CASE LAW UPDATE 2013

People v. Brandão (Oct. 24, 2012) 210 Cal.App.4th 568 **(Adult case but worth mentioning!)**

Defendant was pulled over for invalid registration on his vehicle. Based upon subsequent investigation he was arrested and during booking was found to be in possession of meth. At sentencing the court imposed various probation conditions, including that defendant not associate with gang members. Counsel objected to the gang condition, but the court overruled the objection. Defendant accepted probation. Defendant appeals claiming his First Amendment rights were infringed by the gang condition.

DCA first addresses the fact that the defendant did NOT *waive* his right to raise the First Amendment issue simply because he accepted the probation conditions. Ultimately accepting probation, rather than going to prison, doesn't preclude someone from challenging a probation condition on appeal. Further, the defendant did not *forfeit* his right to challenge the condition on constitutional grounds. While a probationer who claims a probation condition is unconstitutional must challenge the condition on that basis in the trial court to preserve his claim on appeal, here, defense counsel "uttered scarcely more than a few words" of her objection before the court cut her off. Given the lack of opportunity to fully state counsel's grounds for objecting to the condition, the court found the timely objection preserved defendant's claim for review.

An appellate court reviews a trial court's imposition of probation conditions under one of two standards, depending upon the probation condition's effect on the defendant's civil liberties: 1) if the condition limits a person's constitutional rights the limitation must be closely tailored to the purpose of the limitation so it is not impermissibly overbroad; 2) all other probation conditions are reviewed for an abuse of discretion—while broad, this standard is confined by case law and statute. Probation conditions may not be "arbitrary or capricious" or "exceed the bounds of reason;" they may be imposed to "foster rehabilitation" and "protect public safety." A probation condition won't be invalidated unless it 1) has no relationship to the crime the offender was convicted of; 2) relates to conduct that itself is not criminal; and 3) requires/forbids conduct that is not reasonably related to future criminality (*Lent*). (Further analysis specific to adult probationers' conditions omitted.)

The court held that under *Lent's* reasonableness standard, the gang term was unreasonable. Even though the trial court believed the gang condition would help forestall the risk of future criminal behavior, the term involved noncriminal conduct and it lacked any "reasonable nexus" to present offense or future criminality.

In re T.C. (Nov. 9, 2012) 210 Cal.App. 4th 1430

Minor stole a car and while driving, rammed into a parking lot curb three times, rendering it a complete loss for insurance purposes. Minor fled the scene. A petition was filed alleging auto theft, resisting arrest, and harming a police dog. The minor was granted DEJ and as a condition of participation he was ordered to make restitution in the amount of $12,936 to the owner of the car. That total included $2,073 worth of interest the victim had paid on the car loan. The minor appealed the interest amount of the restitution order.

The appellate court dismissed the appeal. Appealing a condition of probation under Welf. & Inst. Code § 794 is an appeal of an order granting DEJ. The right of appeal is statutory and a judgment or order is not appealable unless expressly permitted by statute. Welf. & Inst. Code § 800 allows an appeal of a judgment sustaining a petition or certain related rulings or orders but there is no provision for appealing an order of DEJ. DEJ is not a “judgment,” rather it is a deferral of judgment, thus the court has no jurisdictional basis to hear the minor’s appeal.

Should the minor fail DEJ and the court enter judgment, the minor may be able to appeal.

In re P.A. (November 15, 2012) 211 Cal.App.4th 23

Two groups of students were involved in a confrontation on the campus at Moreno Valley High School. The minor refused to comply with several orders, to break it up and go to class, given by a Riverside County Sheriff's Deputy who had responded to the scene. Minor became angry and upset and swore at the deputy, taking a "fighting stance" and warning the deputy not to come any closer. Minor was arrested and a petition alleging a violation of Penal Code § 69, a felony, and § 148(a)(1) was filed. Following a contested hearing the court sustained both counts and stated the minor's maximum time of confinement would be 3 years for count one and 4 months for count two. At the Dispositional hearing the court reduced the PC 69 to a misdo. The minor was not removed from his parents' custody and the court made no further statement about max time. Minor appealed claiming the court's statement about max time was error b/c statements regarding the maximum term of confinement can only be made if the minor is removed from the physical custody of his parents. Minor also challenged the probation condition that he submit to blood, breath, or urine testing for alcohol and/or drugs.

