CASE No. S231315

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of **Albert C.**, a person
Within the Jurisdiction of the Juvenile Court

THE PEOPLE OF THE STATE OF CALIFORNIA Respondent	B256480
vs.	Juv. Ct.No.MJ21492 (Los Angeles)
ALBERT C. Appellant	

SECOND APPELLATE DISTRICT, DIVISION FIVE
APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE DENISE MCLAUGHLIN-BENNETT, JUDGE PRESIDING

APPELLANT'S REPLY BRIEF ON THE MERITS

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Albert C.

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INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal presents two inter-related issues: whether the minor's detention in juvenile hall for competency training for far longer than the 120-day limit established in the Los Angeles County Superior Court Juvenile Division's "Amended Competency to Stand Trial Protocol" (Protocol), without evidence of progress toward attaining competency violated his constitutional right to due process; and whether a violation of the Protocol establishes a rebuttable presumption of a constitutional violation.

The answer to the first question depends upon whether Albert's detention was reasonable under *Jackson v. Indiana* (1972) 406 U.S. 715 [32 L. Ed.2d 435, 92 S.Ct 1845].) It was not. While *Jackson* allows the states some flexibility in establishing limits to the commitment of defendants found incompetent to stand trial, it requires at a minimum that any such commitment not be indefinite, and that it be reasonably related to the purpose of restoring competency; and that even when a defendant is found likely to regain competency in the foreseeable future, the validity of his continued commitment depends upon evidence of his progress toward competency. (Id. at 738.) Under these standards, the juvenile court's detention of Albert fails the constitutional test.

First, Albert was committed to detention in juvenile hall for what was essentially an indefinite term. In finding his detention constitutional, one of the factors referenced by the Court of Appeal was an expert's conclusion that with mental health and education services, Albert might likely attain competency

within twelve months. The Court of Appeal pointed to no statute or policy, however, that would have compelled Albert's release should he fail to attain competency within twelve months. [1] If the court had followed the Los Angeles Competency Protocol, by contrast, Albert would have been entitled to an Attainment of Competency Hearing after 60 days, and could have been detained for a further 60 days only if the court found that further efforts at attainment would be successful. If after a further 60 days of remediation services, Albert had not attained competency, the Protocol would have required his release from detention, although, if appropriate, competency services could have continued in another setting.

Also, while in detention, Albert was not provided with the recommended medication trials or mental health services, and the competency training provided him was delayed and minimal. Without provision of the services on which attainment of competency depended, Albert's lengthy detention in juvenile hall was not reasonably related to the goal of attaining competency.

Further, under *Jackson*, even when a defendant is diagnosed as likely to be restored to competency in the foreseeable future, he may not be detained when there is no evidence of progress toward that goal. Between the time Albert was first found incompetent in March 2013 and the juvenile court found him competent nearly a year later, in February 2014, the court received no evidence he was making sustained progress toward attainment of competence. All the test

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[1]Appellant does not concede the juvenile court was correct in finding he had attained competency

reports submitted to the court by the agency responsible for competency training reported the same lack of progress, and a second appointed expert reported to the court in January 2014 that Albert was still incompetent. In light of the evidence Albert was not making progress towards competency, his continued detention was unconstitutional, even though Dr Kambam had concluded that, with proper mental health services and education, there was a substantial probability that Albert would become competent within twelve months.

In sum, regardless whether violation of the Los Angeles Competency Protocol establishes a rebuttable presumption of a violation of due process, the court's disregard of its provisions resulted in the commitment of a fifteen year old boy to a lengthy detention term in juvenile hall that bore no reasonable relationship to the purpose of remediation, and when there was no evidence of progress towards attainment of competency.

Respondent concedes that the proceedings "were not perfect" and that "there were delays, miscommunications and inefficiencies at times, " but argues that these circumstances do not establish a due process violation (Respondent's Brief, "RB" p. 2.) Respondent also asserts that "the juvenile court closely monitored the proceedings" to ensure that Albert's commitment bore "a reasonable relation to the purpose for which he was committed." (Ibid.) The record compels a contrary conclusion. During the time Albert was detained in juvenile hall, over repeated objections by his counsel, the juvenile court conducted no meaningful reviews to justify his detention. Indeed, it was only in October 2013, when the court speculated that the reason for Albert's lack of progress might be "malingering," that it appointed a second expert to evaluate

him, which Albert's counsel had been requesting for months. By that time, Albert had been detained in juvenile hall for incompetence for approximately seven months. An attainment of competence hearing did not take place until February 2014,when Albert had been detained for remediation for close to a year.

Respondent argues that appellant's "principal argument" is that there is no evidence in the record that Albert made progress toward competency, and that he is incorrect. (RB, p. 24) But Albert's "principal argument" is that his constitutional right to due process was violated by a lengthy detention which bore no reasonable relation to the purpose for which he was detained and during which he made no sustained progress toward competency; and the record amply supports that Albert made no progress towards competency. Contrary to respondent's assertions, the circumstances of Albert's detention were a violation of the very essence of the due process required by *Jackson* v. *Indiana*.

As to the second question, whether violation of the Protocol is a presumptive violation of due process, respondent asserts that the Protocol is incompatible with *Jackson*'s approach of " flexibility" with regard to due process. *Jackson* does not require states to set no limits to the detention of those found incompetent to stand trial. Quite the opposite: it states that indefinite commitment is unconstitutional, thus leaving it to the states to determine appropriate standards. Respondent also asserts that a rebuttable presumption of a constitutional violation would conflict with the exercise of a court's discretion, but it would not. A rebuttable presumption effects only a shifting of the burden of production or proof. Finally, respondent asserts that a presumption of a constitutional violation could interfere with the policymaking process needed to

ensure that juvenile competency proceedings are conducted in a fair, efficient and effective manner. But courts have the inherent power to create procedures where rights would otherwise be lost, and such power does not conflict with the power of the Legislature to enact statutes.

Each of these issues is discussed below. As to any point not addressed, appellant relies upon the points and authorities discussed in the Appellant's Opening Brief on the Merits (AOBM .) No matters are conceded.

