtain[ed]" the password. (2) Looking at the legislative intent when the Legislature substituted, among other prohibitions, the language "any unlawful purpose" for the earlier prohibition on accessing "to commit a crime," the Legislature intended to "greatly expand the scope of the unlawful conduct";and (3) that the Legislature added Penal Code section 528.5 (impersonation of another on the internet for the purposes of harming, intimidating, threatening or defrauding another) after M's crime, does not mean that only later the Legislature intended to criminalize M's actions since section 530.5 requires the D to obtain a password, and act to "harm" and "intimidate" under section 528.5 could simply be posting comments on a blog impersonating another. Also, since the Legislature could simply have used "a crime" instead of "any unlawful purpose," the Legislature evidenced an intent to punishment more than obtaining a password for a crime. Thus considered, the judicial construction of "unlawful purpose" includes wrongful acts, such as intentional civil torts, like libel. Further, even if the section required the commission of a criminal act, M's actions violated Penal Code section 653m (telephone or other contact by electronic device to address or talk about person with obscene language or which threatens the other person with the intent to annoy).

Firearm offense cannot be used to both elevate misdemeanor to a felony and as a gang enhancement. *In re Jorge P.* (2011) 197 Cal.App.4th 628 (rev. den.)

Facts: Jorge, an admitted gang member and a previously declared ward, was the front passenger in car with two other gang members in joint possession of a firearm. A petition alleging that he: (1) carried a loaded firearm in a car (Pen. Code, § 12031(a)(1) (a misdemeanor), enhanced with an allegation he was an active gang participant (Pen. Code, § 12031(a)(2)(C) (making it a felony); (2) was a minor in possession of a concealable weapon; and (3) actively participated in a gang. The prosecutor alleged gang enhancements for to the first two counts. The court found Jorge had committed the first two offenses and found true the gang enhancements. It stayed the confinement time on the first count and its gang enhancement per Penal Code section 654. On appeal, the minor argued that in order to make misdemeanor carrying a loaded firearm in a vehicle a felony per subdivision (a)(2)(C), the prosecutor must prove he was then engaging in “felonious criminal conduct.”

Held: (1) “Wobbler” conduct of being a minor in possession of a concealable weapon does not constitute felonious criminal conduct since “conduct” is not synonymous with “offense” for purposes of Pen. Code, § 186.22, and misdemeanor conduct cannot constitute “felonious criminal conduct”; (2) in order to satisfy subdivision (a)(2)(C), the prosecutor must establish all elements of the substantive crime of active gang participation by conduct distinct from the firearm possession charges; (3) in a footnote the court believed that proof of prior felonious conduct may be sufficient; and (4) the court declined to determine if the requisite felonious conduct may occur “simultaneously” with the conduct of carrying the weapon.

Note: Expert’s opinion: “[A]s a matter of course gang members inform everyone in a car if a gun is present so that [probationers and parolees] can make an informed decision about violating” probation or parole.

Child V's hearsay statements may properly be admitted to establish the corpus delicti (*Evid. Code* § 1228). *In re J.A.* (2011) 198 Cal.App.4th 914

Facts: 15-year-old J.A. was the three-year-old victim's uncle. At the contested jurisdictional hearing, V cried and refused to testify and the court found she was unavailable. V's mother testified to the statements made to her under the hearsay exception allowing for the use of a child sex offense victim's prior statements to establish the corpus delicti (pursuant to Evidence Code sec. 1228). J.A. had admitted culpability to the investigating officer. The court sustained allegations of lewd conduct and attempted lewd conduct. On appeal, J.A. claimed the admission of the hearsay was erroneous and therefore, the corpus delicti was not established.

Held: (1) M's statements included all elements of the offense, constituted a confession and not an "admission"; and (2) the mother's testimony was admissible under section 1228 "solely for the purpose of determining the admissibility of the confession."

Minor committed felony attempted lynching (664/405a P.C.) by attempting to take detainee from police by means of a riot. *In re Maria D.* (2011) 199 Cal.App.4th 109 (rev. petn. pend., S197036).