Recent cases direct the trial courts not to state the max time in a dispositional order unless the minor is removed from the parents' custody. Here, statement was made at Jurisdiction. The purpose of a Juris. Hearing is to decide if evidence exists to find the person is described under § 602 and to declare the minor a ward. The court must also determine whether the offense would be a felony or a misdemeanor (unless deferred until dispo). The court's authority to state max time at Disposition is prescribed by statute (state MTC if remove from parents; don't if no removal) and stating max time without that authorization is in excess of the court's discretion. A statement made at Juris is of no consequence—it is what happens at Dispo that matters.

W&I § 729.3 provides that if a minor is found to be a person described in §601 or 602 and not removed from his parents' custody, the court may order urine testing as a condition of probation. The provision makes no mention of other types of testing. W&I § 730 applies to minors who have been adjudged wards of the court under § 602 and provides that the court can impose any and all reasonable conditions to reform/rehabilitate the ward—and random drug testing as a probation condition, including "any tests"—has been upheld pursuant to this provision. Each provision applies to a different minors: §729.3 applies to §601 and §602 *non-wards or wards*, who have not been removed from their parents' physical custody; §730 applies to §602 minors who *are wards* and within that, minors who have, as well as those who have not, been removed from their parents. Thus, 729.3 permits URINE TESTING only, not more invasive blood testing, of those "*lesser offenders."* W&I § 730 permits any "reasonable condition" which may include "any test," including blood and breath, for wards of the court (i.e. more serious offenders). A review of the legislative history provides no evidence the enactment of §729.3 was meant to affect the court's discretion in §730 to impose blood or breath testing when statutorily permissible.

In re Curtis S. (April 19, 2013) 215 Cal.App. 4th 758

Victim was sitting outside his school around 4pm doing homework. His cell phone was sitting on his lap. The minor ran up, grabbed the phone, and ran off saying, "thanks for the phone." The victim chased him, yelling, "that guy stole my phone." A woman who was driving by at the time saw the minor running and heard the victim shouting about his phone. She made a U-turn and stopped her car in front of the minor. She got out of her car and confronted the minor in the street—in front of a nearby swimming pool. She told the minor to give the phone back. He denied having it. During the exchange the minor became angry and swore at the woman, calling her a "bitch" and when the woman tried to grab the minor's wrist to detain him he pulled away warning her to "get back! Step back!" The minor got on his cell phone and told someone on the other end, "you better get this lady, because I'm about to." Minor also swung his fist at the woman and being afraid, she backed away. Another witness testified that the minor's behavior was aggressive and his voice was loud and offensive. The arriving police officer said the minor looked upset and was "flailing his arms" He also used the "f-word" and the "n-word" in excited/agitated tones.

A petition was sustained following a trial for violating PC 484, 240, and 415(2) (disturbing another person by loud and unreasonable noise). A fourth count alleging violation of PC 415(3) (using offensive words in public place) was dismissed. For the first time on appeal the minor claims there was insufficient evidence to support the finding on the PC 415(2) charge; he argues the purpose of his speech was to communicate and thus it was protected by the First Amendment.

The court found the minor's constitutional claim was effectively waived since it was not raised at the time of the jurisdictional hearing. However, the court exercised its discretion in order to address the issue on the merits. An appeal to ensure a First Amendment right has not been violated requires a fact-based analysis rather than being a pure question of law (which is why it is better addressed by the trial court.)

Penal Code § 415(2) makes it a crime to "maliciously and willfully disturb another person by loud and unreasonable noise." "Noise" is defined as communications made in a loud manner (1) where there is a clear and present danger of imminent violence and (2) where the purported communication is used as a guise for disrupting lawful endeavors. Here, the minor's loud shouting of threats and obscenities was not communicative it was disruptive. His loud, angry, aggressive tone was not meant to inform or persuade, but to disrupt the witness who was reasonably (lawfully) trying to stop minor from escaping. From his calling her a "bitch" and telling someone on the phone that "someone needs to get this lady" the trial court reasonably inferred minor's speech presented a clear and present danger of violence.

In re Robert M. (April 29, 2013) 215 Cal.App.4th 1178

The minor admitted to one count of a lewd or lascivious act on a child under 14 (PC 288(a)) and one count of sexual penetration of a child under 14 and 10 years younger (PC 289(j)). At the April 2010 dispositional hearing the court adjudged the minor a ward and committed him to DJF. Minor appealed and the DCA affirmed. CA Supreme Court (CASC) granted review. In December 2011 the CASC held, in *In re C.H.,* that a juvenile court may only commit a ward to DJF if he has committed a W&I § 707(b) offense and then, only if the most recent offense committed by the ward is a 707(b) offense or one listed in PC 290.008. In February 2012 the CASC sent the minor's case back to the DCA for reconsideration in light of *C.H*. Minor's case was reversed and remanded for further dispositional proceedings.

