PRIKAZI STRANIH ISKUSTAVA

JUVENILE LAW AND PROCEDURE IN THE STATE OF CALIFORNIA, UNITED STATES OF AMERICA[1]

Timothy J. Helfer, J.D.
California State University-Stanislaus
Department of Criminal Justice

JUVENILE LAW IN THE STATE OF CALIFORNIA

The purpose of this paper is to provide an overview of laws and procedures that focus upon juveniles and/or their parents in the state of California. The following will be based upon state laws and procedures that have evolved in California over the last 50 years. I have been a deputy public defender representing youth and parents for 7 years and was then appointed as a judicial officer for Stanislaus County, presiding over juvenile cases for 20 years. Since my background is as an attorney and judicial officer, my focus is on the legal issues set forth by the specific statutes and cases of juvenile law in the state of California.

OVERVIEW

In California, there are three main categories of law and procedures pertaining to youth. The three are dependency proceedings, status offender proceedings, and delinquency proceedings.

In **dependency proceedings** (W.I. 300), the focus is upon the acts of the parent(s)/guardian(s) of the minor(s). These proceedings determine whether a minor should be removed from the custody of his/her parent(s)/guardian(s) if it has been proven that sexual, physical, or emotional abuse was committed upon the minor by the parent(s)/guardian(s). These proceedings are considered civil proceedings. If a parent(s)/guardian(s) have been found to abuse the minor, a district attorney (county prosecutor) may decide if a separate, independent criminal proceedings should also be directed against the parent(s)/guardian(s).

In **status offender proceedings** (W.I. 601), the focus is mostly upon a minor's actions relating to curfew, truancy, and runaways. These proceedings consider what options are available to assist the minor and parent(s) in determining what is the causation of the minor's actions and what can be done to rectify the situation. These proceedings are not criminal proceedings.

In **delinquency proceedings** (W.I. 602), the focus is on the acts of the minor who is alleged to have committed a criminal act. If the allegations are found true, then the court decides what should happen to the minor. The minor can be placed on informal probation; formal probation; or be removed from the home and placed in a foster home, structured placement center, or D.J.J. (the state equivalent of state prison for juveniles).

In all three proceeding listed above, as a general rule, the court proceedings are "closed" to the public. There are exceptions to this rule in each of the proceedings, but for our purposes in this brief overview, all hearings are closed.

Each of the proceedings above is directed toward a particular need. However, because of limited space, I will provide a brief description of each, and will be focusing mainly on the delinquency proceedings in the state of California. This outline will not be providing all the specific statutes or all of the procedures on any of the three procedures. The statutes and cases are far too numerous for this paper. One must also remember that the general procedure outlined below have "exceptions" to the rules touched upon.

1 Ovaj je rad dio znanstvenog projekta pod nazivom: Usklađivanje intervencija s potrebama djece i mladih u riziku: izrada modela, kojeg je odobrilo i financira MZOŠ RH. Voditeljica projekta je prof.dr.sc. Antonija Žižak

TERMINOLOGY

Juvenile law in California, as in most states, is a very specialized field. As a result, in each of these proceedings there are very specialized terms used. To assist the reader, a list of terms and their meanings are provided in the **glossary** listed at the end of the paper.

In discussing California juvenile law, the reader needs to be aware that California's juvenile laws and procedures are codified within the **Welfare & Institutions** statutes[2].

In California, a *minor* is an individual under the age of 18. Thus, for a court to have legal authority to proceed in one of the hearings listed above, the *minor* needs to be less than 18 years of age. The juvenile court's authority over the minor is based on the age of the individual at the time the abuse or offense occurred. Thus, in delinquency matters, an individual who committed a crime the day before his or her 18th birthday would still appear in juvenile court even though the court appearance was after he/she turned 18 years of age.