Facts: While Maria's boyfriend (BF) was detained in the back of a patrol car. He broke out a patrol car window. M ignored the officers' commands and walked toward the officers yelling obscenities and telling the officers to release BF, including yelling: "Fuck you pigs . . . let him go." Maria signaled to a group of eight men who were then being pat-searched to join her and she reached out, apparently to grab an officer and pull him away from the patrol car as the officer was attempting to restrain BF. The court sustained an allegation of attempted felony lynching: "*[t]he [attempted] taking by means of a riot [of any person] from the . . . custody of a[] peace officer . . .*" On appeal Maria claimed that her conduct violated the more specific misdemeanor offense of incitement to riot, which therefore governed.

Held: (1) Incitement to riot (Pen. Code, § 404.6(a)) does not punish attempted lynching since it does not address punishment for an attempt to free another from custody; (2) riot only requires the different specific intent to cause a riot; and (3) a "riot" need not be proved to establish attempted lynching. Consequently, the misdemeanor offense was neither the more specific offense in light of the conduct nor reflective of all of the elements present in the more serious offense.

Direct infliction of unjustifiable physical pain vs, willfully permitting a child to suffer (Penal Code sec 273a (a)). *In re L.K.* (2011) 199 Cal.App.4th 1438

Facts: Fifteen-year-old L.K. drove her mother's truck over a 17-month old child, causing injuries to the infant's liver and kidney, a broken rib, abrasions, and arm lacerations. After the incident, others ascertained the child had somehow been injured, but they thought the injuries were minor and did not then seek medical attention for the victim. LK was present at the time but said nothing. Later that day, the child was first taken to a clinic and it was determined he might have serious injuries. He was then hospitalized. The court determined LK had caused the injuries by accident amounting to negligence, was aware the child was injured and did nothing.

Held: (1) The court improperly found M was culpable under the second, "direct infliction of injury" prong of Penal Code section 273, subdivision (a) (§ 273a(a)), which requires a general criminal intent to willfully inflict unjustifiable physical pain; but (2) was culpable under the first, willfully permitting a child to suffer prong of that subdivision, which requires a finding of criminal negligence (she failed to tell anyone about the accident).

Notes: DCA explains the four, separate prongs of section 273a(a), and restated that the determination of credibility of witnesses is the exclusive province of the juvenile court.

A DJJ commitment based upon an offense listed in Penal Code section 290.008(c), but not listed in section 707(b), where minor has *never* had a sustained 707(b) offense, is not authorized. *In re C.H.* (2011) S183737

Facts: C.H. committed lewd acts against several children and admitted an a single allegation of a lewd act on his three-year-old sister (in October 2005, when he was 13). Prior to disposition, he violated his home detention contract by going to a sexually-explicit website. He was placed at a group home but made little progress. CH admitted a section 777 notice that he failed to participate in the program, and the court sent him to another program. After he had sex with another resident, he was terminated from that program. He was placed at Gay and Lesbian Adolescent Social Services (GLASS). Subsequently, another notice (777) was filed when the he did not complete assignments for his sex offender therapy. The violation was admitted and the court returned him to GLASS with a suspended camp commitment. January 2009 section a 777 notice was filed alleging that CH had not made any progress at GLASS, had failed to complete assignments and had accessed several pornographic websites. M admitted the violations. While a defense psychologist opined M would not receive safe and appropriate treatment at DJJ, the court committed him to DJJ for sex offender treatment.

Held: (1) The juvenile court had no authority to commit M to DJF because he was never adjudicated to have committed an offense listed in section 707, subdivision (b); (2) Sections 731(a)(4) and 733(c) give the juvenile court discretion to commit a minor to DJF only if the minor has committed an offense listed in section 707, subdivision (b) and then only if the most recent sustained offense is either enumerated in section 707, subdivision (b) or a sex offense described in Penal Code section 290.008, subdivision (c).