ARGUMENT

I

THE JUVENILE COURT VIOLATED THE MINOR'S DUE PROCESS RIGHTS BY DETAINING HIM IN JUVENILE HALL WELL PAST THE 120-DAY LIMIT ESTABLISHED IN THE LOS ANGELES COUNTY SUPERIOR COURT JUVENILE DIVISION'S "AMENDED COMPETENCY TO STAND TRIAL PROTOCOL" WITHOUT EVIDENCE OF PROGRESS TOWARD ATTAINMENT COMPETENCY

A. The Constitutional Guarantee of Due Process

The indefinite commitment of an incompetent defendant violates the federal constitutional guarantee of due process. (*Jackson v. Indiana* (1972) 406 U.S. 715, 738 [32 L.Ed.2d 435, 92 S.Ct. 1845]; *In re Davis* (1973) 8 Cal. 3d 79.) Under *Jackson* and *Davis,* a commitment must last no longer than is reasonable necessary to determine whether there is a substantial likelihood the accused will attain competency in the foreseeable future; even if there is a substantial probability of attainment of competence in the foreseeable future, an accused

may not be detained if there is no evidence of progress toward competence; and the duration of the commitment must bear some "reasonable relation" to the purpose which originally justified it. (*Jackson v. Indiana*, supra, 406 U.S at 738; *In re Davis*, supra, 8 Cal. 3d at 805.).

In light of differing state facilities and procedures and a lack of evidence in the record of the case before it, the court in *Jackson* did not set an arbitrary limit on the length of detention that would violate due process. (*Jackson v. Indiana* , supra, 406 U.S. at 738.) In *Davis*, a case that like *Jackson* involved adult defendants, this court noted that "ordinarily" a period of ninety days would be sufficient to determine whether a defendant would likely attain competency and instructed that "[t]he trial court must necessarily exercise sound discretion in deciding, whether, in a particular case, sufficient progress is being made to justify continued commitment pending trial. " (*In re Davis*, supra, 8 Cal. 3d at 807.)

While California case law has held since 1978 that juveniles must be competent to stand trial[2], Welfare and Institutions Code section 709, governing competency matters in delinquency proceedings, was enacted only in 2010. Section 709 requires that when a minor is found incompetent, delinquency proceedings must be suspended for "no longer than reasonably necessary " to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. (Welf & Inst Code § 709 subd (c).) The statute does not state how long an incompetent minor may be detained for the purpose of restoring competence, nor

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[2] See *James H. v. Superior Court* (1978) 77 Cal. App. 3d 169, 172.)

does it set any time limits for the court's periodic review of the juvenile's progress toward competence.

The presiding judge of the Los Angeles Juvenile Court issued the Protocol to implement section 709. The Protocol establishes time limits for processing cases[3] in which a minor is detained and provides that in no circumstances may a minor be detained for more than 120 days for the purpose of attaining competence. (Protocol, p. 7; *In re Jesus G.* (2013) 218 Cal. App. 4th 157, 171.)[4] The court in *In re Jesus G* held that a violation of the Protocol creates a rebuttable

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[3] When a minor who is deemed incompetent is detained in juvenile hall, the court must set an Incompetent to Stand Trial (IST) planning hearing within fifteen days. At that hearing, the probation department must provide a plan to implement services to help the minor attain competency. Within sixty days, the court must hold an Attainment of Competency hearing to determine whether those services are helping the minor make progress. (Protocol, pp. 5-6.) If the court finds that further efforts at attainment would be successful, it may order these services be provided for another sixty days. (Protocol, pp. 5-6.) At the 120 day limit, the court must either find the minor competent, or if still incompetent release him from detention. There is nothing in the Protocol that prevents the court from ordering continuing attainment services to a minor who is released from detention. (Protocol, p. 7.)

[4] Respondent is correct in pointing out that on pages 32-33 of the Appellant's Opening Brief on the merits, appellant incorrectly referred to the Protocol as setting a six month limit on the detention of an incompetent minor. Appellant stated: "Both point to the conclusion that detention for more than six months to determine whether there is a substantial likelihood that a minor will regain competence in the foreseeable future is unreasonable. The outer limit of six months detention for a minor to attain competency is reflected in the Protocol." The error was inadvertent and both references to "six months" should be read as "120 days. " Appellant apologizes to the court for the error.

presumption of a violation of due process. (*In re Jesus G.*, supra, 218 Cal. App. 4th at 170-171, 174.) In this case, the juvenile court determined it was not required to follow the Protocol because " it was not law" and the Court of Appeal agreed that its 120-day limit on detention does not define due process. (*In re Albert C.* (2016) 241 Cal. App. 4th 1436, 1461.) But appellant's position does not depend on whether the Protocol defines due process.[5] Regardless of the Protocol's provisions, Albert's detention violated the due process guarantees of *Jackson v. Indiana* and *In re Davis*.

B. The Minor's Lengthy Detention Violated His Right to Due Process of Law under *Jackson v. Indiana*

There is no statutory provision in the California juvenile law governing the length of time a minor might be detained for competency training or how frequently the juvenile court must review progress toward competency. Accordingly, in holding that the minor's lengthy detention in juvenile hall did not violate his right to due process, the Court of Appeal relied heavily upon the 12 month period in which Dr Kambam believed Albert could likely achieve competency.[6] The court noted that "[u]nlike the defendant in *Jackson*, who

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[5] Whether violation of the Protocol establishes a presumptive violation of due process is addressed in Part II, below.

[6]As another reason to reject the minor's due process claim, the Court of Appeal also held that " the length of detention in this case was the product of the minor's determination to avoid a finding of competency, as evidenced by his repeated answer of 'I don't know' to basic questions despite months of training,

suffered from multiple disabilities and was unlikely to ever attain competence, minor's incompetence was founded on emotional immaturity, which according to Dr. Kambam, could be remedied within 12 months." (*In re Albert C., supra,* 241 Cal. App. 4th at 145.) The Court of Appeal continued, "[u]nder these circumstances, we hold that 12 months to attain competency was constitutionally reasonable."(Id. at 1460.) Respondent agrees with the Court of Appeal, stating that, "the [juvenile] court considered the length of time that Albert had been confined. It measured that period against the period in which the Dr. Kambam projected that Albert would likely attain competency, noting that the period of confinement was 'within the 12-month period as described in Dr. Kambam's report.'" (RB p. 23, quoting 1 RT 89, 61.)

There are a number of reasons why it is erroneous to rely on the twelve month period to justify Albert's detention as satisfying the requirements of due process; the services Dr Kambam stated would be necessary for Albert to achieve competence were not provided; Albert's long detention without

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an average IQ, and no mental disease or defect. " (Id at 1460.) But there is nothing in the record to support the Court of Appeal's conclusion that the length of detention was the product of the minor's manipulation. First, when the minor had already been in custody for four months, he had received only two competency training sessions. (RT vol. I, 30- 31.) The delay in providing the necessary services was not the minor's fault. Second, Nico Gipson, the competency trainer who worked with the minor for eight months testified that he was cooperative and made a good effort, that he was attentive during their sessions and that he participated and volunteered information. Because the minor was participating and trying to learn, their sessions often lasted the full hour and a half that was scheduled. (RT vol. I, 176, 180.)

adequate services and meaningful review bore no reasonable relation to his attainment of competence; and the court had no evidence Albert was making progress toward competence to justify his continued detention.

