

NEW JUVENILE CASE LAW – 2015

In re Bryan E. (10/27/14) 231 Cal.App.4th 385

The People filed a petition alleging the minor, who had recently turned 13 years old, committed a PC §245(a)(1) and a PC §245(a)(4). A doubt was raised about his competence and proceedings suspended. The doctor who evaluated the minor's competence, opined Bryan "lacked sufficient present ability to consult with counsel and assist in preparing his defense with a reasonable degree of rational understanding" and lacked "a rational as well as factual understanding of the nature of the charges or proceedings against him." Minor didn't know his "exact charges" but knew he was in court for "fighting." He didn't know the possible punishments he could face, nor did he "initially understand the basic pleas." He did tell the doctor that "guilty means you did it." He couldn't recall his public defender's name but knew he was a man and was there to "protect me." He knew the other attorney was "against" him. Bryan described the judge's role as "to find evidence or not" and "to say if you're guilty or not." Upon cross-examination the doctor admitted the minor had no "developmental disabilities" and did reasonably well in school, doing better with one-on-one help. He suggested if minor's depression was stabilized he would be amenable to training on the court process.

The court's minute order from the competency hearing date indicated the matter was called for a "hearing pursuant to Penal Code Section 1368" Following testimony, the juvenile court found the minor competent—stating the minor expressed an understanding of the proceedings and types of pleas. The judge stated the evidence led the court "to believe that the defense has not met its burden. There has not been a substantial showing that Bryan lacks the ability to comprehend the court procedures" Minor appealed.

Penal Code sections 1367 & 1368 govern adult criminal competency proceedings. If a court finds "substantial evidence" of incompetence, the trial court must conduct a competency hearing. Welf. & Inst. §709 governs juvenile competency proceedings and also requires the court finds "substantial evidence" as to a minor's incompetence. However, the juvenile competence statute provides that incompetence can arise from a minor's developmental immaturity as well, not just a mental illness, disorder, or disability. In both adult and juvenile matters the correct standard for proving incompetence is preponderance of the evidence.

Appellate court found the juvenile court applied the incorrect standard. The minute order itself referenced a hearing pursuant to §1368.

Additionally, both adult and juvenile proceedings require incompetence shown by a “preponderance of the evidence.” Here, the court used a “substantial showing” standard and determined the minor had not met his burden. If the court’s reference to “substantial showing” was intended to mean “substantial evidence” then that is the showing needed to decide if a competency hearing is required, not to determine if a defendant or minor is competent. Because the record was unclear as to what type of hearing was had, and what exactly the court found, the matter was remanded for a new hearing if necessary, and to make findings consistent with W&I §709.

People v. Palafox (11/3/14) 231 Cal.App.4th 68

Defendant and co-def were convicted of two counts of first degree murder with multiple murder, robbery-murder, and burglary-murder special circumstances. Each was sentenced to 2 consecutive LWOP terms. Appeals Court affirmed the judgments, but upon petition for rehearing, and after a lengthy discussion of *Miller*, remanded the cases to the trial court to “exercise its discretion ... under 190.5 in light of *Miller*” and to resentence defendants. At that hearing, defendant presented a “mitigation” report detailing his life, family, social, and educational history, and the results of a psychological exam.

The trial court considered the factors *Miller* found appropriate to assist in an LWOP determination: 1) chronological age & its hallmark features including immaturity, impetuosity, and failure to appreciate risk and consequences; 2) family and home environment from which a juvenile usually can’t escape no matter how dysfunctional; 3) circumstances of the murder including extent of defendant’s participation and the way family/peer pressure may have affected him; 4) that defendant might have been charged/convicted of a lesser offense if not for incompetencies associated with youth; and 5) possibility of rehabilitation. The court also considered prior criminal history.

In making its sentencing decision the court indicated 1) the age/maturity factor was not that significant as defendants were both 16 and more mature than the *Miller* defendants, and while they probably didn’t appreciate the risk and consequences, they entered the victims’ home with a weapon and decided to proceed knowing there might be a violent confrontation; 2) while the defendant’s family life was disruptive and chaotic the court found many people have similar backgrounds and didn’t make the choices defendant made; 3) the court found this murder to be one of the worst it had seen in 30 years; 4) the court didn’t find defendant suffered a more severe conviction than he would have had he been older and more able to understand the system; 5) the court acknowledged it could not “exclude the possibility” the defendant might experience rehabilitation, but didn’t find this criteria dispositive by itself. The court noted defendant had no prior criminal history. After weighing all the factors and exercising its discretion, the court found it appropriate to resentence both defendants to 2 consecutive LWOP terms. Defendant appealed claiming LWOP is unconstitutional as the 8th Amendment forbids LWOP for juvenile offenders unless the facts show the juvenile is “irreparably corrupt” and here the trial court found a significant possibility of rehabilitation.

An appeals court independently reviews a cruel and/or unusual punishment claim as a question of law; however, it is viewed in the light most favorable to the judgment. The framework for a claim of excessive punishment requires reference to the “evolving standards of decency that mark the progress of a maturing society.” The court then reviewed the line of USSC juvenile 8th Amendment death penalty and LWOP sentencing cases from *Eddings* to *Miller*, concluding that the trial court must “follow a certain process—considering an offender’s youth and attendant characteristics” before it metes out “the law’s most serious punishments.”

Here, the court found Penal Code §190.5 requires a sentencing court to consider the defendant’s “distinctive attributes of youth.” The court did that, as well as considering the factors set out in *Miller*. Importantly, the court found nothing in *Miller* says the potential for a defendant’s rehabilitation overrides or is even the most significant of all the factors. After weighing the various factors, the trial court found LWOP was the appropriate sentence.

In re M.D. (11/24/14) 231 Cal.App.4th 993

Officers observed minor and another female dressed scantily, walking slowly down the street together. They made contact with the passengers in two different passing vehicles. They always stayed in visible range of each other and seemed to be “together” the whole time. They were arrested for loitering with intent to commit prostitution and the adult was also charged with pimping. Prior to the minor’s jurisdictional hearing she filed a motion to exclude evidence of her alleged commercial sexual activity pursuant to Evid Code §1161(a), claiming she was the victim of human trafficking. After a hearing, the court found insufficient evidence that the minor was a victim of human trafficking and denied the motion. Following a contested jurisdictional hearing the court sustained the petition. Minor appeals, claiming the court erred in putting the burden on her to establish she was a victim of trafficking & even if the burden was hers, she met it.

Generally, the party seeking to exclude relevant evidence/testimony on public policy grounds (pursuant to Evid Code § 405) bears the burden of proof on any foundational issues of fact. When a court decides whether to alter the allocation of that burden, it considers: 1) the parties knowledge about the particular fact; 2) availability of evidence to the parties; 3) desirability of the result, in terms of public policy, in the absence of proof of the particular fact; 4) and the probability of the existence/nonexistence of the fact. Here, the minor argues Evid Code §1161(a) warrants reallocating the burden on both procedural fairness and public policy grounds. Minor claims the prosecution has better access to evidence, and whether or not she is a victim is “not a fact peculiarly within her knowledge.” The court disagreed, finding minor has the most knowledge about the circumstances that led her to engage in prostitution, who, if anyone, led her to do so, and to whom, if anyone, she is delivering the proceeds. Minor also argued the Californians Against Sexual Exploitation (CASE) Act was passed by voters to protect young trafficking victims and that when minors engage in commercial sex acts with an adult present, she should be presumed to be a victim of trafficking—and thus the burden is the prosecutor’s to rebut. The court disagreed, holding nothing in the statute creates such a presumption.

The court went on to find that the minor did not provide sufficient evidence she was the victim of trafficking. The evidence presented was consistent with several possibilities, not just that she was a trafficking victim and thus the court did not err in denying her motion. IAC claim also failed as counsel’s failure to present additional evidence on minor’s behalf did not prejudice her.

In re J.V. (11/26/14) 231 Cal.App.4th 1331, 180 Cal.Rptr.3d 711

In December of 2006, minor admitted to a misdemeanor VC 10851 in San Joaquin County and the case was transferred to Alameda County for Disposition. In January 2007, minor was declared a ward and returned to his parents' custody. On March 7, 2007, the juvenile court ordered minor to pay the victim restitution in the amount of \$2,357.65.

Over the next two years minor appeared in court for several review hearings, and jurisdiction and disposition hearings on a VOP. The amount of restitution was reduced by about \$250 due to his ongoing payments and minor continued to acknowledge his responsibility to pay. In August 2009, minor failed to appear at a review hearing as he had apparently previously been released to the custody of Immigration officials. A warrant was issued, but set to "expire on 9/16/2011" (presumably his 21st birthday). When he failed to appear at a hearing on 9/13/11, the court indicated it would not dismiss the case until a JV-790 was signed. Defense counsel subsequently filed papers opposing the court's intention to file a JV-790, claiming the court had no jurisdiction. The court signed the form, however, stating restitution is a constitutional as well as statutory right, indicating the remaining restitution balance was \$2,026.65, and then dismissed the case. Defendant appealed, claiming the court's jurisdiction terminated by operation of law on his 21st birthday.

Appellate court held that the juvenile court had issued a restitution order in March of 2007, well before minor was 21. The later issuance of an order/abstract "simply memorializes a previously entered, valid restitution order." In keeping with the constitutional and statutory intentions that restitution be made to victims, the court was acting within its authority to enforce the juvenile restitution order. To require the minor be under 21 to issue an abstract, that does nothing more than memorialize a prior restitution order, would negate the Legislature's intent to give victims enforceable restitution orders similar to enforceable civil judgments.