CALIFORNIA

California is located at the western end of the continental United States. It has the largest population in the nation with an estimated 36,457,549[3] people. Of that total, an estimated 9,531,046[4] are children under the age of 18. There are 58 counties in California, and each county has their own courts. The California court system has "superior courts" in each of the counties. The total number of courts (judicial officers) for each county is determined by the population of the specific county. Stanislaus County has 22 judicial officers and is considered a "mid-size" county for judicial purposes.

California State University, Stanislaus, is located in Stanislaus County. Stanislaus County is considered to be in "northern" California, roughly 90 miles due east of San Francisco and 90 south of Sacramento (the state's capital). Stanislaus County has approximately 512,138[5] people with 147,599[6] under the age of 18.

DEPENDENCY PROCEEDINGS (W.I. 300)

In Stanislaus County, there were 5,638[7] children referred to C.P.S. between July 2007 and June 2008. This averaged between 450 to 500 calls per month. Between August and November 2008, there were roughly 63 families[8] (totaling 102 children) "petitioned" alleging some type of abuse.

For a court to proceed with a dependency action in California, there needs to be an allegation that the *minor* and/or a minor sibling(s), under the age of 18, has been neglected or abused physically, sexually, or emotionally. The specific code setting forth the requirements is **W.I. 300 (a)-(j)**. Under W.I. 300, the California state legislature has specifically set out the legislative intent that the purpose of the hearing is not to "disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting."[9] Thus, parental rights are paramount in considering whether to commence a proceeding under dependency.

Anyone can commence an action under this section. A doctor, teacher, neighbor, extended family member, any concerned citizen, can contact law enforcement or the department of Child Protective Services [CPS], (the state social service agency), with a complaint of child abuse. In California, CPS is then required to investigate the complaint concerning the *minor's* safety. If there is a valid, legal concern, CPS can either provide the family with services that can ameliorate the situation, or if necessary, remove the child or children from the home and begin formal proceedings in the juvenile court.

If referred to the juvenile court, there is a *petition* filed listing the allegations that have brought the minor and family before the court. The parents and children have the right to be represented by an attorney and if they cannot afford one, the court will appoint one for them. Each member of the family has a right to their own separate attorney.

At a dependency *jurisdictional hearing*, the trial court decides if the petition is true. There is no right to a jury trial in these proceedings. At this hearing, CPS is represented by county counsel who presents evidence to the court. Defense counsel (representing the parent(s)/guardian(s)) can also present evidence. The *minor(s)* attorney can also present evidence or cross-examine either party to the action. After all evidence is provided to the court, the court determines whether the evidence shows by a "prepon-

2 For convenience, the initials W.I. will be listed before the number of the statute. [eg. W.I. 300 – represents the specific code that is being discussed.]
3 United States Census Bureau- California: ACS Demographic and Housing Estimates 2006
4 United States Census Bureau- California: ACS Demographic and Housing Estimates 2006
5 United States Census Bureau-Stanislaus County, California: Estimates 2006
6 United States Census Bureau-Stanislaus County, California: Estimates 2006
7 Stanislaus County C.P.S. statistics: provided by deputy County Counsel Ms. Linda Macy on December 9, 2008
8 Stanislaus County C.P.S. statistics: provided by deputy County Counsel Ms. Linda Macy on December 9, 2008
9 W.I. 300

derance of evidence" that the *petition* is true. If the legal burden has been meet by CPS, the proceeding is continued for a *dispositional social study* report to be prepared by CPS setting forth alternatives or options that are available to the court to assist the family and protect the *minor(s)*. A *dispositional hearing* is set for a later date, and once prepared, all parties have the right to review the *dispositional social study* before the next hearing.

At the *dispositional hearing*, the court considers evidence presented by the parents, minor(s), social services, extended family members, etc. If the court determines by "clear and convincing" evidence that, for the minor's safety, the minor needs to be removed from the custody of the parents, a *reunification plan* is prepared and implemented by CPS to assist the family to be reunified with their child or children. The *reunification plan* addresses the specific needs of the family and based on those needs, resources are to be provided for the family to assist them to be reunified.