1. Reliance upon Dr Kambam's 12 Month Prognosis Was Unreasonable Because it Was Predicated on Services That Were Not Provided

Both the Court of Appeal and respondent ignore the fact that Dr Kambam predicated her prognosis of Albert's likely becoming competent within 12 months on the provision of mental health services and medication trials in addition to competency training. Dr Kambam stated:

> "It is my opinion, with reasonable medical certainty, that there is a substantial probability that the minor will attain Competency to Stand Trial in the next 12 months. While the minor is significantly impaired in his ability to retain information, reason, and make decisions, he has not had any medication trials with medications (such as ADHD medications) that improve executive functioning and reduce inattentive and hyperactivity-impulsivity symptoms. With mental health services to intervene in this area, and with repetitive education of competency-related concepts, he would likely significantly improve his understanding of these concepts.
>
> (Report of Dr Praveen Kambam, March 17, 2013, " Kambam"p.12.)

The probation department's treatment plan provided only that:

> "The minor will be referred to the Creative Support CS services that will provide the minor with competency training. Further, the competency instructor will provide the minor with proximately 20 total hours of competency training once a week, while the minor is detained in juvenile hall. The minor will be administered a assessment test on his first visit with Creative Support CS services. Once the competency training has been

completed, Creative Services will provide a written report to the court." (CT 78.)

The plan did not include the medication trials to improve executive functioning or the related mental health services on which the psychiatrist's report predicated the substantial likelihood Albert could become competent within 12 months. There is no evidence the treatment plan was amended or augmented to provide those services. The Court of Appeal observed that "in compliance with *Davis,* once minor was declared incompetent, the delinquency court ordered services to assist minor in attaining competence" but the court did not acknowledge that the services provided lacked elements that Dr Kamabam indicated were necessary. (See *In re Albert C.*, supra, 241 Cal. App. 4th at 1460.) The Court of Appeal's reliance on Dr Kambam's report to justify a period of 12 months to attain competency is flawed. Dr Kambam did not conclude as the Court of Appeal stated that Albert's incompetence "could be remedied in 12 months," but that there was "a substantial probability that the minor will attain Competency to Stand Trial in the next 12 months with the proper mental health services and education. " (Kambam, supra, p.12.)

Respondent urges that the juvenile court, "required frequent reports on Albert's status, pushed for additional information necessary to confirm whether Albert was actually making progress, and acted within its 'sound discretion' in determining that 'sufficient progress [was] being made to justify [Albert's] continued commitment pending trial.'" (RB, p. 19, quoting *In re Davis*, supra, 8 Cal.3d at 807.) But respondent cites nothing in the record to demonstrate that the juvenile court made a single enquiry whether Albert was receiving the

medication or mental health services that were an essential part of Dr Kambam's prognosis..

With regard to medication, respondent does refer to a statement made by a deputy county counsel during a discussion of Albert's dependency status. Respondent states that "a deputy county counsel told the court that Albert was 'not taking the medication that was ordered,' followed by a reference to 'risperdal' an antipsychotic medication. "(RB, p. 27.) What the deputy county counsel actually said was "We understand he's not taking medication that was ordered. I don't know if he's still taking that or not, the Risperdal. The court knows the history as far as that goes." (RT vol. I, 69.) Not only was the statement hearsay, but it was completely unreliable, as counsel admitted he didn't know whether Albert was taking Risperdal. Moreover, Risperdal is an antipsychotic medication and not an anti-hyperactivity medication as recommended by Dr. Kambam. [7]

To summarize, there is nothing in the record to show that Albert was receiving any medication for hyperactivity or any related mental health

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[7] The issue of Risperdal is clarified in Dr Kambam's report, which states: "According to the Child Adolescent Initial Assessment, Penny Lane, prepared by Shannon Housedog, ACSW, dated 4/18/20111, the minor was receiving psychotherapy at Child Help for three years and taking Risperdal 1mg by mouth at 4pm and at night. " (Kambam, p. 6.) Albert "was discharged from Penny Lane on 7/7/2012 dure to missing several therapy appointments. " (Ibid.) Albert himself told Dr Kambam that he stopped taking Risperdal at age 12 or 13. (Id at p. 5.) In sum, it appears that Albert was prescribed Risperdal when he was receiving care at Penny Lane/ Child Help, and that he stopped taking it when he was discharged.

treatment while he was detained in juvenile hall. Respondent concedes as much, stating: "The record in this case does not detail what medications or mental health services, if any, Albert received during his confinement in juvenile hall." (RB, p. 27) Respondent also concedes that "[i]n light of Dr. Kambam's report, it might have been a better practice for the juvenile court to explore on the record whether Albert was receiving appropriate mental health treatment in addition to his competency training." Respondent argues nevertheless, "that omission does not establish a constitutional violation." (RB, p. 27)

Respondent's contention is wrong. It was unreasonable for the juvenile court to detain Albert in juvenile hall for nearly 12 months, on the ground Dr Kambam believed he could achieve competence in that time, when the court failed to ensure he was receiving the medication and treatment upon which Dr Kambam's prognosis depended. (See *Oregon Advocacy Center v. Mink* (9th Cir. 2003) 322 F.3d 1101, 1122 [holding incapacitated criminal defendants in jail for weeks or months violates their due process rights, because the nature and duration of their incarceration bear no reasonable relation to the evaluative and restorative purposes for which courts commit those individuals].)

2. Albert's Detention Bore No Reasonable Relation to the Purpose of Achieving Competence

The inadequacy of the services that comprised Albert's treatment plan is at the heart of the constitutional question, because *Jackson* and *Davis* are clear that the nature and duration of a commitment for incompetence must bear some

reasonable relation its purpose of remediation. (See *Jackson v. Indiana*, supra, 406 U. S. at 738; *In re Davis*, supra, 8 Cal. 3d at 805.)

Respondent concedes the constitutional requirement, but contends "it does not require a court to ensure that the treatment plan for the incompetent defendant mirror the recommendations contained in the initial psychiatric evaluation in every respect." (RB, p. 10.) But this is not appellant's contention. Appellant's contention is that in this case, the psychiatrist's prognosis that Albert could very likely achieve competence within 12 months was expressly predicated on his receiving not only competency education but also medication to address hyperactivity, and related mental health services. Accordingly, Albert's detention without those services does not have the requisite reasonable relationship to the purpose for which he was detained: remediation to attain competence.