In re Jose O. (12/9/14) 232 Cal.App.4th 128, 180 Cal.Rptr.3d 804

Jose and his family had a long dependency history. He had been a dependent child of the court since 2008 and in October of 2013 was a runaway from a group home. A petition was subsequently filed alleging the minor committed the misdemeanors of contributing to the delinquency of a minor and resisting arrest, and a felony battery with a gang enhancement. (Only the PC 272 is at issue.) Evidence at the jurisdictional hearing revealed the minor's girlfriend (both were 14 years old during this period of time), who was a runaway on probation, had been associating with Jose, and her father did not approve of Jose because of his "lifestyle." Father was concerned about his daughter's runaway behavior, drug use, and gang activity. He went to Jose's house several times looking for her. On one occasion he saw her with Jose but they fled. On another occasion he spoke to Jose's mother and brother who admitted the two had been there the night before but now were probably down the street. The father saw the two—getting close enough to make "eye contact" with Jose before he fled. He caught his daughter who appeared to be under the influence of a drug.

PC 272(a)(1) makes it a misdemeanor to commit any act that encourages a minor to commit an unlawful act or violate a court order. The petition alleged Jose committed an act that caused or persuaded or induced his girlfriend to come within the provisions of 300, 601, or 602. Defense argued that there was insufficient evidence Jose contributed to the delinquency of a minor and this was just "one 14-year-old hanging out with another 14-year-old." The prosecution countered that Jose was helping hide his girlfriend from her father and authorities. The court found that on more than one occasion Jose helped her run from her father in "what was obviously an attempt by the parent to bring his daughter under control," thus finding Jose induced the girl to engage in actions that fell within W&I §601.

The appellate court reviews a juvenile court's findings for substantial evidence, reviewing the record in the light most favorable to the prosecution to determine whether it contained evidence that was reasonable, credible & of solid value such that the trier of fact could have found the elements of the crime beyond a reasonable doubt.

Here, the court held that while there was sufficient evidence the minor's girlfriend was a delinquent pursuant to W&I §601, there was not sufficient evidence that Jose caused or contributed to that delinquency. While he was present when his girlfriend ran from her father, and Jose in fact ran, the court declined to simply infer that he encouraged or prompted her behavior.

In re A.L. (1/21/15) 233 Cal.App.4th 496, 182 Cal.Rptr.3d 741

The D.A.'s Office filed a petition alleging the minor committed second degree robbery, and in commission of that offense he personally used a handgun, a deadly and dangerous weapon, within the meaning of the §12022(b)(1) enhancement. During the jurisdictional hearing the facts indicated that the minor and a friend bought a pair of shoes from the victim for \$100, and agreed to return later and buy another pair. They returned, but this time as the minor was trying on the second pair of shoes, his friend pulled out a gun, held it to the victim's chest and demanded "everything." The minor took the shoes and his friend took the victim's cell phone.

During closing, the court indicated he did not believe there was evidence showing the minor personally used a dangerous or deadly weapon as required to prove the §12022(b) enhancement. The prosecutor stated the incorrect enhancement had been charged and she moved to amend the petition to conform to proof by substituting a §12022(a)(1) enhancement—which allows for vicarious liability when another principal is armed with a firearm. Defense objected, arguing her case was prepared and presented believing the 12022(b) enhancement was the only enhancement at issue. However, the juvenile court concluded the minor would not be prejudiced by the change in allegation, and subsequently sustained the robbery charge and the §12022(a) enhancement. Minor appeals claiming his due process rights were violated as he didn't have adequate notice of the charges against him.

Both sides acknowledged the due process right to adequate notice of the charges. The parties also agreed that once a minor has denied the allegations in a petition, amendment during a contested hearing is limited to an offense "necessarily included" in the charged offense or a "lesser" not necessarily included but expressly pleaded offense. The issue is whether 12022(a) is a lesser included offense of 12022(b). To be a "lesser and necessarily included offense it must be of such a nature that as a matter of law and considered in the abstract the greater crime cannot be committed without necessarily committing the other offense."

PC §12022(b) provides an additional one year punishment for a person who "personally uses a deadly or dangerous weapon in the commission of a felony...." PC 12022(a), on the other hand, provides an additional punishment for a person if during the commission of a felony "one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm."

The appellate framework for analyzing whether or not something is a lesser included involves one of two tests: 1) Elements test: asks whether all the statutory elements of the lesser offense are included in the greater offense; 2) Accusatory pleading test: will find a lesser included within a greater offense if the charging allegations of the accusatory pleading include language that describes the offense in a way that if it is committed as specified, the lesser offense is necessarily committed. Here, under the “elements test,” the 12022(a) enhancement is **not** a lesser included of the 12022(b). (Personal use of a deadly or dangerous weapon during a felony can be committed without necessarily also being found to have been armed with a firearm.)

Under the “accusatory pleading test” the charging language must describe the greater offense in such a way that if it is committed as specified, the lesser is necessarily committed. Here, the petition states, “It is further alleged, pursuant to Penal Code Section 12022(b)(1), that in the commission...of the above offense the Minor, personally used a Handgun, a deadly and dangerous weapon.” If the minor committed the 12022(b) as spelled out in the petition (personally used a handgun in committing a felony), he necessarily committed a 12022(a) (being armed with a firearm in the commission of a felony) because he was a principal committing a felony with a firearm. Thus, a 12022(a) is a lesser included of the 12022(b). Therefore, the minor was adequately apprised of the elements the prosecution was seeking to prove and there was no due process or lack of notice violation when the court permitted the late amendment of the petition.

In re Khalid B. (2/2/15) 233 Cal.App.4th 1285, 183 Cal.Rptr.3d 427

In November 2012, DA's Office filed a petition on minor's behalf alleging involuntary manslaughter and assault by means likely to produce great bodily injury. In January 2013, a second petition was filed alleging another PC 245(a)(4), which occurred while minor was in juvenile hall. In October 2013, after some testimony was taken at a Juris hearing, minor admitted the manslaughter and the remaining charges were all dismissed. In the November dispositional report probation recommended wardship and placement at an out-of-state facility. Probation wanted minor removed from his local family and environment. Following a contested dispo hearing, the court declared minor a ward and authorized probation to seek an out-of-state placement. In January 2014, minor was placed at a facility in Iowa. Minor appealed.

A juvenile court's commitment decision is reviewed for abuse of discretion and won't be disturbed if substantial evidence supports it.

The appellate court reviewed the probation department's assessment of placements it chose not to use. Probation rejected 2 local placements and only considered 5 out-of-state facilities. Probation nor the court appeared to weigh in on the 3 alternative placements suggested by defense counsel—all were in CA but far from the Bay Area. The trial court stated it did not believe there was an appropriate placement for the minor in CA, but it "[left] that to the Placement Department when they explore the options."

Court concluded the trial court failed to follow the statutory mandates of W&I § 727.1(b)(1), which provides a court may only send a minor to an out-of-state facility if all in-state programs are "unavailable or inadequate to meet the needs of the minor." Nothing in the record shows probation even considered any other CA placements, including the 3 suggested by defense counsel—which were also far from minor's mother. Without some evidence that probation found other in-state programs "unavailable or inadequate" the department failed to comply with § 727.1(b)(1). Thus, the court was in no position to make the finding required by the statute.

** SEE *In re Oscar A.* (2013) 217 Cal.App.4th 750 for the correct analysis of out-of-state placement findings**

In re G.Y. (2/3/15) 234 Cal.App.4th 1196, 184 Cal.Rptr.3d 461

In 1998 the minor admitted one count of assault with a handgun with a personal use of a firearm enhancement, one count of making criminal threats, and one count of possessing a concealable firearm. Several other counts were dismissed. Minor was committed to the juvenile ranch and his max time was set at 15 years, 4 months. He successfully finished the program, returned home to work in the family business, and attended community college. As an adult, he enlisted in the Army, serving several years in Iraq and receiving numerous medals and achievement awards. In 2012 he obtained his B.S. degree in Criminal Justice Administration and in 2013 received another Army Commendation Medal for military intelligence contributions in Kuwait.

In November 2013 appellant filed a petition to reduce his prior felonies to misdemeanors. The petition was granted, with no objection from the prosecutor. In December appellant filed a petition to seal his juvenile records under § 781, however it was (reluctantly) denied by the court. Appellant appealed, claiming the reduction of his felony assault with a firearm to a misdemeanor permits the court to seal his records.

Section 781(a) provides that a court shall not order a record sealed in which a person has been found by the court to have committed an offense listed in 707(b) after reaching the age of 14. The plain meaning of the statute provides that the juvenile court has no power to seal a record “in any case” where the juvenile court found the person “committed an offense listed in subdivision (b) of section 707” and the person was at least 14 at the time. Section 707(b) does not specify that the offenses listed must be felonies, and the relevant language makes no distinction between felonies and misdemeanors. A subsequent reduction of a felony to a misdo doesn’t alter the fact the court found he had previously committed an offense listed in 707(b). The court had no authority to seal appellant’s record.