A search, pursuant to established school policy, was consistent with type of action by school administrator that fell within the definition of “special needs” of government agency and did not violate Fourth Amendment. *In re Sean A.* (2010) 191 Cal. App. 4th 182

Facts: M was observed by an attendance clerk as he returned to campus in the middle of the school day. M had been absent 3 of 4 periods that morning. Pursuant to written school policy regarding students who leave and then return to campus, the M was subject to a “search of [his] person, [his] possessions....” The assistant principal called M to his office and asked him to empty the contents of his pockets; one pocket contained 44 Ecstasy pills. M was arrested and admitted to police he left campus to pick up pills and, in fact, had sold some on the way back. Petition alleging possession for sale and unlawful possession was filed. M moved to suppress the evidence, claiming the assistant principal’s search of him was unlawful. Court denied the motion and minor admitted the possession for sale charge. On appeal M claims the search violated the Fourth Amendment and for the first time he objects to one probation condition.

Held: (1) The search of M was consistent with an action by a school administrator that falls within the definition of the “special needs” of a governmental agency, similar to the *Latasha W.* case. The search was limited in nature, intended to prevent harmful items from entering the campus, and was based upon the general application of a school policy—thus, individualized suspicion was not required, as it is pursuant to *T.L.O.*; (2) M forfeited his right to appeal the probation condition as he did not raise his objection to the trial court.

Adult Cases Which May Have Relevance in the Context of Juvenile Cases

Post arrest search of cell phone proper. *People v. Diaz* (2011) 51 Cal.4th 84.

Facts: As part of a controlled buy, D was observed transporting Ecstasy. Police stopped D's car, "lawfully" arrested him, and transported him to jail. When arrested, six tabs of Ecstasy were seized and a small amount of marijuana was taken from D's person. At the jail, police took D's cell phone. Approximately 90 minutes later, after concluding an interview in which D denied involvement in the sale of Ecstasy, the investigating officer went through several functions on the cell phone to look at its text message folder, where he observed the message: "6 4 80." The detective believed that meant "[s]ix pills of Ecstasy for \$ 80." Within minutes, and within 30 minutes of observing the message, the investigator showed the message to D. He admitted participating in the sale of Ecstasy. D moved to suppress the text message and his statement made after observing the text message.

Held: The cell phone was "immediately associated with [D's] person" and the delayed search was valid as a search incident to arrest.

Juvenile probation officer may briefly detain a guest when conducting a probation search. *People v. Rios* (2011) 193 Cal.App.4th 584 (rev. den.)

Facts: Several juvenile probation officers went to a ward's home on the basis of the ward's search term. The officers were aware the ward had gang association terms. During a probation search conducted a month previous, the ward was under the influence of methamphetamines and there was drug paraphernalia and gang writings in the house. Upon entering the house the officers found D sitting in the living room. D had gang tattoos, and despite the weather was wearing bulky clothing. Each time a probation officer tried to get closer to D, he attempted to move away. Believing that D might be trying to hide a weapon, an officer told D was going to pat-search him. D resisted. A handgun wrapped in a blue bandana fell to the floor from D's shirt. D's motion to suppress the firearm was denied. He pleaded guilty to possessing a firearm and resisting arrest.

Held: (1) Given the lack of a search warrant, the prosecution would usually be required to prove an exception to the Fourth Amendment by a preponderance of the evidence; (2) however, given the lack of argument on this basis in the trial court, D has forfeited that issue; (3) being in another's home does not establish that the guest has a legitimate expectation of privacy and therefore he cannot challenge the probation officers' entry into the residence; (4) while simply asking D questions did not amount to a detention, but the court assumed for purposes of its analysis that D was detained when the officers entered the residence; (5) given the juvenile probationer's association term and that D had visible gang tattoos, the officers could properly briefly detain D to learn his identity and his relationship to the probationer and the probationer's residence; (6) since D kept turning away from the questioning officer and started to lean over; the officer could reasonably suspect based upon articulable facts (including that D was a gang member, was "overdressed," belligerently refused to answer questions, and kept moving despite the officer's order that he stop), that D might be carrying a dangerous weapon; and (7) the probation officer was acting as a "peace officer" since he was lawfully exercising his powers in respect to the probationer, which included the right to frisk D: "To hold otherwise would mean that juvenile probation officers could not detain or investigate anyone on the same premises . . . no matter what the circumstances or officer safety issues"