The lack of mental health services and medication is not the only problem with the remediation services provided to Albert. The "repetitive education of competency-related concepts" also viewed as necessary by Dr Kambam consisted of only one training session per week, lasting no more than one and a half hours. per week. Although Albert was found incompetent on March 19, 2013, and the competency training plan was filed with the court on April 17, 2013, by May 23, 2013, he had received only two training sessions of one and a half hours each. (CT 94.)

Respondent concedes that the delay was "regrettable" but notes that the length of that period was "prolonged by the need to transfer Albert to a different

facility where he could receive services "[8] and that "courts have held that the similar delays in the receipt of treatment related to competency do not violate the Constitution," citing *United States v. Magassouba* (2d Cir. 2008) 544 F.3d 387, 417-418 and *In re Loveton* (2016) 244 Cal.App. 4th 1025, 1047.)

Leaving aside the question why the probation department selected a training agency that could not provide services at the Sylmar Juvenile Hall where Albert was housed, respondent's reliance on *U. S. v. Magassouba* and *In re Loveton* is misplaced. Albert's criticism of the delay in beginning his treatment is but one small piece in a lengthy violation of his right to due process, that started with his being found incompetent on March 19, 2013 and ended only when the court found him restored to competence on February 4, 2014

In summary, the competency training plan provided for Albert was not reasonably related to the purpose of remediation. Albert, who had not been adjudicated a ward and was entitled to the presumption of innocence, was detained in juvenile hall for competency training from April 17, 2013 to February 4, 2014, when that competency training consisted of one short session of training once a week. As counsel told the court on June 30, 2013, when Albert had

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[8] The plan for Creative Support to provide weekly training sessions was submitted to the court on April 17, 2013. (CT 78, 81.) On April 26, the probation department informed the court that it had received a phone call from Creative Support explaining that "the travel distance was too far " for the educational consultant to provide services at Sylmar Juvenile Hall. (CT 92.) Judge Arakaki immediately ordered that Albert be housed at Eastlake Juvenile Hall. (CT 93.)

received a total of only four training sessions:[9] "Three hours, maybe? Five hours — of sessions in 90 days is not effective and is a false attempt to comply with the law. " (RT vol. I, 41.)[10]

Detention for incompetence must be reasonably related to the purpose of attaining competence. Albert's lengthy detention was not reasonably related to the purpose of attaining competence because he was not provided the services upon which his likely attainment of competency was were predicated. It therefore violated his right to due process of law. (*Jackson v. Indiana*, supra, 406 U.S. at 738; *In re Davis*, supra, 8 Cal. 3d at 807; see also *Oregon Advocacy Center v. Mink*, supra, 322 F. 3d at 1121 [incompetent defendants have a liberty interest both in being free of incarceration in restorative treatment].)

3. Albert's Detention Was Unreasonable Because He Was Not Making Progress Towards Becoming Competent

As discussed in the Appellant's Opening Brief on the Merits, the juvenile court had no evidence that Albert was making demonstrable progress to achieving competence, and his continued detention therefore violated his right to due process. (*Jackson v. Indiana*, supra, 406 U.S. at 738.) Starting in July 2013, Creative Support began submitting to the court monthly reports of Albert's

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[9] Although Albert was in juvenile hall for the sole purpose of receiving competency training, it seems he was forced to miss two of his once-a-week appointments, one for court, and one for a dental appointment. (CT 99.)

[10] The court expressed no concern at the slow pace at which training was provided. (RT vol. I, 41, 42, 44.)

scores on the assessment tests his trainer administered. The assessment tests demonstrated that Albert was not making progress: on each test, he achieved a score of 1 in each of the 14 domains that were tested.

Respondent dismisses the evidentiary value of the reports from Creative Support that showed Albert received failing scores on multiple competency assessments. Respondent asserts: "While those results certainly did not constitute evidence of progress, they also did not definitively establish a lack of progress (as Albert now suggests.)" Respondent also objects, "[n]or did the reports address the reasons for failing scores." (RB, p. 25.) Respondent's assertions beg the question why, if the assessment tests were so deficient as an indicator of progress or lack thereof, the court did not immediately question them and ask for more information in July 2013, when it was presented with the assessment tests for May and June.

The July report gave the date of the tests; it named the 14 "domains " that were tested; it demonstrated that both times he was tested, Albert scored a 1 on all domains; and it explained the meaning of the scores from 1 (Clearly Incompetent) through 4 (Clearly Competent .) (CT 106-107.) The report also explained: "It is recommended that any individual attain at least a score of 3 (Borderline Competent) on all 14 CAI[11] domains before he can be considered competent. Albert did not score a 3 in any of the domains, therefore he is not competent to stand trial. " (CT 108)

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[11] "CAI" stands for the Competency Assessment Instrument. (CT 108)

Under *Jackson* and *Davis*, an accused may not be detained for competency training when he is not making progress toward the goal. Such detention violates the constitutional guarantee of due process. On their face alone, the two reports submitted in July 2013 put the juvenile court on notice that a detained minor was not making measurable progress towards becoming competent. The court should therefore immediately have taken action to determine whether Albert could be further detained without violation of his right to due process. It did not do so, waiting until October 2013 to ask why Albert's reported scores were the same in each monthly report.

Respondent seeks to explain the juvenile court's delay by arguing: "Given that the court did not receive the first report from Creative Support until mid-July (see CT 103-108), it is understandable that it took several months before the court became aware that multiple monthly reports showed identical results. " (RB, p. 20, fn 12.) Respondent's assertion is incorrect. Counsel for the minor brought the reports to the court's attention on July 17, 2013. She argued that it did not appear that the goal of attainment of competency was being met, because the reports from Creative Services stated Albert was scoring all 1s. As there appeared to be no progress, counsel asked the court to appoint an expert from the competency panel to evaluate Albert and to "determine whether the training that they are providing him is helping him meet that goal, or helping him towards —competency." (RT vol. I, 49-50.) Counsel also reminded the court that under *Jackson* and *Davis*, the court could not keep Albert detained without evidence of progress. (RT vol. I, 49.) The court denied the request for appointment of an expert from the competency panel as "premature," (RT 53),

even though *Jackson* is clear that detention on the grounds of incompetence is unconstitutional when there is no evidence of progress. (RT vol. I, 49-50, 51, 53)

Counsel repeated her arguments at the next hearing, on August 15, 2013, by which time the court had received three reports from Creative Support. Counsel again noted that Albert's scores were all 1s, on all 14 domains, demonstrating that he was not making progress. (RT vol. I, 59) Counsel argued that: "There should have been an attainment of competency hearing, but the people providing us with the competency attainment services have reported to us that he [Albert] still has all 1s, all 14 categories, clearly incompetent after three months of training. So, I'm asking the court to rule that he is unlikely to attain competency in the foreseeable future and dismiss this case, your Honor. Thank you." (RT vol. I, 60.)