In re Art T. (2/11/15) 234 Cal.App.4th 335

On August 18, 2012, just after midnight, 3 people were shot: one died and 2 survived. There was a surveillance camera that caught the incident. The investigation caused L.A. police to bring the minor, who was 13 years old, to the police station to be interrogated. This interrogation was recorded and transcribed. A *Gladys R.* inquiry was done by officers to confirm the minor knew the difference between right and wrong. It wasn't until page 21 of the transcript that the minor was finally advised of his *Miranda* rights, and an express waiver was never secured. Police showed minor the video and told him that it was him. Minor denied being the person in the video—said he had never killed anyone, those weren't his clothes, that he was in Arcadia not LA that night, and was home by midnight. When pressed to make a statement the minor said, "Could I have an attorney? Because that's not me." The detective replied, "But—okay. No, don't worry. You'll have the opportunity." Over 40 pages of transcribed interview follow the minor's request for an attorney. He asks to call his mother & girlfriend several times and is denied. He repeatedly denies he was involved in the shooting. Officers tell him his mother ID'd him in the video and cried. Ultimately the minor confessed, implicating a second shooter and admitting he shot the men because he thought they were part of the "18th Street Gang."

August 22, 2012 the People filed a petition alleging minor had committed one count of murder and two counts of attempted murder, along with the personal discharge of a firearm and gang enhancements. Minor filed a motion to suppress alleging his statements were obtained in violation of *Miranda* and that his confession was involuntary. He also claimed his *Miranda* rights were violated when officers refused to provide him with an attorney after he asked for one. No testimony was offered at the motion to suppress hearing. The DA argued minor's statement was conditional rather than an unequivocal invocation. Defense asked the court to consider minor's youthfulness when he invoked. The trial court ruled that some 13 year olds are quite sophisticated and in spite of his age, the minor's request for an attorney was insufficient to be a "revocation of his waiver to speak to the police" and the confession was not coerced.

After trial, the court stated the video identification and quality didn't really help the court establish the minor's ID. While finding the video alone was not sufficient, the court still felt there was enough other evidence (presumably the minor's admission prevalent among it) and sustained the petition. Minor appealed.

The court reviewed, de novo, the question of whether the minor's statement re: an attorney was ambiguous or equivocal. In analyzing the application of *Miranda*, even where an accused has waived his *Miranda* rights, once he asserts his right to counsel the interrogation must stop. However, the request for counsel must be unambiguous and unequivocal.

Under the USSC case of *Fare v. Michael C.* and the CASC case of *Lessie*, courts should consider the **totality of the circumstances** surrounding a confession when deciding whether a juvenile has knowingly and voluntarily waived his rights under *Miranda*., including a minor's age and experience., education, intelligence, and ability to understand the consequences.

Under the USSC case of *Davis* and the CASC case of *Nelson*, courts must use an objective inquiry to determine if after a *Miranda* waiver someone has unequivocally requested an attorney. In the USSC case of *J.D.B.*, the court held that when making an objective inquiry of whether a juvenile is in custody for purposes of *Miranda*, the inclusion of the child's age if known, or apparent to a reasonable officer at the time, "is consistent with the objective nature of that test."

Here, the court applied *J.D.B.*'s reasoning to the question of what type of inquiry should be made when considering whether a juvenile, having already waived *Miranda*, is later invoking his right to an attorney. The court held that this inquiry requires consideration of whether a reasonable officer, given the circumstances known to him or objectively apparent, including the minor's age, would understand the juvenile's statement to be a request for counsel. In this case, the court held the minor's age, education level, and repeated requests to talk to his mother should have made his lack of maturity and sophistication objectively apparent to a reasonable officer. "Could I have an attorney? Because that's not me," was an unequivocal request for counsel and all statements made afterward were inadmissible and should have been suppressed.

Given the trial court's statement that it couldn't use the video evidence to ID the minor as the shooter, it likely relied on minor's confession to sustain the petition. Thus, the error in admitting the confession was not harmless. The matter was reversed and remanded.

In re D.D. (2/23/15) 234 Cal.App.4th 824

Minor was contacted for smoking pot in a private parking area and was found by officers to be in possession of a concealed loaded handgun. A petition was filed alleging violation of PC §25400(a)(2), carrying a concealed firearm, and PC §25850(a), carrying a loaded firearm in public. The court sustained both counts and determined them to be mandatory felonies pursuant to PC §25400(c)(4) and §25850. Minor appealed.

A complicated statutory scheme regulates firearm/weapon possession in CA. Penal Code § 25400(c)(4) states that carrying a concealed firearm is punishable as a felony if “the person is not in lawful possession of the firearm or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 ...or Chapter 3....” PC § 25850 describes a felony violation and is substantively identical to PC §25400(c). Both statutes have subdivisions that provide for a felony, misdemeanor, or wobbler designation, depending on the circumstances. PC §16750(a) & (b) define “lawful possession of a firearm” as used in § 25400 and §25850, respectively, to mean that the person who possesses the firearm lawfully acquired it/lawfully owns it, or has the permission of the lawful owner.

Other statutes regulate possession of firearms and ammunition by minors: PC §29610 prohibits a minor from possessing a pistol, revolver, or other firearm capable of being concealed upon the person—with some exceptions—and pursuant to PC §29700(a)(3) violation is a wobbler. PC §29650 prohibits minors from possessing live ammunition—with some exceptions—and pursuant to §29700(a)(1)-(2) & (b) violation is a misdemeanor unless certain priors are proved and then it is a wobbler.

In declaring the offenses to be felonies, the trial court’s statements were somewhat unclear. The court stated it understood its “discretion” but then found the minor was in a class of people prohibited from owning/possessing a firearm and cited PC §25400 & 25850 subdivisions (c)(4), which *mandate* felony punishment. The appellate court concluded the court was in error. The court should have determined if the requirements of subdivision (c)(6) of §25400 & §25850 had been met and if so, then used its discretion to declare the offenses to be felonies or misdos. If not, then the offenses would be mandatory misdos.

Several statutes would be completely superfluous if minors possessing loaded/concealed firearms were automatically felonies. Section §25400(c)(4) expressly declares it a felony for people subject to “Chapter 2...or Chapter 3” (of Div. 9, title 4,

part 6 of the PC) to carry concealed firearms—there is no mention of people subject to Chapter 1, which deals with juveniles. If the Legislature intended to automatically make it a felony for juveniles, they could have included a reference to Chap. 1 in (c)(4). If the term “lawful possession” was intended to automatically exclude juveniles because of §29610’s prohibitions, it would also likely automatically exclude all persons whose possession is unlawful because of a statute—and that would make §25400(c)(4)’s references to Chaps 2 & 3 superfluous. Section §29700(a) provides that a violation of §29610 can be either a felony or a misdo. Making carrying a concealed firearm a mandatory felony by charging it under §25400(c)(4), would undercut the purpose of the wobbler provided for in §29700 or the use of discretion as provided for in §25400(a)(2).

Case was remanded for the court to determine which of sections §25400 & §25850’s subdivisions are applicable to the minor.

Ruelas v. Superior Court (3/20/15) 235 Cal.App.4th 374

In 1994, while 14 years old, the minor committed a felony PC §245 and a misdemeanor PC §647.6 (annoying/molesting a child). At age 17 minor committed 3 additional felonies: PC §211; PC §245, and VC §10851. The court committed him to CYA/DJJ for 8 years, 2 months, a term that included 4 months for the 647.6. Following his release from CYA he was required to register as a sex offender. In 2012, appellant filed for a writ of mandate arguing the registration requirement violated equal protection.

PC §290.008 provides registration requirements for juveniles. Anyone discharged from CYA/DJJ after being adjudicated a ward for the commission of specified offenses must register and PC §647.6 is one of them. Courts have interpreted §290.008 to require registration for minors who were committed to DJJ “both after and because of a sex offense adjudication” but not minors who were committed only for non-sex offenses even though previously adjudicated a ward for a sex offense.

The juvenile court may exercise its discretion under §726 to aggregate the period of physical confinement for a DJJ commitment on multiple petitions. Thus, if a juvenile with a previously sustained §647.6 offense is later committed to DJJ for a non-sex offense, and the court aggregates the petitions in calculating the commitment time, the minor is subject to mandatory sex offender registration.

Appellant claims his right to equal protection was violated. Such a claim requires a showing that the state has created a classification that affects 2 or more similarly situated groups unequally. Appellant suggests the 2 similarly situated groups are: 1) juveniles who violated §647.6 and were never sent to DJJ; and 2) those who violated §647.6 and were not initially sent to DJJ but were later committed for a non-sex offense where the court aggregated the previous §647.6 petition as part of the commitment. Here, appellant claims his rights were violated because all juveniles adjudicated for §647.6, but not initially committed to DJJ and who don't commit later sex crimes, are similarly situated for purposes of registration. He argues juveniles in each group committed a sex offense, and the conduct was not found by the court to not be serious enough to require a DJJ commitment. The court disagreed, finding those who are committed to DJJ later *were* found to warrant commitment for their violation of §647.6, although as part of disposition on a subsequent petition.

The court here exercised its discretion to aggregate the §647.6 petition, necessarily making the judgment that commitment for the underlying sex offense is appropriate.