New Statutes Related to Delinquency

Courtesy of Kathy Storton, DDA

County of Santa Clara

Educ. C. 49076
(Amended)
(Ch. 434) (AB 143)
(Effective 1/1/2012)

Adds a minor's attorney to those persons (district attorneys and probation officers) who are permitted access to school records without parental consent or a court order, for the purpose of conducting a criminal investigation, or an investigation regarding declaring a minor a ward of the court, or involving a probation violation. Adds that district attorneys, probation officers, and attorneys for minors who receive pupil records shall certify in writing that the information shall not be disclosed to another party, except as provided under the federal Family Educational Rights and Privacy Act of 2001 (20 U.S.C. Sec 1232g) and under state law, without the prior written consent of the pupil's parents or the person who is the holder of the pupil's educational rights.

W&I 213.5
(Amended)
(Signed into law 2010)
(Ch. 572) (AB 1596)
(Effective 1/1/2012)

Makes a number of changes to the juvenile court's authority to issue ex parte orders to enjoin specified conduct or to exclude a person from dwelling in a juvenile delinquency or juvenile dependency action.

Regarding juvenile delinquency cases: adds striking, telephoning, destroying personal property, contacting, or disturbing the peace to the list of actions (attacking, molesting, threatening, sexually assaulting, stalking, or battering) that a juvenile court may enjoin a person from doing to a minor. Authorizes the court to also issue this type of ex parte order against any person in order to protect a parent, legal guardian, or caretaker of a minor, whether or not the parent, guardian, or caretaker lives with the minor. Further authorizes the court to issue this type of order against any person in order to protect the minor's current or former probation officer, or court appointed special advocate.

Increases, from 15 to 21, the number of days the court has to hold a hearing, after a temporary restraining order has been granted without notice. Increases, from 20 to 25, the number days the court has to hold a

hearing if there is good cause to go past 21 days.

Requires the court to transmit to law enforcement personnel a protective order, extension, modification, or termination, within one business day, by either (1) transmitting a physical copy of the order to a local law enforcement agency authorized to enter orders into the California Law Enforcement Telecommunications System (CLETS); or (2) entering the order into CLETS directly, with the approval of the Department of Justice.

(Amended)
(Signed into law 2011)
(Ch. 101) (AB 454)
(Effective 1/1/2012)

Requires the protected party to be given notice when a person other than the protected party files a motion to terminate or modify a protective order issued pursuant to this section. [A W&I 213.5 order may be issued to protect a dependent child of the court, a juvenile ward of the court, a parent or legal guardian, a social worker or court-appointed advocate, or a probation officer from being attacked, threatened, contacted, harassed, etc. Such an order may also exclude a person from a dwelling.]

Provides that if the protected person cannot be notified prior to the hearing, the court must deny the motion or continue the hearing until the protected party can be properly noticed.

W&I 241.1
(Amended)
(Ch. 459) (AB 212)
(Effective 10/4/11)

Requires the probation department and the child welfare services department in each county to jointly develop a written protocol to:

- (1) determine which agency and court shall supervise a child whose jurisdiction is modified from delinquency jurisdiction to dependency jurisdiction;
- (2) determine which agency and court shall supervise a nonminor dependent under the transition jurisdiction (new W&I 450) of the juvenile court; and
- (3) address the manner in which supervision responsibility is determined when a nonminor dependent becomes subject to adult probation supervision.

W&I 303
(Amended)
(Ch. 459) (AB 212)
(Effective 10/4/11)

Permits a nonminor who is under age 21 and who exited foster care at or after age 18, to petition the court to assume transition jurisdiction (new W&I 450) over himself or herself.