By September 18, 2013, Albert had been tested four times, and was still scoring all 1s. As counsel informed the court: "He's been tested four times — at least four times. And he's still showing all 1s, which is a grade of clearly incompetent according to those support services. ... Its been several months and several tests, and there's still no progress. Per *Jackson*, [the minor] can only be held if progress towards competency is being made. And its not being made, so he's being illegally detained here." (RT vol. I, 81.)

In sum, respondent's assertion that the juvenile court had no reason to question the test results before October 2013 is just not supported by the record.[12]

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[12] As discussed in the AOBM, The Probation Department's IST plan for the minor stated he would receive a total of 20 hours of competency training through weekly sessions lasting one- and- a- half hours. Training commenced on May 9,

In arguing nevertheless that the juvenile court had evidence Albert was making progress towards competence, respondent points to parts of Nico Gipson's testimony at the attainment of competency hearing the juvenile court finally held in February 2014, 6 months or so after Albert's test scores put the court on notice he was not making progress toward becoming competent.

Respondent takes issue with appellant's characterizing Gipson's testimony as "uncontradicted testimony" that Albert "was still not making progress towards the attainment of competency." (RB, p. 24) Respondent points to various places in Gipson's testimony where she stated that on some occasions Albert would get more answers correct than he had previously. For example, respondent quotes Gipson as saying that at the beginning of his training, Albert "would get [the questions] all incorrect" but "then one day I came and he had ...maybe eight correct. " (RB, p. 22, citing RT vol. I, 180.) Gipson's testimony made clear, however, that Albert had problems with retention On the very same page of the transcript, Gipson stated that " sometimes, I'll make him feel like he had something in the last session and then this one, he completely forgot it. So I will just kind of ... its kind of repetitive. We'll just keep going over the same thing." (RT vol. I, 180) Gipson also stated " With [Albert] it can appear that he

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2013 after which the minor received the planned weekly sessions. (CT 113-114.) The training program should therefore have taken no more than 13 weeks, but there is nothing in the record to show that the juvenile court recognized time frame nor questioned why there had been no progress when the 13 weeks had elapsed. The Court of Appeal did not acknowledge that the program specified in the IST plan should have been complete and therefore requiring review at around the 13 week mark.

has the information on one visit and then the next visit he forgets or he has some information he doesn't understand, so we have to go over it again. " (RT vol. I, 166.) Similarly, when asked the question "Is it your testimony that on occasion he'll pass a certain domain then at a later date, he'll fail that domain," Gipson answered "Yes."(RT vol. I, 169.)

Gipson was not able to give dates or details of the times when she believed Albert might have made progress on a question or a domain. (See e.g (RT vol. I, 167, 174, 191-192.) Also, Gipson was unequivocal and consistent in her testimony that Albert would sometimes improve one week and regress the next, that he would forget things he had previously answered correctly. For purposes of competency, the capacity for factual understanding includes the capacity to retain understanding of information across time, so as to apply the information later, not merely understanding the information at the moment it is taught. (Viljoen, J. and Grisso, T., *Prospects for Remediating Juveniles Adjudicative Incompetence,* Psychology, Public Policy, and Law 2007, Vol. 13, No. 2, 87 -114, p. 94.) Studies suggest that youth may be able to show an immediate benefit from brief teaching, although brief teaching is unlikely to sufficiently alleviate limitation in factual understanding. Furthermore, given that those studies reassessed understanding immediately after teaching, it is unclear if adolescents adequately retain the information they are taught. (Ibid.)

In summary, there is no reliable evidence of Albert making sustained progress towards competency, but as early as July 2013 Creative Support's monthly reports indicated to the court that Albert was not making progress.

As previously discussed, due process requires that the nature and duration of commitment for incompetency "bear some reasonable relation to the purpose for which the individual is committed." (*Jackson v. Indiana,* supra, 406 U.S. at 738; *People v. Superior Court (Lopez)* (2005) 125 Cal. App. 4th 1558, 1565.) The purpose here was to provide the minor with competency training. Competency training sessions did not even commence until the minor had been detained in juvenile hall for two months and then consisted only of one short session a week. Despite making a good effort, the minor made no demonstrable progress toward competency, and his lack of progress was documented in reports to the juvenile court. After competency training started, Albert was detained for approximately 6 months days before the court questioned the reports that demonstrated his lack of progress. The minor's detention was unreasonable and violated the right to due process under *Jackson* and *Davis*

II

BECAUSE ITS PROVISIONS IMPLEMENT THE DUE PROCESS GUARANTEES OF *JACKSON V. INDIANA* AND *IN RE DAVIS* IN JUVENILE COMPETENCY PROCEEDINGS, A VIOLATION OF THE PROTOCOL'S 120 DAY LIMIT ESTABLISHES A REBUTTABLE PRESUMPTION OF A DUE PROCESS VIOLATION

In Part I of the argument, the minor discussed the reasons why his lengthy detention in juvenile hall for competency training without evidence of progress toward attainment of competency violated the due process right defined in *Jackson v. Indiana* and *In re Davis. Jackson* left it to the states to determine a standard of reasonableness, stating: "In light of differing state facilities and

procedures and a lack of evidence in this record, we do not think it appropriate for us to attempt to prescribe arbitrary time limits." (*Jackson v. Indiana*, supra, 406 U.S. at 738.) Although *Jackson* left time limits to the states, Welfare and Institutions Code section 709 does not establish a time limit beyond which a juvenile may be detained to attain competence. It provides only that: "If the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction." (Welf & Inst. § 709 subd. (c).)