If a minor is removed from his/her family, a court review is held at least every six (6) months to determine if the family can now be reunified. The legal burden is upon CPS to justify why reunification is not recommended. Within 18 months, if there is no reunification, the court must consider if "long term placement", guardianship, or the minor is to be "freed for adoption" is in the best interest of the *minor*.

As noted, this is not a criminal proceeding. The express intent of the legislature is to have the child, if removed from the parents, to be returned as soon as it can be shown that the child would now be protected. If this isn't accomplished, as noted above, the *minor* could, as the most severe option, end up being freed for adoption.

As the result of more and more psychological research done in this field, it has been shown that there will be unhealthy long-term effects upon a *minor* when stability isn't provided within the *minor's* life as quickly as possible. The most severe consequences have occurred when babies are removed from their parent(s) and then unable to "bond" with a stable caregiver/parent in a relatively short period of time. A particularly good book on this subject is Ghosts in the Nursery.[10]

Because of these concerns, there are a substantial amount of statutes of procedures that need to be followed before a child can be removed from the home or freed for adoption. Since the legislative intent is to reunify the family as specified under W.I. 300.2, various reunification services, with a full array of social and health services, are provided to the family, including parenting programs, substance abuse treatment programs, and sexual abuse treatment programs if needed. These treatment programs are tailored to the individualized needs of each family.

The dependency field of juvenile law is very important and a substantial amount of time could be spent on just this one subject. Unfortunately, this particular paper is to provide a very cursory sketch of the proceedings. A personal observation: How we, as a society, respond to these very serious abuses against children within their own families will determine how these children will respond to there own life's journey. If the child is not "bonded" to a caring family in a very short period of time, research has shown that there could be very serious long-term effects. If there are no adequate community responses such as family therapy, counseling for substance or alcohol abuse, sexual abuse counseling for the whole family, just to name a few examples, the cycle will continue throughout generations of a particular family. If the *minor* is not treated, along with the family, the probability that he or she will end up in the juvenile delinquency court or adult criminal court is substantial. This I have seen from my own experiences as a defense attorney and judicial officer in Stanislaus County.

STATUS OFFENDER PROCEEDINGS (W.I. 601)

"Status offenders" in California are defined under W.I. 601. The individual is under the age of 18, who persistently or habitually refuses to obey parent/guardian (including run away from home); violates curfew ordinances; or violates the truancy laws of the state. Historically, when the state enacted its juvenile laws in 1909, there was no distinction between W.I. 300 (dependents), W.I. 601 (status offenders), and W.I. 602 (delinquents) minors. Only with legislation in 1961 was there a differentiation made between the three as shown by the separate codes. Even then, status offenders were still treated the same as delinquents in every respect except they couldn't be committed to the California Youth Authority (now D.J.J.). From 1974 to 1978, the legislature made substantial changes in the laws affecting status offenders. The current law reflects those changes.

10 Karr-Morse, Robin., Wiley, Meredith S. Ghosts from the Nursery. The Atlantic Monthly Press

Under current law, W.I. 601 offenders fall within two categories. These two categories were designated by Peter Bull in California Juvenile Court Practice, (1981) as:

1. "home-oriented" misconduct such as curfew, habitually disobeying parent(s)/guardian(s), and runaways and;
2. "school-oriented" misconduct which includes truancy.

Presently the minor, if allegations are found true, can be adjudged a ward of the court but cannot be removed from his/her home or detained (except for truancy violations and only then during school hours).

Under W.I. 207, the minor is expressly prohibited from being detained in a secure facility (such as juvenile hall) unless:

1. Authorities believe there are outstanding warrants – can be held 12 hours;
2. Authorities are trying to locate the minor's parents – held up to 24 hours; or
3. Authorities are arranging to return minor to parents out of state –up to 72 hours.

If the minor is being detained for one of the above reasons, he/she cannot be housed with delinquent minors or be housed at the jail with adults.