W&I 450
W&I 451
W&I 452
(All New)
(Ch. 459) (AB 212)
Effective 10/4/11)

Creates a new jurisdictional status - "transition jurisdiction" - for a delinquent youth who needs or wants to remain in foster care but no longer requires the oversight of the court as a delinquent ward. A minor who is subject to the court's transition jurisdiction is a "transition dependent." A youth age 18 or older who is subject to transition jurisdiction is a "nonminor dependent." Provides that a minor or nonminor who is subject to transition jurisdiction shall not be subject to any terms or conditions of probation, and his or her case shall be managed as a dependent child of the court or as a nonminor dependent of the court. Requires counties to determine whether the child welfare services department or the probation department shall supervise persons subject to transition jurisdiction.

W&I 607.2
W&I 607.3
(All New)
(Ch. 459) (AB 212)
(Effective 10/4/11)

Creates W&I 607.2 to provide a procedure when the court is considering terminating jurisdiction over a ward. Provides that the court may modify jurisdiction from delinquency jurisdiction to "transition jurisdiction" (see W&I 450 – 452, above), modify delinquency jurisdiction to dependency jurisdiction, continue delinquency jurisdiction over a ward as a nonminor dependent, continue delinquency jurisdiction, or terminate delinquency jurisdiction.

W&I 607.3 requires the probation department to do all of the following for a W&I 607.2 hearing when a ward who is age 18 or older is subject to foster care placement: ensure that the nonminor is informed of his or her options, including the right to reenter foster care placement; ensure the ward has the opportunity to confer with counsel; ensure the ward is present in court for the W&I 607.2 hearing, unless the ward has waived the right to appear; submit a report to the court stating whether it is in the ward's best interest for the court to assume transition jurisdiction, whether the ward has indicated that he or she does not want juvenile court jurisdiction to continue, and whether the ward has been informed of the right to reenter foster care; and submit a 90-day transition plan.

W&I 706.5
(Amended)
(Ch. 471) (SB 368)
(Effective 1/1/2012)

Requires a probation department to consider and include in the foster care social study prepared pursuant to this section, whether the right of a parent or guardian to make developmental services decisions for a minor should be limited, and if so, whether there is a responsible adult to make these decisions. [Previously, only educational decisions were specified. Now, whether a parent's rights should be limited with respect to developmental services is added.]

W&I 709
(Amended)
(Ch. 37) (AB 104)
(Effective 6/30/2011)
and
(Amended)
(Ch. 471) (SB 368)
(Effective 1/1/2012)

Provides that if the expert who is evaluating a minor's competency believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled persons to evaluate the minor and determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (W&I 4500 – 4868). Requires the regional director to prepare a written report for the court. Provides that an expert's opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center whether the minor is eligible for services.

W&I 712
(Amended)
(Ch. 37) (AB 104)
(Effective 6/30/2011)

Requires that an evaluation of a minor suspected of being developmentally disabled must be done by the director of a regional center for developmentally disabled persons. [W&I 711 permits a court to order the evaluation of a minor who may have a serious mental disorder, or who is seriously emotionally disturbed, or who has a developmental disability. For minors who have a serious mental disorder or who are seriously emotionally disturbed, the type of mental health professional the court may order to do the evaluation remains the same: licensed to practice medicine in California and trained and actively engaged in the practice of psychiatry, or licensed as a psychologist.]

W&I 726
(Amended)
(Ch. 471) (SB 368)
(Effective 1/1/2012)

Requires the court, when it limits the right of a parent or guardian to make developmental services decisions for a minor, to appoint a responsible adult to make these decisions. [Previously, only limits on educational decisions were specified. Now, limits on developmental services decisions are added.] Provides

that if the court appoints a developmental services decisionmaker, he or she has the authority to access the minor's information and records, and act on the minor's behalf.

W&I 727.2
(Amended)
(Ch. 459) (AB 212)
(Effective 10/4/11)

Requires the court, at a status review hearing where terminating jurisdiction is being considered, to order the probation department or a ward's attorney to submit an application to the child welfare services department to declare the ward a dependent child of the court and modify its jurisdiction from delinquency to dependency jurisdiction if it finds that

- (1) the ward does not come within new W&I 450 (transition jurisdiction), but jurisdiction as a ward may no longer be required; and
- (2) the ward appears to come within W&I 300 (dependency) and cannot be returned home safely.