Respondent asserts that appellant asks the court to construe Welfare and Institutions Code section 709 to incorporate the statutory protections of the adult competency scheme. (RB, p. 29.) Quite to the contrary, appellant's contention is that unlike the Penal Code, Welfare and Institutions Code section 709 does not provide time limits; that time limits are necessary for the protection of due process under *Jackson;* and that while juveniles should be entitled to at least as much protection of their rights as are adults, the time limits for juvenile proceedings should take into account that they are not adults, as does the juvenile law as a whole. (See AOBM, pp 27-29, 40-41.) [13] In light of the absence

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[13] In the AOBM, appellant discussed the statutes governing defendants found incompetent in criminal proceedings who are statutorily entitled to a review after commitment of a period of 90 days. (AOBM, pp 26-27.) Appellant then discussed *In re John Z* where the court held that in the absence of a statutory provision, Welfare and Institutions Code section 709 should be interpreted to give a minor *at least the same protection* afforded someone committed under Penal

of a specific time limit in Welfare and Institutions Code section 709 subdivision (c), the court in *In re Jesus G.*, supra, held that the Protocol implements the statute. It also held that in addressing the problem of an indefinite commitment and a time limit for making a prognosis as to the likelihood of a detained minor's attaining competence, a violation of the Protocol is a presumptive violation of due process (*In re Jesus G., supra,* 218 Cal. App. 4th at 171.)

A. A Presumptive Violation of Due Process Is Compatible with *Jackson* and *Davis*

Respondent asserts that a presumption that the detention of an incompetent minor for longer than the Protocol's 120- day limit violates due process "would be in considerable tension" with the "flexible approach" adopted in *Jackson* and *Davis,* an approach that "is consistent with general due process principles." (RB, p. 33.)

Respondent's assertion is inapposite. First, the reason the court in *Jackson* declined to set an arbitrary limit for all jurisdictions on the record of the case before it was its recognition of the various states' different facilities and

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Code section 1386. (See *In re John Z* (2014) 223 Cal. App. 4th 1046, 1057.) Appellant then stated: "*The same sensitivity to the protection of the rights of a minor should apply in competency matters.* Indeed, the legislature enacted Welfare and Institutions Code section 709 precisely to address the problem that in the absence of a juvenile statute on competency to stand trial, adult competency statutes did not address the nuanced application of 'developmental immaturity' outlined in case law relevant to determination of competency in juveniles. " (Assembly Committee on Public Safety, April 13, 2010 hearing on AB 2212 as amended April 8, 2010, Bill Analysis, p 3.)

procedures. But because it made clear that commitment for treatment could not be indefinite, *Jackson* necessarily requires standards that both limit the time an accused may be held to attain competency and that provide for dismissal of charges if competency is not restored within that time period. The Protocol provides these time limits for the detention.

Quoting *Mathews v. Eldridge*, respondent objects that due process "unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place, and circumstances.'" (RB, p. 33, quoting *Mathews v. Eldridge* (1976) 424 U.S. 319, 334.) The Protocol , however, is not a mere technical conception that is unrelated to the circumstances it addresses. The Protocol's outer time limit of 120 days detention for remediation is consistent with emerging research on juvenile incompetence, which indicates that most juveniles will achieve competence within a shorter period, or otherwise be unremediable. Data from a study in Virginia showed that the majority of juveniles were either restored to competence or found to be incapable of attaining competence within 3 to 4 months. (Larson, K. And Grisso T., *"Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers "* National Youth Screening and Assessment Project (November 2011) p. 76.)[14] Results from a

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[14] The study involved 520 youth. The results showed that, after services were provided for between 91 and 120 days, 52 percent of youth were remediated and 16 percent were determined to be unable to attain competence. After services had been provided between 121 and 150 days, the cumulative number of juveniles who had either been remediated or determined to be unrestorable was 78 percent. In that additional 30 days of service provision, an additional 7 percent of juveniles were remediated and 3 percent found unremediable. If services were provided up to 180 days, an additional 2 percent

Florida study were similar. (See AOBM, p. 82.) Respondent observes that the Virginia study concluded that after 180 days of competency training, 15% of the juveniles had not attained competency but also had not been determined to be unable to attain competency and that therefore, for those juveniles "continued competency services beyond 180 days may have been warranted. " (RB, p. 29.) Even if this is so, it does not speak to the question whether a juvenile should be *detained* for longer than 180 days to achieve competency. Research on juvenile competence shows that even factual understanding, which focuses only on basic knowledge of legal proceedings, has been found difficult to sufficiently improve (See Viljoen, L. And Grisso, T., supra, at p. 107. Thus, not all youth will attain competency even with proper training, but release from detention conditioned solely upon attainment of competence is unconstitutional. (*Jackson v. Indiana,* supra, 406 U.S. at 734.)

Respondent speculates that Albert's prospects for attaining competency may have been greater than the juveniles represented in the research studies because he did not have a developmental disability, only ADHD and Disruptive Behavior Disorder. The question is not whether Albert might have achieved competence with a longer period of training; it is what period of time is constitutionally reasonable to *detain* a juvenile solely to become competent. Taken together, the two studies indicate that a large majority of incompetent juveniles will attain competency within a much shorter time than 12 months.

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of youth were found to be unable to attain competence and an additional 5 percent were remediated . (Ibid.)

They also indicate that while California's adult system allows an outside time limit of one year for misdemeanors and three years for felonies, "those time frames ...seem inapposite to the detention of incompetent juveniles." (Burrell, S., *Protocol for Competence in California Juvenile Justice Proceedings,* Youth Law Center, (revised November 2012) p. 14, fn. 68.) Also, as Burrell notes, a lengthy competency proceeding may result in a case that could be difficult to prosecute because: "Witnesses may be lost, and the court may be faced with holding a marginally competent child accountable for alleged events he or she can no longer remember" (Id at p. 4, fn 21.) Burrell also notes the strain on county resources of detaining incompetent youth, and the problem that youth who remain detained pending months of competence proceedings are likely to decompensate further. (Ibid.) Accordingly, the Protocol is compatible with the interests of the state as well as the juvenile.

To conclude, the Protocol sets out time limits to prevent the indefinite and unconstitutional detention of a minor, and it does so with a time frame that is realistic in the context of what is now known about the prospects for remediation of incompetent juveniles. As the United States Supreme Court has observed, flexibility has its limits" and it "is not a blank check. " (*County of Riverside v. McLaughlin* (1991) 500 U.S. 44, 55, 111 S. Ct. 1661; 114 L. Ed. 2d 49 (*McLaughlin*).) Sometimes, therefore, courts must constrain flexibility to protect rights guaranteed by the United States Constitution. (Id at 56; see also *In re Loveton,* supra, 244 Cal. App. 4th at 1044-1045 [upholding injunction setting a 60-day outer limit on the time after commitment when incompetent defendants in

Contra Costa County must, in accordance with their procedural due process rights and based on all of the circumstances, be admitted to the state hospital].)