Also in February 2012, the CA Legislature enacted as urgency legislation W&I § 1752.16, specifically to address the ruling in *In re C.H.* Section 1752.16(a) provides that DJF may enter into a contract with any county for DJF to furnish housing to a ward who was in custody at DJF when *C.H.* was decided and who had been committed to DJF for an offense listed in PC §290.008, but who had not previously had a §707(b) offense sustained. The legislation also amended §731(a)(4) and §733(c) to allow DJF commitments for sex offenses registerable under PC §290.008, but not listed in §707(b).

On remand, the juvenile court committed the minor to juvenile hall until the age of 21, with housing at DJF pursuant to §1752.16. He was ordered to reenroll in and complete the sex offender program, where he had been prior to appeal. After completion of the S.O. program minor was to be returned to the juvenile hall for possible modification of disposition by the juvenile court. Minor appealed arguing the new statute and the housing order are a procedural end-around *C.H.* and demeaned the judicial process; that W&I §202 and §727 do not provide for DJF housing; new statute is a violation of equal protection since counties CAN but aren't REQUIRED to contract with DJF; such a housing order impermissibly comingles DJF and probation duties; and the statute is an ex post facto law.

Appellate court affirmed. The court pointed out the differences between a DJF commitment and a JH commitment that provides for housing at DJF—sex offenders won't have to register w/JH commit; also, a DJF commitment means Juvenile Parole Board decides release, not the juvenile court judge. Further, while the minor is participating in a DJF program, the juvenile court maintains supervision of the ward, similar to a group home/foster care placement, thus there is no impermissible intermingling of probation and DJF responsibilities.

The appellate court also found the new statute didn't violate *C.H.* since *C.H.* simply held the law *at that time* provided no legal basis for a DJF commitment. Further, §§ 202, 727 and 731 provide the statutory bases for JH commitments and permit the juvenile court to make orders appropriate for the ward's circumstances, including treatment and counseling; the DJF S.O. treatment program is just another treatment option available to counties. Nowhere is there legal authority for the proposition that county resources be uniform across the state—the juvenile court in each county considers all its available resources (so some can contract w/DJF even if others don't), and the individual exercise of discretion by a court (and for that matter

prosecutors) is not a basis for an equal protection claim unless the exercise of discretion is discriminatory or retaliatory. (This is straight out of *Manduley.*) Additionally, here the trial court had not abused its discretion because the court thoroughly considered all its dispositional options and there were no other residential facilities that would take the minor.

Finally, the DCA held the new statute was not an ex post facto law. Such a prohibition requires two elements be met. The first requirement, that the law be retroactive, is satisfied because the minor was, prior to the effective date of §1752.16, serving a DJF commitment for a §290.008 listed offense. The second requirement is that the law do one or more of the following: 1) make criminal an act that was innocent when done; 2) make a crime more aggravated than when it was committed; 3) inflict greater punishment that when crime was committed; 4) or alter rules of evidence or proof required. Here, the minor claims §1752.16 increases the punishment he could have received for his offense. The court found that simply creating another S.O. treatment resource in a different location was not an increase in punishment. Housing at DJF in order to complete a S.O. program is no more punishment than a commitment to JH with housing in county jail. The punishment is of no greater duration or type than a fixed term JH commitment—in fact the ward can expedite his release by completing the DJF treatment program.

<u>Elijah W. v. Super. Ct. (May 8, 2013) 216 Cal.App.4th 140</u>

In December of 2011 the L.A. D.A.'s Office filed a petition alleging the 10-year-old minor committed violations of PC §451(c) (willfully setting fire to a structure) and PC §452(c) (recklessly burning a structure). Minor's PD moved, pursuant to Evid. Code §730 and §952, for appointment of a particular psychologist to evaluate the minor "to assist counsel in conducting reasonably necessary psychological evaluations, assessments … related to … the case." The request was for appointment of Dr. who expressed a willingness to respect the lawyer-client privilege and duty of confidentiality and who would not report child abuse/neglect or a Tarasoff threat. Juvenile court denied the motion, ruling that defense was limited to appointment of someone on the court's juvenile competency to stand trial (JCST) panel—though panel members had told minor's PD they would report child abuse, neglect, or *Tarasoff* threats.