W&I 727.3
(Amended)
(Ch. 459) (AB 212)
(Effective 10/4/11)

Adds a reason for the court to determine that termination of parental rights and adoption is *not* in the best interest of a minor: the minor is age 17 or older and requests transition to independent living with a caring adult, or the minor requests modification of his or her jurisdiction to dependency jurisdiction or transition jurisdiction (new W&I 450).

W&I 727.7
(Amended)
(Ch. 258) (AB 177)
(Effective 1/1/2012)

Expands the authority of the juvenile court to order the parent or guardian of a minor to attend antigang violence parenting classes by adding minors found to be out of control or habitually truant pursuant to W&I 601, and any case pursuant to W&I 602 if the court finds the presence of significant risk factors for gang involvement. Continues to require that the minor be a first-time offender. [Previously the antigang parenting class was authorized only for W&I 602 minors "by reason of the commission of a gang-related offense." Now, these classes may be ordered for W&I 602 minors even if the offense is not gang-related, if there is a significant risk of gang involvement, and for W&I 601 minors.]

W&I 731.1
(Amended)
(Ch. 36) (SB 92)
(Pursuant to Section 84

Permits any juvenile commitment to the Division of Juvenile Facilities to be recalled by the court upon the recommendation of the chief probation officer by eliminating the exception for W&I 707(B) offenses.

of the bill, this is operative only if the Director of Finance reduces an appropriation pursuant to subdivision (b) of Section 3.94 of the Budget Act of 2011)

[Upon recall, the court must hold a recall disposition hearing for the purpose of ordering an alternative disposition.]

W&I 739
(Amended)
(Ch. 256) (SB 913)
(Effective 1/1/2012)

Permits a probation officer to authorize nonemergency medical or dental treatment based on the written recommendation of the examining physician and considered necessary for the health of the minor, without the advance consent of the minor's parent or guardian. Requires the probation officer to make a reasonable effort to notify and obtain the consent of the parent or guardian, and to document these efforts. Provides that if the parent or guardian objects, the treatment or care shall be given only upon court order. [This amendment makes it clear that a probation officer can authorize nonemergency treatment if a minor's parent or guardian cannot be located or notified. These nonemergency treatment procedures (in subdivision (a)) are now similar to the provisions for emergency treatment in subdivision (d), where the probation officer was already permitted to authorize emergency medical care without the consent of a parent or guardian.]

Adds a new subdivision (h), providing that nothing in this section interferes with a minor's right to authorize or refuse medical, surgical, dental, or other care.

W&I 781
(Amended)
(Ch. 459) (AB 212)
(Effective 10/4/11)

Permits the court to access a sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to assume or resume transition jurisdiction over a former delinquent ward pursuant to new W&I 450. Provides that this access shall not be deemed an unsealing of the record and shall not require notice to any other entity.

W&I 903.15
(Amended)
(Ch. 402) (AB 1053)
(Effective 1/1/2012)

Increases, from a maximum of \$25 to a maximum of \$50, the registration fee the parent of a minor may be ordered to pay when the minor in a W&I 602 or W&I 601 action is represented by appointed counsel.

W&I 912
(Repealed & Added)
W&I 912.1
(Repealed)
W&I 912.5
(Repealed)
(Ch. 36) (SB 92)
(Pursuant to Section 84
of the bill, these
amendments are
operative only if the
Director of Finance
reduces an appropriation
pursuant to subdivision
(b) of Section 3.94 of the
Budget Act of 2011)

Beginning January 1, 2012, increases the rate a county must pay the state to house a person committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF), to \$125,000 per year. Applies to any person committed to DJF, including persons committed before January 1, 2012 who remain in or return to a DJF facility.

W&I 1403
(Amended)
(Ch. 356) (AB 220)
(Effective 1/1/2012)

Extends two years, from January 1, 2012 to January 1, 2014, the sunset date on The Interstate Compact for Juveniles (W&I 1400 – 1403), which is a multi-state agreement governing the supervision and return of juveniles on probation or parole to their home states when they have run away, absconded, or escaped from juvenile facilities.