B. The Protocol Does Not Prevent a Court From Exercising Discretion Within Constitutional Limits.

Respondent asserts that adopting the standards of the Protocol to establish a rebuttable presumption of a constitutional violation would impede a court's exercise of its "sound discretion"under *In re Davis*. (RB, pp. 32-33.) Not so. A rebuttable presumption merely shifts either the burden of production or the burden of proof. (Evid. Code § 601, 603, 605.) Thus, it may guide the court's discretion, but the court's ultimate discretion remains.

Respondent also argues that presumptions may reflect that one side has greater access than the other to relevant evidence, and that in matters of progress towards juvenile competency, a juvenile and his counsel "are likely to have greater access to the relevant facts, including the juvenile's ability to consult with counsel, his capacity to assist counsel in his defense, and his understanding of the charges against him." (RB, p. 37.)

Respondent's references are to Welfare and Institutions Code section 709 subdivision (a), which provides that: "During the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency." (Welf & Inst Code § 709 subd (a).) At that stage of the proceedings, it is reasonable to assume that counsel will have greater access to information about the client than will the State.

The Protocol does not deal with subdivision (a) however, but with the situation of a juvenile detained for competency training while proceedings are suspended under Welfare and Institutions Code section 709 subdivision (c). In such a situation, the juvenile will be detained by the State and will receive competency training provided by the State or its agents. In this situation, the State does not have "less access to the pertinent facts," as respondent asserts, but has at least the same access, as Albert's case demonstrates. The reports of Albert's competency training were provided to the court, counsel for the minor and the district attorney.

Respondent also asserts that a presumption, "would substantially reduce the flexibility presently accorded to juvenile courts to address the particular circumstances and needs of each juvenile after a doubt is raised as to competency." (RB, p 38.) Respondent points to the facts of Albert's case and the court's conclusion that there was "good cause to deviate from the protocol " based on the circumstances of the case, including the courts obligation to " provid[e] for the safety of the minor and the community at large. " (RB, p.38, citing (RT vol. I, 62 and CT 116.) Respondent is incorrect about the negative effect of the Protocol. First, the courts' "flexibility" is already constrained by *Jackson's* requirements of due process. Second, the Protocol establishes a rebuttable presumption, not a conclusive one, that detention beyond the 120 -day limit violates due process. Therefore, it would have placed on the District Attorney the burden of showing why Albert's detention after the Protocol's 120-day limit did not violate his right to due process. If that burden were met, Albert's detention could constitutionally have been continued. Under the

Protocol, the court is still free to exercise its discretion "grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue. (See *People v Cluff* (2001) 87 Cal.App.4th 991, 999, citing *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977 and *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1065-1066, [discussing relationship between substantial evidence and abuse of discretion standards].)

In *Gerstein v. Pugh,* in the interest of flexibility, the Supreme Court left it to the states to integrate "prompt" probable cause determinations into their differing systems of pretrial procedures. (*County of Riverside v. McLaughlin* (1991) 500 U.S. 44 , 125 [114 L. Ed. 2d 49; 111 S. Ct. 1661] Recognizing that flexibility has its limits, in *McLaughlin* the court articulated the boundaries of what was permissible under the Fourth Amendment (*McLaughlin* supra, 500 U.S. at 56.) The court stated:

> " Although we hesitate to announce that the Constitution compels a specific time limit, it is important to provide some degree of certainty so that States and counties may establish procedures with confidence that they fall within constitutional bounds. Taking into account the competing interests articulated in *Gerstein,* we believe that a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein.* For this reason, such jurisdictions will be immune from systemic challenges. "

(*McLaughlin* supra, 500 U.S. at 56.)

In announcing this rule, the court observed that where an arrested individual did not receive a probable cause determination within 48 hours, the burden would shift to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. (Id at 57.) Thus, the court

accommodated the requirement of flexibility by means of a rebuttable presumption. (Id at 56.) The Protocol accommodates the same end.

Respondent asserts that *McLaughlin* is essentially irrelevant because it was a Fourth Amendment case, "an area of law in which the Supreme Court has repeatedly emphasized ' the virtue of providing ..."' clear and unequivocal guidelines ' to the law enforcement profession.'" (RB, p. 39 citing *California v. Acevedo* (1991) 500 U.S. 565, 577.) By contrast, respondent asserts, this case"deals with an area of law in which that Court has concluded that it is " not appropriate ... to attempt to prescribe arbitrary time limits.'" (RB, p.39.) As discussed above, this is a mischaracterization of *Jackson*, and respondent offers no other reasons why *Mclaughlin* does not stand as an example of a workable and specific time limit crafted to establish a rebuttable presumption of a constitutional violation.

C. A Rebuttable Presumption of a Due Process Violation Does Not Preclude Policy Reform

Respondent notes that there is an "active policy-making process regarding juvenile competency proceedings in California," citing the enactment and subsequent amendment of Welfare and Institutions Code section 709, and the fact that "juvenile courts in several counties ... have already developed juvenile competency protocols tailored to local conditions. " (RB, pp 39, 40.) Respondent also cites A.B. 2695 which for a juvenile felony offense would have limited the period of remediation to "two years or a period of time equal to the maximum term of detention ... whichever is shorter. " (RB, p. 40.) Memorandum from the Judicial Council dated August 25, 2016 indicates the bill is now dead.

(Judicial Council of California, Governmental Affairs, *Memorandum,* August 25, 2016, p. 15) Respondent asserts that if the Protocol establishes a presumption of a constitutional violation, it would "short-circuit this ongoing policymaking process." (RB, p.41.) Courts, however, have an independent, inherent power to create procedures where rights would otherwise be lost. Such power does not conflict with the power of the Legislature to enact statutes. (*James H. v. Superior Court* (1978) 177 Cal. App. 3d 169, 175.)

In *James H.*, the court explained that despite legislative reforms, " many situations have arisen which have demanded improvisation to meet changing constitutional requirements. Without any fuss or commotion, the juvenile courts have done so without recourse to the Legislature or to the reviewing courts. They have done so without any evangelistic illusions of judicial wisdom. They have simply been forced to rely on their inherent powers to formulate procedures which have not yet attained legislative approval. Such is the instant case. "(Id at 176.) So, too, in this case. The Protocol does not pre-empt the statute, but adds provisions to implement it in accordance with the requirements of due process. (*In re Jesus G.*, supra, 218 Cal. App. 4th at 171.)

Respondent also objects that a "patchwork system" of various county protocols "cannot be reconciled with the need for consistent adjudication of constitutional claims across different cases and geographic regions." (RB, p. 42.) That constitutional issues arise at the county level should not prevent the courts from acting when as here, a local initiatives creates procedures to protect rights that would otherwise be lost. (See *James H. v. Superior Court,* supra, 177 Cal. App. 3d at 175.) *In re Loveton* supra, provides a recent example.