T.W. v Superior Court (4/21/15) 236 Cal.App.4th 646

Minor robbed the victim of her purse and was later found in possession of a stolen ATM and cell phone. A petition was filed alleging felony violations of PC §211 and §496. The D.A. dismissed the §211 and minor admitted to the §496. A year later, the minor filed a petition to modify under §778, based upon the passage of Prop 47 (PC 1170.18(a)). The petition noted his max time had been set at 3 years, 4 months after his admission to the felony §496 (he also had a previous 1 yr misdo). Minor was seeking to have the max time of the §496 reset at one year as Prop 47 made possession of property less than \$950 a misdemeanor offense. The district attorney conceded Prop 47 applied to juveniles, but argued minor posed an unreasonable risk of danger to public safety and resentencing was not appropriate. Additionally, the D.A. argued the “retroactive sentencing provision” doesn’t apply to negotiated dispositions. The trial court indicated it believed if the negotiated plea was to a reduced charge on a non-Prop 47 eligible offense, then the charge that remains should not be eligible for a Prop 47 reduction and it denied minor’s motion. Minor filed a writ.

PC 1170.18(a) states in part, “A person currently serving a sentence for a conviction, *whether by trial or plea*, of a felony ... who would have been guilty of a misdemeanor under ... this section ... may petition for a recall of sentence....”

The court ruled that the unambiguous language of the statute says “whether by trial or plea” and if the court finds the petitioner eligible under the statute’s criteria, the court must grant the reduction, unless the court finds the person poses an unreasonable risk to commit a very serious crime. Thus, minor is entitled to a reduction, regardless of the fact his sustained petition was due to a plea bargain. Matter remanded for the court to determine if minor poses an unreasonable risk of danger to public safety.

In re Keith C. (4/24/15) 236 Cal.App.4th 151

In 2006, at age of 15, minor had petition sustained for VC 10851(a) and restitution of \$2180 was ordered paid to victim. Minor never challenged the amount of restitution. Minor appeared at various status hearings over the next couple years, but defaulted on his restitution debt. On July 25, 2011 minor failed to appear and a BW was issued. Warrant was set to expire in December 2011, on minor's 21st birthday. The warrant was never served and subject never appeared at any further court dates. In March of 2014, over the objection of counsel, the court ruled that it had authority to issue an abstract of judgment (JV790) allowing collection of the unpaid restitution. A month later the court recalled the warrant, terminated probation/wardship, and issued the JV790. The subject appealed.

Pursuant to W&I §607, a juvenile court maintains jurisdiction over a ward until the age of 21. Appellant claims the court had no jurisdiction over him once he turned 21 and thus the court had no authority to issue the JV790.

Similar to the court in *In re J.V.*, this court found the entry of a JV790, based upon a prior, valid order of restitution is nothing more than a memorialization of the original order. The juvenile court has a statutory and constitutional duty to order the minor pay restitution to the victim. A juvenile's obligation to pay restitution may extend beyond the period of wardship and a restitution order may be enforced as a civil judgment.

If a juvenile court makes a valid restitution order when a juvenile is under 21, that order remains enforceable even after wardship ends, in the same manner as any civil judgment.

In re D.W. (4/28/15) 236 Cal.App.4th 313

In November of 2010 minor was made a ward of Contra Costa County for misdo battery on a school employee and was placed in a group home. Over the next 2 years he committed several probation violations and was the subject of a VC 10851 petition in Stanislaus County. In April 2013, minor was ordered placed in the Youth Offender Treatment Program (YOTP) for a period not to exceed 2 years. In May 2013 the D.A.'s Office filed an amended second supplemental petition. Count one alleged minor's parents could no longer accept responsibility for him. Count two alleged felony battery by gassing of an employee of a local detention facility (PC 243.9). Count three alleged possession of a dirk or dagger (PC 21310). At the contested jurisdiction hearing the DA asked the court to take judicial notice that the minor was detained in the YOTP (in the juvenile hall) and that the juvenile hall is a "local detention facility." The court refused to judicially notice the JH was a detention facility and suggested it was inclined to dismiss the charge because JH doesn't fit the definition in PC 243.9. The hearing was continued so parties could brief the issue. Prior to the next hearing (10/3), the DA moved to file an amended petition, which added another charge—a felony battery with injury on a peace officer (PC 243(c)). At the hearing (10/21) the DA conceded PC 243.9 only applies to adult facilities and moved to dismiss. The court granted the motion. The defense then objected to the motion to amend the petition to add the felony battery charge on the grounds it violated double jeopardy because the trial had already started and it violated the minor's right to due process as he had no prior notice of an injury during the incident. The court overruled both objections and granted the motion to amend, stating there was no surprise as counsel was noticed on 10/3 and the court would grant defense additional time to prepare. Following continued protests from defense the court agreed to continue the matter for briefing and reconsideration. Defense filed a motion to dismiss the charge on grounds of double jeopardy and 654 bar on multiple prosecutions. The court denied the motion.

At the hearing, the JH staff testified that while trying to remove the minor from his room on Feb. 12, minor spit in his left eye. He suffered irritation and redness, a temporary blurriness in his normally 20/20 vision, and had to undergo testing for STDs. After follow up appts in March, May, and Aug the victim's vision had returned to 20/20 and he had no STDs. The court subsequently sustained the battery with injury charge, reasoning that because victim had to do follow up testing and visits, and the discharge summary said victim was now in his "pre-injury" state, victim had to have suffered an

“injury.” Minor appealed, claiming the court erred in allowing the DA to amend the petition.

Court held that the minor’s due process rights were not violated in that both offenses minor was found to have committed were alleged in writing and the petition was served on 10/3. The trial court confirmed defense received the amended petition and provided defense additional time to prepare—the hearing didn’t proceed for two months. Further, amendment to the petition didn’t occur mid-trial; it was before a single witness testified.

However, the appellate court reversed the true finding on the sustained battery charge finding there was insufficient evidence. Analyzing the four statutory crimes of battery and citing several cases ...

- Felony battery occurs when “the batterer not only uses unlawful force upon the victim but causes “serious bodily injury.””
- Serious bodily injury includes: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function, wound requiring suturing, serious disfigurement.
- “Serious injury” isn’t required when the victim is a peace officer. In the case of a peace officer, “injury” simply means a physical injury requiring professional medical treatment.

It is an objective and factual test when analyzing a qualifying injury – “it is the nature, extent, and seriousness of the injury, not the inclination or disinclination of the victim to seek medical treatment which is determinative.” Here, the medical follow up was not for an actual injury, it was to determine if the victim had a communicable disease. His eye was red and irritated but he stated he was not in pain. The court suggested the proper charge would have been PC 243.9—which six months after the trial court dismissed that count the Court of Appeals held “local detention facility” applied to juvenile halls.

The court found insufficient evidence for the felony battery and the parties agreed the dispositional order should be modified to find minor committed a simple battery on a peace officer pursuant to PC 243(b).

In re J.W. (5/6/15) 236 Cal.App.4th 663

Minor's juvenile record consisted of 14 incidents. The most serious of these was an incident resulting in 3 counts of PC §664-211, and a PC §243(d). During probation minor had amassed over \$1,000 in fines. Probation ended in October 2012 and after minor turned 18 in October 2013, he petitioned the court to have his records sealed under W&I §781(a). Following some confusion, the court accepted that the subject had paid his fines. At a sealing hearing the subject presented evidence of rehabilitation in the form of 3 letters, 2 were from his counselor at a youth program and the third was from a pastor who had been mentoring him. Subject had finished high school and was enrolled in a community college class. He wanted to join the U.S. Air Force and had been advised by a recruiter to seal his records. After weighing the evidence of rehabilitation provided, the court declined to seal the record, concerned the robbery/battery incident was serious and not enough time had passed since it occurred. The court found the subject was not yet rehabilitated, but suggested sealing might be possible after more time had passed. Subject appealed, arguing the seriousness of the offense is not a consideration because a record sealing hearing should focus on rehabilitation—his behavior after the adjudication of the offense, not the prior crime.

Section §781(a) directs a record shall be sealed if the petitioner has reached the age of 18, never committed a 707(b) offense, since jurisdiction terminated has not been convicted of a felony or misdo involving moral turpitude, and rehabilitation has been attained to the court's satisfaction. The language of the statute itself suggests the seriousness of the offense should be considered—it prohibits sealing the most serious of offenses, those listed in 707(b), even if the subject is otherwise rehabilitated (See *In re G.Y.*) Other statutory schemes such as adult parole provisions consider the seriousness of the offense—the gravity of the commitment offense may be relevant to the inmate's *current risk* of danger to the community—especially if recently committed. Further, the provisions for obtaining a certificate of rehabilitation require a period of at least 5 years, and more depending on the severity of the offense. Ignoring the seriousness of the offense and resulting danger the petitioner poses to society, when considering rehabilitation, severely compromises the delinquency system.

Court found the trial court did not abuse its discretion in finding subject was not sufficiently rehabilitated and the term "rehabilitation" was not unconstitutionally vague. It is a common term with accepted meaning—predictive, criminal behavior is in the past, to be determined by the totality of circumstances and individual factors.

In re Alejandro B. (5/7/15) 236 Cal.App.4th 705

Minor was alleged to have committed 2 counts of assault with a deadly weapon and a burglary, for the benefit of a gang. At a jurisdiction hearing the court found one of the assaults and the burglary to be true, as well as the gang allegations. At contested disposition, minor's counsel asked the court, pursuant to *People v. Vargas* (2014) 59 Cal.4th 635), to dismiss one of the remaining 2 counts, arguing they arose from the same transaction, course of conduct, and involved the same victim. The trial court, believing it was following *Vargas*, struck the assault charge, leaving the single sustained count of burglary. The People appealed.