W&I 1766.01
(Amended)
(Ch. 39) (AB 117)
(Effective 10/1/2011)

Amended to change a reference in subdivision (b)(1) from “juvenile court” to the more generic “committing court.” [According to the legislative history, in 2010, the state Division of Juvenile Justice parole responsibility was transferred to county probation departments, and there was a concern that this transfer could not take place if a “superior court” rather than a “juvenile court” had made the original commitment order. “Committing court” applies to both types of courts.]

W&I 1916
(Amended)
(Ch. 661) (AB 1122)
(Effective 1/1/2012)

Establishes the California Voluntary Tattoo Removal Program, to be administered by the California Emergency Management Agency and funded by federal or private money. Requires that the program be designed to serve young people between ages 14 and 24 who are on probation or parole, in the custody of the Department of Corrections and Rehabilitation (CDCR), or in a community-based organization serving at-risk youth, and who have gang-related tattoos that are visible in a professional environment. Requires that program participants be actively pursuing

secondary or postsecondary education, be seeking employment or participating in workforce training, have a scheduled job interview or job placement, or be participating in a community or public service activity. Provides that county probation departments, community-based organizations, relevant service providers, and the Division of Juvenile Facilities of CDCR may apply for grants.

Legislative Analysis

Courtesy of David Steinhart

Commonweal Juvenile Justice Program

AB 109 (Assembly Budget Committee). Corrections Budget Trailer Bill—Realignment of the Division of Juvenile Justice. Incorporates the Governor’s proposal to shift major state corrections and criminal justice populations and operations to counties, as part of a larger Realignment Plan that would transfer \$6 billion of state-funded programs to counties, contingent upon voter approval of tax extensions to pay counties for the realigned operations. On the adult side, AB 109 moves persons convicted of first-time specified non-violent/non-serious/non-sex (so called “triple Ns”) to county jails instead of state prisons and moves a major share of the adult parole population to county control. **On the juvenile justice side,** AB 109 provides that the Division of Juvenile Justice (DJJ) shall no longer accept commitments of juveniles to its facilities unless the Division has a memorandum of understanding with a county that provides for such commitment. A new WIC Sec. 1710.5 permits a county to enter into an MOU with the state for the commitment of minors adjudicated for offenses listed in WIC Section 707(b). (Notably, the new section makes no mention of non-707 sex offenders that are currently eligible for DJJ). While this is the functional equivalent of full fiscal realignment of the Division of Juvenile Justice, this is “placeholder language” meaning that the details of DJJ realignment are deferred to future negotiation and adoption. AB 109 makes all of its realignment provisions contingent upon the adoption of a community corrections grant program with an appropriation to fund the shifted operations. *Signed into law on 4/4, Stats. 2011 Chapter 15. DJJ realignment provisions modified and superseded by subsequent budget trailer bill—see SB 92.*

SB 92 (Senate Budget and Fiscal Review Committee). Corrections budget trailer bill—replacement of the Corrections Standards Authority. Among many other provisions, abolishes the Corrections Standards Authority and replaces it with the Board of State and Community Corrections, outside CDCR. The mission of the Board is to provide statewide leadership and coordination for state/local partnerships in the adult and juvenile justice systems, including addressing gang problems, with a focus on developing evidence-based practices. A new 12 member Board is chaired by the Secretary of CDCR with the head of CDCR parole; two sheriffs and one police chief; two probation chiefs; one judge; one county supervisor or CAO; and three community and public members. The bill mandates the Board, among other things, to develop recommendations for crime prevention, provide technical assistance for evidence-based programs and coordinate gang violence programs. All prior CSA functions not changed by the bill are moved to the new Board. The bill contains numerous other corrections provisions related to adult corrections, peace officer training and the office of the Inspector General. It incorporates the Administration's decision not to realign the remaining DJJ populations this year, while providing that if revenue targets state in the Budget Bill are not met, counties will have to pay DJJ \$125,000 per ward per year for committed juveniles. Eliminates the California Council on Criminal Justice and the Governor's Office of Gang and Youth Violence Prevention. *Signed into law, Stats 2011 Ch. 36.*