L.A. County Superior Court adopted a protocol to implement §709 (juvenile competency statute). The Protocol provides for the establishment of a qualified panel (e.g. have expertise in child development & forensic evaluation of juveniles) of psychologists/psychiatrists to conduct competency assessments. The Protocol allows for counsel to receive an assessment and not disclose it unless a doubt is declared (L.A.'s protocol permits counsel to seek a JCST evaluation without having to formally declare a doubt first), and it provides that no admissions, statements, or information obtained in the course of the evaluation can be admitted into evidence or used against the minor. Minor petitioned for writ of mandate arguing an expert who wouldn't protect confidentiality of attorney-client communications re: child abuse/neglect and *Tarasoff* threats violated his constitutional right to effective assistance of counsel. DCA granted minor's petition. The People sought a rehearing to consider arguments re: CANRA.

Court held that the right to effective counsel applies to all reasonably necessary defense services, including appointment of experts, to assist in minor's defense; and the statutory privilege b/t attorney and client prevents disclosing confidential communications, and in addition, there is a broader ethical duty of confidentiality that protects "virtually everything a lawyer knows about [his] client's matter." Together, these fundamental principles mandate that the appointment of necessary experts includes the right to have any communications made to those experts remain confidential—to same extent as communication b/t client and attorney. (There is, however, no privilege if the expert is appointed by the court to evaluate the person for any purpose other than to aid the defense.)

All Drs., psychiatrists, psychologists, MH professionals are mandated reporters under CANRA. Attorneys are not. Leg history of CANRA shows no consideration of conflicting obligations of a defense expert and court didn't want to read such a requirement into the law. Additionally, it is not clear a defense psychologist has a duty under *Tarasoff* to report a threat to authorities. (Expert here stated she would notify minor's PD, which she thinks satisfies her duty to use reasonable care in such a circumstance.)

Minor had constitutional right to appointment of an expert as part of his defense team & a right, which is further protected by confidentiality and attorney-client privilege, to speak in confidence to that expert. Court abused its discretion in denying request for Dr's appointment.

In re Matthew N. (May 16, 2013) 216 Cal.App.4th 1412

Fourteen-year-old minor was friends with the older brother of an 8-year-old girl and 6-year-old boy. In March 2011 the two children told their parents that minor had engaged in various lewd acts with them, violating PC § 288(a). In October 2011, following the filing of a petition, minor was evaluated. He acknowledged un-coerced physical contact with the girl, but denied contact was sexually motivated, although he ejaculated. He denied contact with the boy. Psychologist stated minor's behavior was more like that of a nine-or-ten-year old. Minor had also told her that he: (1) had experienced auditory hallucinations and believed he was haunted by ghosts, those behaviors possibly indicative of schizophrenia; and (2) had had serious suicidal thoughts. The psychologist advised that during his evaluation, his actions demonstrated either intense anxiety or a thought disorder. Dr. recommended a secure setting to obtain treatment. A month later minor admitted both charged counts (in San Luis Obispo County where he had been living with father) on the condition he could withdraw his admissions if he was not found suitable for DEJ. One week later probation discovered father was in custody and minor's mother lived in San Joaquin County. Probation was now recommending transfer to San Joaquin so that at Dispo a treatment facility close to the mother could be found. In light of the residency situation, the parties agreed minor could withdraw his DEJ-conditioned admissions and admit to just one count; his case was then transferred to San Joaquin for Disposition.

The newly appointed defense attorney expressed a doubt as to minor's competence, both at the present time and at the time of his admission. A psychologist was appt'd to address minor's current competence. Dr. opined minor was, and court found him to be, incompetent based upon lack of maturity or developmental delay, but not because of any mental disorder/disability. Defense argued this finding should apply to earlier plea, but the court disagreed given there was nothing in the record of those proceedings that minor lacked an understanding. Defense filed motion to withdraw the plea. In late February 2012 minor successfully completed competency training, parties stipulated minor had attained competence, and proceedings were reinstated.

At the subsequent motion to withdraw hearing defense argued minor was completely ignorant of what had happened during his plea, and pointed to the evaluation of minor. If minor was not competent in January 2012 he wasn't competent earlier, in October 2011. Relying solely on the minor's written waiver form, the court denied motion.

The DCA described the difference b/t incompetence stemming from mental disorder (which could be different at different times) vs developmental incompetence—which is a more linear process. Here, the minor's unusual immaturity and inability to grasp the legal concepts at time of Dispo means there was no reason to conclude he had the ability to comprehend things any better *earlier* in time. The case was remanded for a renewed motion to withdraw the admission.