The *Vargas* court held that 2 prior strike convictions arising out of a single act against a single victim cannot constitute two strikes under the 'Three Strikes Law.' *Vargas* applies at sentencing where a court is faced with *prior* convictions. This case involved commitment offenses, not priors, and the minor was not entitled to have count one dismissed pursuant to *Vargas*. What the court should have done was apply PC §654, to stay imposition of a separate sentence on the second count.

Should the minor someday be convicted of additional crimes and be subject to a prison sentence, the adjudications for assault with a deadly weapon and burglary would then become *prior convictions* for a hypothetical future court to consider.

In re R.V. (5/18/15) 61 Cal.4th 181

Minor's mother called police when minor threatened family with a knife. He was throwing things around the living room and stabbed his bed with the knife. Responding officers indicated they believed minor had trouble understanding their questions & seemed confused. All 3 witnesses present at the scene reported minor had psychological problems, and mom said he had stopped taking his meds. The DA filed a petition alleging 2 violations of PC §417(a)(1) and one count of PC §594(a)/(b)(2)(A). Defense counsel expressed a doubt regarding minor's competence, the court found substantial evidence of incompetence, and suspended proceedings. An evaluator was appointed and concluded the minor was not competent. PD wanted to submit the issue based upon the report but the DA objected, expressing concern the evaluator did not administer any diagnostic tests. At the competency hearing, the court stated its belief that the minor bore the burden of proving he was not competent by a preponderance of the evidence. The court ruled minor had not met that burden and found minor competent. He subsequently entered a "slow plea," the court found the allegations to be true, and minor was declared a ward. The Court of Appeal affirmed. CASC granted minor's petition for review.

Supreme Court did full historical review of competency law up to the enactment of W&I §709. *Dusky* inquiry focuses on whether a defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and ... a rational as well as factual understanding of the proceedings against him." PC §1367 et seq. mirrors that language. In an absence of statutory guidance, the *James H.* court (1978) authorized juvenile courts to use both *Dusky* & the PC provisions. In 1999, the Rule of Court, which conformed to *James H.*, was added. It authorized, but didn't require, the court to appoint an expert evaluator. In 2007, the *Timothy J.* court held that the rule of court permitted a finding of incompetence based upon a minor's developmental disability. And the *Tyrone B.* court held that notwithstanding the rule of court, the juvenile court must, if it finds substantial evidence as to a doubt about competence, appoint an expert to evaluate the minor. Finally, in 2009, the Legislature enacted W&I §709. It codified many of the procedures established by the rule of court, and added to/modified the holdings in the earlier appellate decisions. It also directed the Judicial Council to adopt rules regarding the qualifications of the appointed expert. The new statute did not, however, address who has the burden of establishing competence.

The court found that the most “straightforward reading” of the statute is that a minor is presumed competent. If that were not the case, the statute would require an affirmative showing a minor was competent in order to proceed. The legislative history and statutory purpose also support the position that a minor is presumed competent. Nothing in §709 indicates who has the burden, nor does PC §1367 et seq., but in the adult scheme, EC §606 operates to place the burden on the party who claims a defendant is incompetent. The presumption of competency comes within the category of policy-based evidentiary presumptions affecting the burden of proof (See *People v. Rells*, 22 Cal.4th 869), and this presumption applies in wardship proceedings.

The court then turned to the issue of what standard of review an appellate court must use when reviewing a challenge to the sufficiency of the evidence that supports a juvenile court’s decision in a competency hearing—de novo or substantial evidence. Deferential review is appropriate when the lower court’s decision is based upon “first-hand observations” and is an “individual-specific decision.” A juvenile court, like an adult criminal court, must draw its conclusions by evaluating the expert testimony, courtroom observations, and other testimonial and documentary evidence. Therefore, like an adult criminal court, the standard of review that applies to a challenge to the sufficiency of the evidence is the deferential substantial evidence test. In this case, the inquiry is “whether the weight and character of the evidence of incompetency was such that the juvenile court could not reasonably reject it.

A juvenile court is not obligated to accept nor defer to an expert opinion regarding competency. However, an expert’s opinion holds “special significance in the juvenile competency setting.” Here, after reviewing the expert’s testimony, report, and ultimate opinion that the minor was not competent the court found the juvenile court could not have reasonably rejected it.

****NOTE:** The court suggested that when the juvenile court finds flaws in an expert’s reasoning and methodology, it should consider appointing a second expert.

In re J.S. (6/4/15) 237 Cal.App.4th 452

Appellant successfully completed a commitment to DJJ. Upon being paroled, pursuant to Realignment, he was supervised by the local probation department rather than DJJ Parole. As a result, the Board of Parole Hearings did not, as previously required, make a finding as to whether his discharge from parole was honorable or not. Appellant petitioned the juvenile court to make the honorable discharge finding in the place of the Board. The trial court declined to do so and minor appealed.

Minor argues that the juvenile court must make the honorable discharge decision because the enacted Realignment provisions are irreconcilable with the previously applicable DJJ discharge statutes, leaving youth with no recourse. He argues the court must correct these inconsistencies.

Prior to Realignment, once a youth finished a commitment to DJJ and his parole time, the Board determined eligibility for honorable discharge. It granted honorable discharge if it found the person had “proved his or her ability for honorable self-support.” (§1177) Honorable discharge meant a youth was *automatically* released from all penalties and disabilities, pursuant to §1772(a). Any youth, whether honorably discharged or not, may also petition the juvenile court to set aside the verdict and dismiss the accusation against the youth and thereafter, under §1772(a) he or she would be eligible for release from all penalties and disabilities. In 2010, the Legislature passed Realignment, which eliminated DJJ Parole and shifted that population to county probation. Because DJJ parole no longer exists, the parole board can no longer make an honorable discharge determination as mandated by §1177—and there is no entity authorized to do so. Therefore, the automatic relief provision is inoperable.

While the mandatory provision of §1772(a), which was triggered by §1177, might now be inoperable, the discretionary relief provisions are still available. So even though a youth can’t “as a matter of right” be released from all penalties and disabilities, he can still petition the court for discretionary relief. The appellant argued Realignment’s intent was to transfer all aspects of youth supervision to the county, including honorable discharge decisions—which he claims the Legislature intended would now be made by the court. The court agreed that there was now confusion about the availability of an automatic honorable discharge finding, but indicated the fix should come from the Legislature not the courts. DJJ youth are not left without any recourse as the discretionary portion of §1772(a) is still available upon a petition. (Which J.S. did not yet want to do as he was still receiving services.)

In re Joseph H. (6/8/15) 237 Cal.App.4th 517

The 10-year-old minor, having suffered through a lifetime of abuse, neglect, and exposure to drugs and violence, shot his father in the head while he lay sleeping on the couch. His step-mom found the body and minor said, "I shot dad." Responding officers placed all family members in separate police cars. The minor, who was in a car, unhand-cuffed, and alone, started talking "a lot" though no questions were being asked. He admitted he shot his father, knew it was wrong, and said he wished he hadn't done it. At the police station, minor was first asked questions to determine if he knew the difference between right and wrong; he was then advised of his *Miranda* rights. The entire encounter was videotaped. Several weeks later a petition was filed alleging the minor had violated PC §187 with a §12022.53(d) allegation. At the first hearing defense asked for an evaluation in anticipation of a NGI plea. At the next hearing proceedings were suspended to determine minor's competence pursuant to §709. Two expert reports (by Drs. Miller and Rath) were prepared and considered, and the minor was found competent. Proceedings resumed and minor then plead NGI. The court ordered evaluation of the minor by 2 experts (Drs. Kania and Rath). Both authored reports opining the minor was not insane.

At the contested jurisdictional hearing the defense objected to admission of minor's responses to the PC §26 inquiry because it was done prior to *Miranda*. The court admitted responses to all but one question. Counsel also objected to admission of minor's other statements on grounds of involuntariness. The court overruled these objections. Counsel further objected to testimony of Dr. Rath regarding minor's capacity because Rath was inappropriately appointed to do both the capacity and insanity evaluations. The court sustained that objection, but permitted the DA to retain another expert (Dr. Salter) on the issue of insanity. Counsel requested to be present when Salter interviewed minor. Court denied the request. In the end both prosecutor and defense expert reports were stipulated to and after the People rested, defense counsel withdrew minor's plea of NGI. The court found minor knew the wrongfulness of his actions and found the allegations in the petition true. At Disposition, probation recommended DJJ as no appropriate county or private placements, save one, would accept minor. (And that one hadn't actually interviewed minor and had 60% of its beds available.) Court found less restrictive alternatives would be ineffective and inappropriate and committed minor to DJJ. Minor appealed.

The court concluded 1) the minor was in custody and should have been *Mirandized* prior to the *Gladys R.* inquiry. However, the error was harmless because the minor made multiple incriminating statements at the scene and in the police car, to family and police, before he was ever in custody; 2) a juvenile's valid waiver of *Miranda* rights is reviewed under the "totality of the circumstances" approach and age may be a factor in determining the voluntariness of a confession. Here, in spite of his age, intelligence, and the presence of his mother, the minor voluntarily waived his rights and there was no police coercion; 3) there is no due process right to have counsel present at a psychiatric exam; 4) prosecution's request for an additional expert was timely, given the issue of the Dr.'s conflict was raised mid-trial; 5) determining capacity pursuant to PC §26 requires consideration of age, experience, and understanding, and can be inferred by the method of a crime's commission or concealment. A court's finding will be upheld if there is substantial evidence. Here, the court considered the testimony and reports of the experts, the minor's own admission he knew right from wrong and would be punished, the planning of the crime and hiding of the weapon afterward and concluded the minor understood the wrongfulness of his conduct; 6) the court did not abuse its discretion in committing minor to DJJ as it considered his age, offense, special education needs, mental and emotional needs, history of aggressive and violent behavior, and need for a highly structured environment.