In *Loveton*, the Court of Appeal had to decide the validity of a Superior Court injunction requiring the Department of State Hospitals to admit incompetent defendants in Contra Costa County to the state hospital within 60 days. The Court of Appeal upheld the injunction as protecting the defendants' right to due process, balanced with the interests of the state, even as it recognized that a county-wide solution to the timeliness of placements "cannot begin to resolve the issue statewide." (*In re Loveton*, supra, 244 Cal. App. 4th at 1047.) The court added: "We also observe that any solution to the problem of the timeliness of placement of IST defendants at the county level cannot begin to resolve the issue statewide..... As noted, we believe the 60-day standing order in this case reasonably balances the various interests involved. Nonetheless, the necessarily piecemeal nature of countywide standing orders in general strongly suggests the ultimate need for a more uniform, statewide solution." (Ibid.)

Both the Superior Court and the Court of Appeal recognized in *Loveton* that the due process rights of incompetent defendants were at issue and decided the case despite the fact that it would not solve a statewide problem.

The facts here demonstrate a similar need for a local court policy, in this case to establish time limits that protect the due process rights of incompetent minors in Los Angeles County. As in *McLaughlin*, supra, it is important to provide some degree of certainty so that courts "may establish procedures with confidence that they fall within constitutional bounds. " (See *McLaughlin*, supra, 500 U.S. at 56.) At the same time, because the Protocol establishes a rebuttable not a conclusive presumption, it retains the courts' flexibility to determine in

individual cases what is a "reasonably necessary" period of detention for the attainment of competency, within the bounds of due process.

In *In re Jesus G.*, the court did not decide whether the presumption of a constitutional violation was rebutted. (*In re Jesus G.*, supra, 218 Cal. App. 4th at 171. In this case, as discussed in Part I above, the facts compel the conclusion that Albert's detention violated *Jackson v. Indiana.* The facts also show that his detention routinely violated the Protocol's guidelines. The circumstances of this case reveal the serious and pressing need for a rebuttable presumption that detention for more than 120 days is a violation of due progress. As in *McLaughlin,* supra, it is important to provide some degree of certainty so that courts "may establish procedures with confidence that they fall within constitutional bounds. " (See *McLaughlin,* supra, 500 U.S. at 56.)

III

THE VIOLATIONS OF THE MINOR'S RIGHT TO DUE PROCESS REQUIRE REVERSAL

Albert's detention in violation of his constitutional right to due process requires reversal of his adjudication as a ward under Welfare and Institutions Code section 602. Respondent argues to the contrary that reversal is not required, because Albert voluntarily entered into a plea agreement and admitted two offenses after being found competent. (RB, p. 30, fn 19.)

Respondent is wrong. Because Albert was detained in violation of his constitutional rights, reversal is required unless the state can meet the heavy burden of proving beyond a reasonable doubt that the prolonged detention of an incompetent fifteen year-old did not contribute to his entering an admission to

the petition after he had spent nearly a whole year in detention in juvenile hall. (See *Chapman v. California* (1967) 386 U.S. 18.)

As the court explained in *Sullivan v. Louisiana,* the question that *Chapman* instructs the reviewing court to consider is not what effect the constitutional error might generally be expected to have but rather what effect it had in the case at hand. (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 279 [124 L. Ed. 2d 182, 113 S. CT. 2078].) The inquiry, in other words, is not whether, in a proceeding that occurred without the error, Albert would have entered a plea, but whether Albert's admission was surely unattributable to the error. See *People v. Johnwell* (2004) 121 Cal. App. 4th 1267, 1278.) This is a heavy burden and the state hasnot met it in this case.

CONCLUSION

For all the reasons stated herein and in the Appellant's Opening Brief on the Merits, the minor asks this court to find that the juvenile court violated his rights to due process of law under the Fourteenth Amendment. The minor also asks this court to find that his detention beyond the 120- day limit of the Los Angeles Amended Competency to Stand Trial Protocol constituted a rebuttable violation of his right to due process that cannot be rebutted on the facts of this case. Accordingly, the minor respectfully asks that the Court of Appeal's opinion affirming the juvenile court's decisions be reversed.

Respectfully submitted

Laini Millar Melnick

Attorney for minor/petitioner, Albert C.

Certificate of Word Count

I hereby certify that the number of words in the Appellant's Reply Brief on the Merits is 9, 872. This certification is made in reliance upon the word count of the computer program used to prepare the brief.

Signed: Laini Millar Melnick

Dated: August 31, 2016

PROOF OF SERVICE BY MAIL

Re: Albert C, Court Of Appeal Case: S231315, Superior Court Case: MJ21492

I the undersigned, declare that I am employed in the County of Sonoma, California. I am over the age of eighteen years and not a party to the within entitled cause. My business address is 4968 Snark Ave, Santa Rosa CA. On August 31, 2016, I served a copy of the attached Reply Brief on the Merits (CA Supreme Court) on each of the parties in said cause by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in United States mail at Sonoma, California, addressed as follows:

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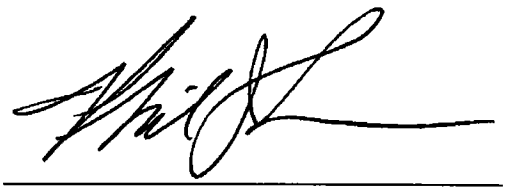
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 31st day of August, 2016.

Phil Lane
(Name of Declarant)



(Signature of Declarant)

PROOF OF SERVICE BY ELECTRONIC SERVICE

Re: Albert C, Court Of Appeal Case: S231315, Superior Court Case: MJ21492

I the undersigned, am over the age of eighteen years and not a party to the within entitled cause. My business address is 4968 Snark Ave, Santa Rosa CA. On August 31, 2016 a PDF version of the Reply Brief on the Merits (CA Supreme Court) described herein was transmitted to each of the following using the email address indicated and/or direct upload. The email address from which the intended recipients were notified is Service@GreenPathSoftware.com.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 31st day of August, 2016 at 13:07 Pacific Time hour.

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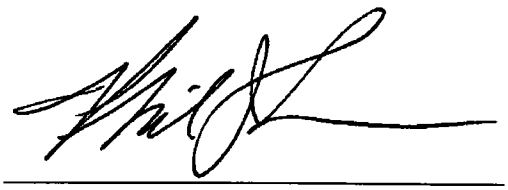

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