<u>In re Timothy N. (May 22,2013) 216 Cal.App.4th 725</u>

Minor pled to one count of PC 460(a), a felony, in exchange for 5 other counts being dismissed and the agreement of the prosecutor that if minor "successfully completed probation" the prosecutor would dismiss residential burglary and reduce charge to misdo. Among minor's probation conditions was an order for restitution—jointly and severally liable with other boys involved. The total amount of restitution agreed upon was over $20,000. The court held an annual review hearing and the minor was doing very well with every aspect of probation, except paying restitution. Probation was extended for one year—but converted to "court" probation—so minor could get restitution "knocked down" in the next year.

A year later, at another review hearing, all the minors had only paid $1,400 of the $20,000+ restitution. Minor's attorney explained minor's parents had made payments as best they could, but now they were both unemployed and further payment seemed unlikely. Defense recommended converting the order into a civil judgment. DA agreed to that. Defense raised the issue of a dismissal and reduction of the charge. DA said probation wasn't successfully completed in light of the outstanding restitution. Court indicated that terminating probation was giving minor a break because he had done everything else asked of him, but couldn't force the DA to agree minor was "successful" since restitution wasn't paid. The minute order indicated that the court "finds" the minor "successfully complied with his/her conditions of probation" and that probation was terminated. However, the court denied the defense request to enforce the plea agreement and dismissal/reduction of the charge. Minor appealed.

Appellate court found the DA "breached" the negotiated plea. The court could not revoke probation b/c minor didn't pay restitution unless that failure was willful; minor's failure to pay was not willful. Any ambiguities in terms of agreement should be construed in the minor's favor and focused on his reasonable understanding of the agreement—what caused him to plead guilty. Here, minor could reasonably have believed "successful completion" meant that he would complete probation without getting into trouble and having probation revoked. If the prosecutor meant that successful completion included full restitution being paid, she/he should have made that condition (i.e. required minor fulfill *every condition* of probation) an explicit term of the plea agreement.

In re Oscar A. (June 28, 2013) 217 Cal.App.4th 750

In 2009, the Imperial County D.A.'s Office filed its first petition on behalf of the then 13-year-old minor. It alleged a violation of PC 594. The petition was sustained, minor was declared a ward, and he was placed at home with his father on probation. Violation of probation notices were filed in Feb. 2010, April 2010, Sept. 2010, and Dec. 2010—each time the minor was returned to his father's home on probation. In Jan. 2011, when the fifth VOP was sustained, the minor was sent to placement. The minor ran away after 6 months and remained on the run for 6 more months. He turned himself in and while in JH he was diagnosed with bipolar disorder but refused to take medication. In March of 2011 minor was returned to placement. A month later the minor ran away and a VOP was filed. Probation tried to find a placement in the CA, but also referred the minor to ROP. Defense counsel objected to ROP and minor was placed in CA (CFLC). In June, minor was terminated from his placement for shoving a staff member and another VOP (7th one) was filed. Minor was placed in another CA facility (PHILOS), but was terminated within a month for not following rules, refusing to turn over a box cutter, and general negative behavior. Minor ran away again. DA filed another VOP and upon minor's arrest on the BW he indicated he couldn't succeed in placement. The DA also filed a petition alleging violation of §11550 at the time of the minor's arrest. Court ordered a Behavioral Health Service assessment. The assessment of the minor found he "dislikes placement" (Really?), has a poor relationship with his parents, school problems, behavioral issues, and a substance abuse history. It was recommended the minor receive individual and family therapy, medication, and drug counseling.

The P.O. recommended ROP, stating it would best serve the minor's needs. Defense objected & the court agreed it wanted more information about why in-state facilities were inadequate or unavailable. (This case is a great analysis of what probation considers in placing wards: how it comes up with a list of facilities to use, why out-of-state facilities can be more appropriate, etc.) After hearing from Probation the court found an out-of-state facility would best serve minor's interests and in-state ones were unavailable or inadequate. Minor was placed at ROP. Minor appealed, arguing the court abused its discretion as there was insufficient evidence that no in-state facility was available.

While W&I Code § 727.1 prohibits out-of-state placement unless in-state facilities are determined to be unavailable or inadequate, the juvenile court isn't required to try every single facility in CA. The court need not determine ALL in-state facilities are unavailable, it may also find the facilities are simply inadequate. Here, minor was placed many times and no in-state program could provide the necessary level of security, services, or treatment; probation recommended ROP as the program to best meet minor's needs. DCA held the juvenile court, considering the minor's lengthy history of probation failures, running away, and many behavioral/drug/family issues, did not abuse its discretion in deciding in-state facilities were not available or were inadequate.