In re Elias V. (6/9/15) 237 Cal.App.4th 568

Thirteen-year-old minor was playing video games with his friend who lived in the apartment across the hall. He was allegedly found, by the friend's mother, on the bed with friend's 3-year-old sister. The victim had her pants down around her legs and when asked by the mother "what happened," the minor said the victim asked him to help take off her pants because she wanted to go to the bathroom. No one saw minor touch victim, but mother testified the child repeatedly made statements that "this boy, he touched me." Mother didn't contact police for 17 days after the alleged offense and there were accusations/insinuations her reporting was due to a conflict with the minor's family and the landlord possibly evicting them. A report was written, however it contained nothing but the statement of victim's mother. No other witnesses/parties were interviewed.

Four months after the offense, the assigned detective witnessed a 10 minute victim interview at the child interview center. The detective testified the victim stated the minor touched her and pointed to the vaginal area on a doll. A few days after the interview, the detective, along with 2 other deputies, went to the school to interview the minor. Minor was *Mirandized* and "interrogated" for approximately 20-30 minutes, after which he "accepted [detective's] alternative theory that he touched the bare skin of [victim's] vagina ... merely out of curiosity." A petition was subsequently filed alleging minor committed a violation PC §288(a). Prior to and during the jurisdictional hearing defense counsel moved to exclude incriminating statements minor made to police, claiming they were involuntary and thus inadmissible under *Miranda*. The court rejected counsel's arguments—finding the detective was "calm" and "gentle" in her manner, her questions "were short, not convoluted," the interview was only 20 minutes, and the minor was able to indicate if he needed clarification of anything. The court then found the charges in the petition to be true. Minor appealed.

A confession's admissibility depends upon the totality of the circumstances at the time of the confession. A minor's "age, intelligence, education, and ability to comprehend the meaning and effect of a confession" are all factors the court must weigh. The prosecution must show by a preponderance of the evidence that a confession was voluntary. The exertion of any improper influence by police makes a confession involuntary. The question of involuntariness is a mixed question of law and fact. The ultimate issue of voluntariness is reviewed independently, however the court's findings

as to the circumstances surrounding the confession—including the characteristics of the accused and interrogation details—are subject to review for substantial evidence.

The appellate court conducted a VERY lengthy review of interrogation techniques, research on false confessions, and police manuals and training tactics used by police to elicit confessions, and compared them to the detective's interrogation of the minor. The court concluded the detective's accusatory interrogation of the minor was "dominating, unyielding, and intimidating." The court further found the minor's statements were involuntary based upon his youth, susceptibility to influence and pressure, the absence of any evidence corroborating his incriminating statements,* and the likelihood that the detective's deceptive and "overbearing tactics would induce involuntary and untrustworthy incriminating admissions."

*The court suggested that a trial court should carefully consider the voluntariness of any confession obtained during an interrogation where the officer doesn't have other evidence indicative of guilt.

In re D.T. (6/10/15) 237 Cal.App.4th 693

13-year-old minor and female victim were friends who had played together, though apparently they didn't engage in "rough play." At some point minor became unwelcome at victim's house as her mother felt he didn't listen to her rules. On the day of the incident the victim was trying to avoid talking to minor but he approached her anyway. Victim tried to walk away but minor pulled the hood on her sweater. She pulled away and told minor to leave her alone, but rather than letting go of her the minor pulled out a pocketknife and showed her the blade. Victim told minor he wouldn't be doing this if her mother had been there. Victim said she was scared of being hurt. Minor poked victim several times in the upper back with the blade of the knife. She said it felt pointy and sharp. She didn't think minor would cut or kill her, but was fearful she would get hurt because he had pressed the knife against her back. She said the minor seemed mad and was trying to bother her. A teacher approached the pair; minor stopped poking her and went to class. Victim told a teacher and a police officer and was "visibly upset." There was a red mark, but no broken skin on her back. The officer spoke to minor, who initially denied even pulling the knife out. He said they had been "playing" earlier that day when victim hit him in the forehead. He told her he would "get her back." Minor eventually admitted showing victim the knife—and said he may have "accidentally poked her." Minor expressed remorse.

A petition was filed alleging a violation of PC §245(a)(1). After a jurisdictional hearing the court found the knife was used as a deadly weapon and sustained the petition. The court stated the knife blade was open and it was poked numerous times to the victim's back "to the extent that it could have resulted in great bodily injury...." Minor appealed.

A "deadly weapon" is any "object, instrument, or weapon which is used in such a manner as to be capable of" and likely to produce GBI or death. The People need not prove actual injury, or even contact, the definition focuses on the potential harm that could be done. PC §245 contemplates 2 types of deadly weapons: 1) those that are deadly weapons as a matter of law because their design and ordinary use makes them such (dirks and blackjacks); and 2) other things that aren't deadly per se, but which can under certain circumstances be used in a manner to produce GBI or death (pencils and bottles). Multiple CA courts have affirmed PC §245(a)(1) convictions when the deadly weapon used was a "hard, pointy thing" used only to "threaten, and not actually used to stab."

Court found that while minor didn't push knife into victim with enough force to break skin, he poked it into her back and held on to her hood—had someone bumped or startled him he could have seriously injured victim. Other cases have found a pencil held to a victim's neck and a screwdriver brandished from a distance were deadly weapons likely to cause GBI or death. Here, there was a likelihood/possibility that a sharp knife with a 2 and half inch blade could cause GBI. Minor claims he didn't intend to use knife as a weapon, but intent need not be proved. Further, while extent of an injury may assist the trier of fact in assessing GBI, the lack of any real injury is not dispositive as assault doesn't require any injury at all.

In re Christian H. (6/29/15) 238 Cal.App.4th 1085

Minor was arrested for selling cocaine base (H&S §11352(a)). A petition was filed on 3/14/15, he was detained pending jurisdiction, and immigration officials were notified of minor's custody status. Homeland Security faxed a Detainer Notice to juvenile hall stating minor had a prior felony charge or conviction and had illegally re-entered the country after a prior removal. The detainer requested juvenile hall keep him in custody up to 48 hours after the time he would be otherwise released so they could take custody of him. A "warrant of removal/deportation" dated 9/12/12 was attached. On 4/8/15 the petition was amended to simple possession and minor admitted. During the process of taking the admission, the minor and counsel stated they understood the plea may result in minor's deportation or exclusion from the country. The disposition report indicated the minor said he had come to the U.S. 10 months earlier with his mother's permission and he'd been living in Oakland working. He had a 4th grade education but had to quit going to school for financial reasons. His mother, who probation reported "wasn't very forthcoming" stated she wanted him to stay in the U.S. so he'd have a better life. Minor and mother denied minor had ever been in trouble before. However, records indicated he had been arrested by border officials in AZ in March 2012 and had runaway from the Chicago shelter where ICE officials had placed him. He was later arrested in Denver in September of 2012 for drug possession and after immigration hearings in Texas he was deported back to Honduras. The probation department recommended minor be released to ICE custody for transportation back to his family in Honduras as the PO didn't believe minor would benefit from any services offered and would abscond upon release. Defense filed an alternative disposition memo requesting minor be removed from parental custody and placed in an out-of-home placement. Counsel also filed a memo arguing minor was eligible for Special Immigrant Juvenile Status (SIJS). Following a contested dispo hearing, the court declared minor a ward, placed him on probation, and ordered him to reside with his mother. Court directed him to serve an additional 2 days in JH and upon release CPS was to take custody of him. Court also made findings to enable him to petition for SIJS. CPS refused to take custody of a 602 ward and the court ordered probation to "follow standard procedures with respect to unaccompanied or abandoned minors" who are being released from custody. Minor appealed. While appeal was pending, Immigration authorities granted his SIJS.

First, the appellate court held that the appeal was not moot. Minor remains in the U.S., having been granted relief from deportation, and federal authorities consented to the jurisdiction of the California state court. Since minor, who was declared a ward and

ordered to live with his mother on probation, may again be in California, the appeal could affect his rights in the future.

To qualify for SIJS, pursuant to U.S. Code §1101, a minor must be under 21; unmarried; have been declared dependent upon a U.S. juvenile court; have been found eligible by the juvenile court for long-term foster care; continue to be dependent upon the juvenile court and eligible for long-term foster care; have had the juvenile court determine it would not be in the person's best interest to be returned to the country of nationality or his/her parent(s).

Pursuant to W&I §202(b), a trial court has broad discretion to select an appropriate disposition for a minor that would conform with the interests of public safety, hold the minor accountable, and is consistent with minor's best interests. Under § 738 the court is authorized to order a nonresident juvenile returned to his parents in a foreign country if it is determined to be in the minor's best interest. While authorized, this court's dispositional order was an abuse of discretion. The court expressly found it was NOT in minor's best interest to return to Honduras when it granted minor's motion for findings in support of his SIJ status. (Court found minor had been "abandoned by his biological father ... and that his mother is unable to provide for his financial support.") Having made the SIJS findings, the court could not also find it was in minor's best interests to return to live with his mother in Honduras.

Dispositional order reversed and remanded so the court may select an appropriate disposition.

People v. Lopes (7/20/15) 238 Cal.App.4th 983

In 2006, when appellant was a minor, she admitted to a felony VC §23153(a) (DUI causing injury). She was committed to a DUI Youth Program and the max time set at 38 months. In 2014, appellant now an adult, was charged with violating VC §23152(a) & (b). Both charges were alleged as felonies, pursuant to VC § 23550.5(a), based upon her prior juvenile DUI. Appellant admitted the 2006 adjudication, but moved for acquittal on the §23550.5 allegation. The court ruled the juvenile adjudication couldn't be used to elevate the current DUI to a felony and struck the felony allegation. Appellant pled no contest to the misdo DUI and the People appealed.

VC § 23550.5(a) provides for felony sentencing if the person is convicted of a VC §23152 or 23153, and the offense occurred within 10 years of "a prior violation of Section 23153 that was punished as a felony...." W&I § 203 provides that an order adjudging a minor to be a ward "shall not be deemed a conviction of a crime for any purpose...." The People argue that 23550.5's use of the words "prior violation" rather than "conviction" belies the Legislature's intent that juvenile adjudications, not just adult convictions, may be used to elevate a DUI charge to a felony. The court disagreed, finding nothing in statute, case law, or legislative history to indicate that was the Legislature's intent. Given the People's interpretation was no more reasonable than any other, the rule of lenity prevented the court from adopting that interpretation. Additionally, the court determined appellant's juvenile adjudication was not "punished as a felony," even though the court declared it a felony at the time it set her max time pursuant to § 702. Finally, the court reiterated the tradition of differentiating between juvenile adjudications and criminal convictions, therefore appellant's adjudication was not a "violation ... punished as a felony" within the meaning of §23550.5.

Alejandro N. v Super Ct. (7/23/15) 238 Cal.App.4th 1209

Minor admitted to a felony violation of PC §459-460(b) in April of 2013. His max time was set at 3 years; he was ordered to pay a \$50 restitution fine and submit a DNA sample for inclusion in the DOJ database. Following the passage of Proposition 47, reducing certain felonies to misdemeanors, minor filed a petition to modify. Minor asked that his offense be reclassified as and reduced to a misdo, his max time reset at 6 months, that he be released from custody having been confined beyond 6 months, that his DNA be removed from the DOJ database, and that his fine be reduced to a misdo amount. The People agreed minor's offense was now a misdo with a max time of 6 months, and he should be released. The People disagreed, however, that §1170.18 applied to juveniles and thus the minor was not entitled to have his offense reclassified as a misdo nor his DNA expunged or fine reduced. The court agreed the minor's commercial burglary offense was now a misdo with a maximum confinement time of 6 months, and it ordered him released. But, believing §1170.18 applies only to *convictions* and is not applicable to juvenile adjudications, the court denied the request for reclassification to a misdo. Further, stating that return of DNA is only required if one of the conditions for expungement listed in PC §299 is met, the court denied the request for DNA expungement. Finally, the court denied the request for reduction of the fine because \$50 was an amount normally ordered for misdemeanors. Minor appealed.

Pursuant to W&I §602, laws that define criminal behavior for adults define the criminal behavior that cause minors to become wards. However, the juvenile and adult systems are distinct, use different terminology, and have different underlying purposes and focus. That said, essential constitutional due process protections provided to adults extend to juveniles. To ensure fairness, a minor's maximum period of confinement may not exceed the maximum term that could be imposed upon an adult.

The application of other adult statutes to the juvenile system depends on the particular enactment being considered. For example, W&I §726 incorporates the "entire system or body of laws set forth in the adult determinate sentencing statute ... when calculating a juvenile's maximum time of confinement." On the other hand, the statutory provision allowing imposition of sex offender registration for statutorily-unlisted offenses, based upon the court making specific findings at conviction or sentencing, does not apply to juveniles (old PC §290(a)(2)(E) /new §290.005(b)).

Proposition 47 reduced various drug possession and theft-related offenses from felonies to misdos. It also provided the opportunity for qualifying offenders who suffered certain

felony *convictions* to benefit from a later reclassification of their offense to a misdo (PC §1170.18). A felony conviction designated as a misdo shall be considered a misdo “for all purposes” (except for firearm restrictions). Because court jurisdiction over juveniles is premised on §602’s incorporation of adult *criminal laws*, the court concluded reclassifying certain criminal offenses from felonies to misdos necessarily reclassified these offenses for juvenile as well. And the addition of PC §1170.18 just retroactively extends reclassification to qualified offenders and also was intended to apply to juveniles. The use of adult criminal terminology doesn’t reflect an intent to exclude juveniles—the codes that define crimes in adult court are “engrafted onto the juvenile proceedings in wholesale fashion” by W&I §602.

With regard to DNA expungement, the court pointed out that Prop 47 expressly provides that a felony reclassified to a misdo shall be “considered a misdemeanor for all purposes” except for firearm restrictions. That is the only exception for “all-encompassing misdemeanor treatment of the offense.” Given the broad mandate to treat all reclassified offenses as misdos for all purposes, as well as the expansive retroactive provision through §1170.18, the court held the voters did not intend for reclassified misdos to be felonies for purposes of retaining DNA samples—in spite of the grounds for expungement listed in PC §299. Prop 47 addresses matters not contemplated by §299.

The court directed the juvenile court to reclassify minor’s felony commercial burglary offense to a misdo shoplifting and ordered removal of his DNA from the database unless there is another statutory basis for retention (e.g. he has other felonies). The court declined to reduce the fine of \$50 as that amount was within the statutory level prescribed for misdos.

In re Kevin F. (8/10/15) 239 Cal.App.4th 351

Minor and his friends robbed the victim of his phone and wallet, assaulting him in the process. He chased them, but after one of the robbers brandished a knife at him he stopped. Police arrived and drove victim around neighborhood where minor was ID'd by victim and arrested. Following a contested jurisdictional hearing, the petition was sustained and minor ordered to complete a ranch school program. One of his conditions of probation was that he "not possess weapons of any kind, which means no guns, knives, clubs, brass knuckles, attack dogs, ammunition, or something that looks like a weapon. You are not to possess anything that you could use as a weapon or someone else might consider to be a weapon." Minor appealed, claiming the weapon condition is unconstitutionally vague.

To withstand a challenge for vagueness, a probation condition must be sufficiently precise for a probationer to know what is required and for the court to decide if the condition has been violated. A person of ordinary intelligence must have a reasonable chance of knowing what is prohibited.

Deadly/dangerous weapons come in two-types: 1) those weapons that are "per se" inherently deadly or dangerous to others in the ordinary use for which they are designed and 2) other instruments that, with the intent of the user, are capable of being used as a deadly or dangerous weapon on a particular occasion.

The court found the trial court's first sentence to be clear enough—a reasonable person could understand the meaning of "weapon." Because what is or isn't a weapon can turn in part on the user's *intent*, the court held the second sentence needed to be modified to prohibit minor from possessing anything that he *intends* to use as a weapon, or that someone else might consider to be a weapon.

The court reviewed the split of authority in the DCAs over the need for an express scienter requirement for probation conditions and further modified the order to include the language that the minor "shall not *knowingly* possess...."

In re B.L. (8/31/15) 239 Cal.App.4th 1491

Minor was a student in one of two P.E. classes being held on the blacktop at JFK H.S. She told the instructors of both classes that her mom was there to pick her up and she needed them to open the locked school gate. She was told no, only the administration could permit early release. Minor made a call on her cell phone and then told the teachers that her brother was outside the gates and to open them. The male teacher pointed out the inconsistent statements about who was picking her up. Minor responded with offensive language. The teacher made a response that provoked the minor further. She called the teacher names, struck him with the Frisbee she was holding, punched him in the face, and kicked him in the groin. A struggle with others ensued. The female teacher approached the scene with her walkie-talkie on so staff could hear the commotion, and hopefully respond. Minor slapped the walkie-talkie from her hand causing it to fall on the ground. The minor did not dispute of the battery upon the male teacher. There was testimony at trial that the female teacher was holding the device very close to minor's face when, the minor says, she struck the device only, not the teacher's hand. The court sustained the petition, finding minor either "struck the hand and the walkie-talkie or struck the walkie-talkie with such force applied to the walkie-talkie that force was applied to the hand of the victim." Minor appealed.

The court found the issue of "touching necessary for criminal battery to be a matter of first impression." Battery is a general intent crime. It is a "willful and unlawful use of force or violence upon the person of another" and the "least touching" may constitute a battery. Force against a person is enough; there need not be a mark, pain or, injury. In the context of tort law, contact with clothing, paper, or any object in the person's hand is sufficient...quoting Prosser, "The interest in the integrity of the person includes all those things which are in contact or connected with the person." The court cited several jurisdictions—Idaho, New Mexico, and Florida—which support the view that the elements of civil and criminal battery are basically identical. Thus, applying the common law interpretation, the case law in other states, and the language of PC §242 itself, the court held that knocking a walkie-talkie out of the hand of the person holding it falls within the statute.