In re V.C. (July 2, 1013) 217 Cal.App.4th 814

Minor lost control of and crashed the car he was driving into the trailer of an Allied Van Lines semi-truck. Minor could not provide a CDL or proof of insurance. The D.A. filed a petition alleging the minor violated VC §12500 (misdo) and 22350 (infraction for unsafe speed). After a contested jurisdictional hearing the prosecution moved to dismiss for insufficiency of the evidence. The motion was granted and count two was found true. Minor moved to dismiss the case for lack of jurisdiction. The juvenile court denied the motion, found the minor came within the descriptions of §602, and placed him on court probation for six months. He was ordered to do PSW and make restitution to victim for property damage. Minor appealed, claiming that the dismissal of the §12500 misdemeanor charge stripped the court of its jurisdiction over the infraction.

Welf. & Inst. Code §603.5 provides that "… jurisdiction over the case of a minor alleged to have committed only a violation of the Vehicle Code classified as an infraction … is with the superior court, except that the court may refer to the juvenile court for adjudication, cases involving a minor who has been adjudicated a ward … or who has other matters pending in the juvenile court." Enacted at the same time, VC §40502 provides in part, "if the citation combines an infraction and a misdemeanor, the place specified shall be" the juvenile court. But there is no reference in the legislative history of either statute as to what stage in the proceedings the statutes are referring to (time of *filing* or post-filing at juris) or what happens if the misdemeanor is dismissed.

Juvenile traffic matters are generally handled in superior court; the purpose of the shift from juvenile court to superior court appears to be a cost saving measure—most evident from the fact most traffic infractions are resolved by bail forfeiture than a court appearance.

A lower court's order is presumed correct and when the record is silent, the minor has the burden to show there was some purpose to the statutory ambiguity that would be served by requiring the juvenile court to dismiss the remaining infraction and requiring the prosecutor to then re-file on the infraction alone. In fact it would be a waste of judicial resources. Also, there is no indication (from the minor or otherwise found) that the Legislature intended §603.5's cost saving mechanism of bail forfeiture be used where there is outstanding victim restitution. (And victim restitution is a constitutional right.) Further, the court considered the example of a case decided prior to unification of the superior and municipal courts. Just because a jury didn't convict on a felony and only convicted on a misdemeanor, the trial court did not lose its jurisdiction over the matter.

Once a court has jurisdiction of a case it retains jurisdiction until the matter is disposed of—jurisdiction does not depend on the case's outcome. Therefore the DCA found that §603.5 must refer to the state of the petition/pleading at the time it is filed.

In re Jesus G. (July 24, 2013) 218 Cal.App.4th 157

Thirteen-year-old minor told school officials he was depressed and wanted to kill himself. He had tried cutting his wrists due to physical abuse by step-father. He was admitted to a psychiatric hospital and during interviews he and his mother disclosed minor had been touching one sibling's genitals and trying to touch another sibling. A petition was filed in Dec. 2011 alleging PC 288(b)(1) (forcible lewd act on a child) and two counts of PC 664-288(a) (attempted lewd act).

On Jan. 9, 2012 the PJ of the Juvenile Court issued a protocol implementing W&I § 709 regarding juvenile competency to stand trial. As relevant here, the protocol provides that when a doubt is raised the proceedings are to be suspended, and if the minor is found incompetent, proceedings are to remain suspended no longer than reasonably necessary to determine whether there is a substantial probability the minor will attain competency. If the minor is in custody, the Protocol outlines procedures that are to be followed by Probation and DCFS in preparing a "planning report." Then, depending upon whether there is a "substantial probability" the minor will attain competency in the foreseeable future, other services are engaged and procedures followed. Pending the attainment of competency, the minor is to be held in the *least restrictive setting* and may only be detained if it is a matter of *immediate and urgent necessity for the protection of the minor … or protection of person or property of another.* But, the minor cannot be held in JH to *participate in attainment services for more than 120 days.*

On May 14, 2012 minor's counsel declared a doubt. An evaluation was done May 30th and an addendum done Aug. 9th. Dr. expressed an opinion that minor was not competent. In August the court ordered a 241.1 report in case minor was found incompetent. In Sept. 2012 hearing the Dr. testified minor was incompetent and the court so found. Probation, DMH, and DCFS were directed to submit a planning report on whether services could be provided to help minor attain competency. The subsequent hearing didn't happen within protocol's timeline, but occurred October 15th. At that time, probation had conflicting recommendations and no placement available, DCFS recommended home w/wrap-around services which made the court uncomfortable b/c victims were in the home, and the court felt it couldn't decide without probation's rec re: likely attainment of competence. Minor's counsel objected to a continuance arguing further detention was a violation of minor's constitutional rights. On Nov. 15th the planning hearing was held but the court didn't have resources to draft joinder order for Probation, DMH & DCFS; defense objected to further detention. (58 days passed since finding of incompetence & no remediation efforts by Probation or DMH.) Everyone was concerned about minor's detention and what release might mean to the victims, and court opined that in spite of having a protocol, there were no services in place and no one yet responsible for providing competency training. Another hearing was scheduled for Dec. 14th. Counsel renewed their objection to minor's continued detention.