In re Albert W. (9/11/15) 240 Cal.App.4th 411

Minor was made a ward at the age of 12, in 2008, following admission of a second degree robbery petition and the dismissal of a residential burglary/possession of stolen property petition. He was sent to live with his dad in Louisiana. He had two petitions sustained in Louisiana, but in 2010 his case was closed and he was returned to his mother in CA. Within a few months a 777 Notice of Violation was filed. Another VOP was filed a week later alleging the minor had committed 2 residential burglaries. In January of 2011, proceedings were suspended and minor found incompetent. A referral was made to determine if he was intellectually disabled and to design an appropriate placement plan. In January of 2012, probation sought a warrant as the minor had runaway after threatening his mother with a sawed off shotgun. In February 2012, minor was detained, but released again to his mother. Other VOPs were filed in May and June claiming, among other things, the minor threatened a school official and had a loaded firearm at school. In July, counsel again expressed a doubt. One of the prior doctor's rejected his report of 2011, which diagnosed "mild mental retardation." He now concluded the minor had been malingering. Following a contested hearing, the court found minor competent. In the meantime, probation filed a report stating the minor was a gang member and had 6 incidents while in custody. Another VOP was filed in October of 2012. On November 15, the minor admitted he committed the residential burglary in 2010, and the court dismissed the remaining VOPs—which contained allegations minor violated PC §422 with §12022.5, PC §71, PC §69, and PC §25850. On November 29 another VOP was filed alleging minor assaulted a minor in juvenile hall. After a 90 day diagnostic evaluation, the court found minor eligible for, and committed him to, DJF. Defense argued minor wasn't eligible for DJF as his most recent admitted offense, which had been committed in Louisiana, wasn't a §707(b) offense. Minor appealed.

Welf. & Inst. Code § 733(c) states a ward shall not be committed to DJF if the "most recent offense alleged in any petition and admitted or found to be true by the court" is not listed in §707(b). Here, the most recent offense alleged in a CA petition was robbery, which is a §707(b) offense. A "petition" under §733 means a 602 petition not a VOP notice. However, §602 refers to petitions alleging state or federal crimes committed in CA. There is no basis for CA to exercise jurisdiction over crimes committed in sister-states.

Welf. & Inst. Code § 245 confers *superior court* jurisdiction to the juvenile *court* – and that court is a California court. Section § 650 provides that proceedings to declare a minor a ward of the juvenile court *pursuant to §602* are initiated by the prosecutor’s filing of a petition. This reference to §602 cuts against the argument that a proceeding based upon Louisiana law would be deemed “commenced by the filing of a petition” under this statute. The references to the “juvenile court” and “ward of the court” in §602 itself clearly mean the juvenile court as part of California’s superior court. Cases and statutes referencing the filing of the petition by the prosecutor, filed “on the People’s behalf,” and “on behalf of the people of the State of California” plainly reference California cases.

Thus, the “petition” referred to in §733(c) must be a California petition and minor’s Louisiana petitions have no relevance on his eligibility for a DJF commitment.

In re Erica R. (9/28/15) 240 Cal.App.4th 907

Minor was arrested at school with a bag of 30-45 orange pills, later determined to be ecstasy. She admitted a misdemeanor violation of H&S §11377(a) and was placed on probation. She received probation conditions which included drug testing and search and seizure. The search condition included vehicle, residence, or electronics and “giving [her] passwords to [her] probation officer.” Counsel objected on the grounds of overbreadth, the fact minor had never had any issue with social media, and she did not have a cell phone. The court overruled the objection indicating its belief minors often post information about and photos of themselves and their drug usage. The condition was a “way of keeping track of her drug usage, not just a way of testing her.” Minor appealed the electronics and passwords search condition.

W&I Code §730(b) grants broad powers to the juvenile court in imposing “all reasonable conditions” it determines to be proper. Even conditions that would be unconstitutional for an adult may be permissible for a minor. However, while the court’s discretion is broad it is not unlimited. The juvenile court’s order regarding probation conditions is reviewed for an abuse of discretion.

Pursuant to *Lent*, a probation condition will not be held invalid unless it 1) has no relationship to the crime; 2) relates to conduct which is not itself criminal; and 3) requires or forbids conduct which is not reasonably related to future criminality. All three prongs must be satisfied before an appellate court will invalidate a probation condition. Here, 1) the electronic search condition has no relationship to the crime of possession of ecstasy. There was no evidence the minor used an electronic device to buy/sell the drug; 2) use of an electronic device is not itself criminal; finally, 3) there is nothing in the record to support the conclusion the electronic search condition is reasonably related to future criminality. No evidence was presented minor used devices or social media in connection with her drug use. And nothing was presented to indicate the condition would preclude her from future drug use or other criminal acts. Thus, the probation condition must be stricken.

**The court indicated the holding was “narrow.” In a case where, based upon the [minor’s] history and the circumstances of the offense, an electronic search condition is reasonably connected to future criminality, such a condition would be appropriate.

In re Malik J. (9/29/15) 240 Cal.App.4th 896

In 2012, minor was placed on probation for a robbery and given a search and seizure probation condition. In 2014, minor and his co-parts robbed and assaulted 3 women near a BART station. The D.A. filed a notice of probation violation alleging minor committed 3 robberies and possessed eight baggies of marijuana. Minor admitted and his previous probation conditions, including the search clause, remained in effect. The D.A. advised the court that the minor had been “working with 2 other individuals” and that indicated electronic devices might have been used to coordinate the crime. Also, one of the robberies involved an iPhone, which meant devices minor possessed might be stolen. In response, and over defense objection, the court added a probation condition that required minor (and possibly his family) to provide all passwords to and submit to searches of electronic devices and social media sites. The court specified that included cell phones, computers, notepads and passwords for Facebook and Instagram. Minor appealed, arguing the electronics condition is overbroad and vague.

The appellate court did not find the phrase “any electronic devices” to be unconstitutionally vague as the trial court referenced cell phones, notepads, and computers and the condition was reasonably clear. The court did, however, strike any requirement the minor’s family turn over electronics or social media passwords since they were not being placed on probation and minor couldn’t be held responsible for their possible lack of cooperation.

The court agreed that searches of minor’s electronic communication “significantly encroaches” on his and 3rd parties privacy and free speech rights—“Modern cell phones ... hold for many Americans the privacies of life.” The court modified the probation condition to omit the requirement minor turn over his passwords to social media sites and limited any searches to devices found in minor’s custody and control. While requiring minor to give the password to a phone in his possession is appropriate, given the personal and private information on networking sites, a “forensic examination of the device” to retrieve deleted information is prohibited. Further, the device should be disabled from the Internet prior to search so the search is limited to information stored on the device & accessible to the probationer—in his possession and control.

In re Ricardo P. (10/22/15) 241 Cal.App.4th 676

Minor was declared a ward of the court for 2 felony counts of first degree burglary. One of his probation conditions required minor to submit to warrantless searches of his “electronics including passwords.” The court stated that it believed minors often brag about their drug use and post pictures on the Internet so the condition was an important part of monitoring the minor’s drug use. Minor appealed challenging the condition on the grounds it 1) permits illegal eavesdropping; 2) is not reasonable under *Lent*; 3) is unconstitutionally overbroad.

The court first settled the question of what “electronics” covers in the electronics search condition. The court and parties agreed it encompasses the physical electronic device itself, the data contained/stored on the device, and data in electronic accounts accessed through the device. The court referred approvingly to the example of an electronics search probation condition reviewed in *People v. Ebertowski* (2014) 228 Cal.app.4th 1170.

Next the court rejected the minor’s claim his probation condition poses a risk of illegal eavesdropping in violation of the rights of anyone with whom he communicates. Minor has no standing as he is seeking to protect the rights of others, not his own. The court then reviewed the electronic search condition under the 3-prong *Lent* test. First, the condition has no relationship to minor’s offense—burglary. There was no evidence that the phones minor possessed at the time were stolen or were used to coordinate the crime. Second, there is nothing inherently illegal about the typical use of an electronic device. The third prong required to invalidate a probation condition—that the condition forbids conduct unrelated to future criminality—was not satisfied. The court found the electronics search condition was reasonably related to enhancing the effective supervision on the minor. (See *People v. Olguin* (2008) 45 Cal.4th 375, 380-381) The probation officer could check minor’s devices for messages or Internet activity related to drug use or communicating about drugs. Nothing in *Olguin* requires a connection between a probationer’s past conduct and the locations that may be searched to uphold a search condition.

Even though a minor’s constitutional rights are more circumscribed than an adult’s, this condition isn’t tailored narrowly enough to avoid infringing on some of those rights. It is overbroad because it wasn’t narrowly tailored to the minor, or to promote public safety and the minor’s rehabilitation. The search of a cell phone differs from traditional searches because phones contain information on almost every aspect of the owner’s life

(religious, sexual, political, financial). However, the court held that a modified condition, authorizing the search of some of minor's cell phone data and electronic accounts, would allow for monitoring his probation compliance. For example, the juvenile court could limit searches to sources where it is likely minor would boast about drug use—texts, voicemail, photos, email, and social media—while still protecting other personal information.

Steven R. v. Super Ct. (10/26/15) 241 Cal.App.4th 812

Minor admitted to possession of a concealed weapon in San Francisco Juvenile Court. The matter was transferred to Sacramento County for Disposition. The D.A. filed a 777 Notice of Probation Violation alleging the same conduct. The People then moved to dismiss the sustained §602 petition pursuant to §782 in order to make minor eligible for DJF—his “most recent offense” would then be the PC 211 previously sustained in Sacramento. The Sacramento juvenile court dismissed the San Francisco petition. Minor filed a writ. The DCA originally denied it and the CASC granted review and transferred the matter back to the DCA.

Section §782 authorizes dismissal of a petition and states that, “a judge of the juvenile court in which a petition was filed may dismiss the petition.” Because the petition in question was filed in San Francisco, not Sacramento, the Sacramento juvenile court was without jurisdiction to dismiss it.