On Dec. 14th the court reiterated the requirement that the minor be held in the *least restrictive* environment, indicated a concern for public safety and the victims living in the minor's home, and stated DCFS is exploring a possible §300 petition. Counsel argued Probation and DMH had

provided no competence training and minor had been in custody nearly one year. Court continued matter to Dec. 28th.

On Dec. 21st a petition for writ of habeas corpus was filed. On Jan. 9, 2013 the DCA denied the petition. On Jan. 28, 2013 a petition for review was filed with the Supreme Court. Review was granted and on March 6, 2013 the DCA issued an OSC as to why minor's prolonged detention without services was not a violation of the Protocol and a denial of due process. Probation responded that Protocol was not violated b/c minor had educational and MH services while in JH that could help attain competency; minor had not been detained for unreasonable period of time; Protocol conflicts w/§ 709 and is thus preempted. Minor's counsel argued provision of JH education services is not providing attainment of competency services; there is no preemption; minor was deprived of equal protection and due process.

DCA concluded the Protocol is not preempted and is constitutional. W&I §709 doesn't have a time limit on how long services or detention may last; it only addresses how long proceedings may be suspended due to finding of incompetency—"no longer than reasonably necessary to determine whether there is substantial probability the minor will attain competency." The Protocol's limit on detention—120 days—doesn't contradict or overrule §709, it simply adds additional rules to the procedure. Further, the Protocol met constitutional due process requirements b/c it incorporates §709, *Timothy J.*, Rules of Court, and relevant adult insanity cases that prohibit indefinite commitments & the necessity of making a prognosis as to probable attainment of competence.

Finally, the appellate court concluded that several of the Protocol timelines were violated: there was not a timely planning hearing, there was no coordination of services between DMH, DCFS, and Probation, the court did not make a finding on the probability that the minor would attain competency, and did not order specific attainment services.

In re David R. (Sept. 10, 2013) 219 Cal.App.4th 626

Minor was declared a ward of court after a petition was sustained for violations of PC 451(c) and PC 148. The minor was placed on probation and ordered to register pursuant to PC 457.1. Minor appealed claiming the registration requirement doesn't apply to him because he was not committed to DJF.

Penal Code Section 457.1 provides, "Any person who … after having been adjudicated a ward of the juvenile court … is discharged or paroled from the Department of the Youth Authority shall be required to register, in accordance with the provisions of this section…."

Registration requirements cannot be imposed on people not specifically described in the statute. The Legislature's determination of who should register is "exclusive" and cannot be expanded by the trial court.

In re M.R. (September 27, 2913) 220 Cal.App.4th 49

In October of 2012 minor admitted a §601(b) petition alleging he was a habitual truant. He was declared a ward, and sent home on probation with certain conditions. At a review hearing a month later the P.O. stated the minor had not attended school daily and not followed curfew. Court imposed additional order that minor attend a weekend training academy (WETA) 3 times and suspended 26 WETA sessions, telling the minor he could have been "remanded today." Another review was set and the court gave "fair warning" that another bad report would mean the minor would "spend the weekend here." At the next review the P.O. stated minor had only gone to 1 of 3 WETAs and lied about being sick; he continued to violate curfew; he had gone to Reno without permission; and he continued to skip school while getting all Fs. The court made clear it was going to incarcerate the minor. Counsel objected, arguing the court lacked authority except under its civil contempt powers. The court disagreed and stated it had been addressing the issue of its authority to remand minors "for probably at least the last couple of months." The court stated it had sought less restrictive options by ordering minor attend WETAs, and cited the various, on-going violations as justification. Minor was remanded and the court ordered he not be housed with any "602s." No statement that the minor was in contempt of court was ever made. Minor appealed.

DCA exercised its discretion to hear the appeal in spite of the fact it was moot, finding the issue was a matter of "public interest that is likely to recur while evading appellate review." W&I §213 provides in part, "Any willful disobedience … with any lawful order of the juvenile court … constitutes a contempt of court." However, no punishment or procedures for finding someone in contempt are specified. Code of Civil Procedure (CCP) §§1209-1222 place limitations on the court's contempt powers. The process for initiating an indirect contempt (act of contempt not committed in the presence of the court) proceeding begins with an affidavit presented to the court setting forth the facts. Without that, a contempt order is invalid.

The ability to order secure confinement of §601 wards is limited by both §601, "…no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours," and §207 which directs, "no minor shall be detained in any … juvenile hall … who is taken into custody solely upon the ground that he or she is a person described by Section 601 …." However, in *In re Michael G.* (44 Cal.3d 283), the CA Supreme Court held that "a juvenile court retains the authority, pursuant to its contempt power, to order the secure, non-school-hours confinement of a contemptuous section 601 ward." But the Court urged respect for the legislatively imposed limits on confinement of 601s and directed courts to exercise caution when imposing such sanctions. That caution includes adopting additional requirements for finding a 601 in contempt: 1) ensure the ward is given sufficient notice to comply; 2) violation must be egregious so that incarceration doesn't become commonplace; 3) juvenile court must have considered less restrictive alternatives & found them ineffective; 4) 601s must not be allowed to come in contact with 602s; and all the courts findings must be made on the record.

CCP contempt provisions apply broadly in other civil and criminal proceedings. The *Michael G.* court assumed at least one of the CCP provisions applied in juvenile court contempt

proceedings. In *In re Vanessa M.* (138 Cal.App.4th 1121) another DCA also assumed the CCP provisions applied in a juvenile court contempt proceeding. Thus, while burdensome, the CCP contempt provisions must be followed. In particular, the juvenile court must issue an OSC before conducting a contempt hearing and the requirement of an affidavit can be satisfied with a declaration under penalty of perjury by probation officer or D.A.

In re K.C. (October 10, 2013) 220 Cal.App.4th 465

Sixteen year old minor and friend were throwing full bottles of water and frozen yogurts out of a school bus window at the oncoming traffic. One car suffered a shattered windshield and the driver was injured. In April 2010 prosecutors filed a §602 petition, but agreed with minor's counsel the case was appropriate for §654.2 I.S.—in spite of the restitution issue (victim's claim was $4,248.14). On July 7, 2010 probation recommended I.S. and submitted restitution recommendation. Court granted I.S., ordered various supervision terms (school, curfew, CSW, counseling) and the minor agreed that restitution and fines/fees were to "remain in effect until paid in full pursuant to [W&I] §730.6 & §730.7 and are not discharged upon termination of probation …." Counsel agreed to, and court ordered, full restitution amount. In December 2010 probation recommended the minor be terminated from supervision as he had completed all his supervision conditions. However, he had only paid $124.07 in restitution. Court terminated "supervisory terms," but extended I.S. program for restitution to be paid. By the April 2011 hearing the minor had paid $224 more. The court indicated it would convert the restitution order to a civil judgment pursuant to W&I §730.6; defense counsel opposed. After both sides briefed the issue the court dismissed the petition, terminated I.S., and converted the restitution to a civil judgment. The court's well-reasoned ruling concluded: 1) victim restitution is a *right* guaranteed by the CA Constitution & I.S. is a *privilege* that provides a minor several benefits; 2) paying victim restitution is rehabilitative; 3) W&I §654 gives the court authority to order restitution and it would make no sense if the court weren't empowered to enforce that order; and 4) if the court can order restitution without a W&I 602 adjudication, the court can convert that restitution order into a civil judgment.

Minor appealed arguing W&I §730.6 only applies to minors adjudicated under §602.

Appellate court agreed with the minor's argument re: the statutory limitations. However, in accepting the conditions of I.S., the minor agreed that the restitution order could be converted to a civil judgment and is now estopped from raising the claim on appeal. In exchange for the benefits of I.S./avoiding an adjudication, the minor agreed the restitution order would remain in effect until paid in full pursuant to §730.6. By doing so, the minor consented to an act in excess of the court's jurisdiction. Such acts have been allowed when all parties receive a benefit and the act did not violate public policy, or when permitting a party to object would amount to "trifling with the courts." Here, the minor derived great benefit from getting I.S., (no adjudication, wardship, criminal record), in spite of the fact the amount of restitution would normally have precluded I.S. Public policy considerations, i.e. the right of victims to recover economic loss, weighs in favor of enforcing the judgment as well. Once minor got the benefit, allowing him to claim the court erred in converting restitution to civil judgment would be "trifling with the court."