These proceedings, as noted, are for minors that are not delinquent, just out of control. The minor and parents have the right to be provided notice of the allegations and have the right to a court trial and sentencing. In sentencing however, the attempt by probation or the courts is to get the family into some type of counseling for the entire family. The social resources available for such an endeavor varies within each community and county of the state.

When considering the issue of truancy, the court only acquires jurisdiction over the minor once a School Attendance Review Board [SARB] has determined that public or private services have been insufficient to correct the minor's truancy or the minor has not responded to those services. Besides placing the minor under W.I. 601 proceedings, the district attorney can file proceedings under Education Code 48293 against the parent for failure to respond to SARB's directives. As a result, the parent can be fined for any such violation.

In Stanislaus County, 88 minors were referred to the Stanislaus County probation department (intake unit) alleging W.I. 601 allegations between January and June 2008. No minors were referred to the juvenile court for formal proceedings (Statistics provided by Ms. Martha Gonzales, Stanislaus County Supervising Probation Intake Officer – December 2008).

A personal observation: From a court's perspective, W.I. 601 proceedings are only as effective as the interest shown by the parent(s) concerning their child's welfare. If the parent(s) does/(do) not actively support any attempts by probation, SARB, or the court to have the minor comply with rules, the efforts will be unsuccessful. The legislative intent to "decriminalize" status offenders is commendable and necessary; however, the courts have been left with nothing to back up their orders except a stern reprimand. For the truly "out of control" minor, nothing may get his/her attention until a delinquent act is committed by the minor and he/she ends up in the delinquency proceedings.

DELINQUENCY PROCEEDING (W.I. 602)

There were 2,065[11] juveniles referred to the Stanislaus County Probation Intake Department between January and June of 2008. There are presently 878 *wards*[12] of the Stanislaus County Juvenile Court.

In 1899, Illinois was the first state to create a separate juvenile court system in the United States. In 1903 California became the seventh state to do so. At that time, the California act covered dependent, neglected, and delinquent children under the age of 16. In 1909, the state law was changed to raise the age limit to 18. The philosophical underpinning was based upon the belief that early intervention, coupled with a system of treatment, rather than punishment, would result in the successful rehabilitation of errant children. During this time, court proceedings were highly informal and "due process" safeguards were not in the juvenile court statutory scheme because it was considered that the primary concern was not to lock the minor up, but to determine the most appropriate method of treatment.

In 1961, based upon a Special Study Commission created by the governor of California, the state legislature created for the first time three distinct jurisdictional categories consisting of delinquents, status offenders and dependents. Many "due process" considerations were added at this time. Some of these changes included the right to appointed counsel, adequate notice, prompt detention hearings, and the right to have a judicial review when a child was removed from the home. **Rehabilitation** was still the philosophy behind the changes.

11 Stanislaus County Probation Dept. statistics: provided by supervising intake officer Ms. Martha Gonzales on December 2008
12 Stanislaus County Probation Dept. statistics: provided by supervising intake officer Ms. Martha Gonzales on December 2008

In 1967, the United States Supreme Court, in the landmark case of In re Gault,[13] held that in juvenile delinquency hearings, juveniles are protected by the various provisions of the Bill of Rights found in the United States Constitution, including the right to counsel, the right against self-incrimination, the right to confront witnesses, and the right to appeal. In later United States Supreme Court decisions, the Court held that in delinquency matters, the minors had the right against Double Jeopardy[14] and that the standard of proof required to "convict" a minor was "beyond a reasonable doubt"[15] as these rights are provided to adults in adult criminal proceedings. The "rights" that were required by the Gault decision, which applied to all *minors* throughout the United States, had already been provided to the *minors* in California based upon the Special Study Commission noted above.

In 1977, another major state revision included the involvement of district attorneys (prior to this, the probation officer presented the prosecution's case), changes of status offenders under W.I. 601 (as noted above), and other major changes that tended to "criminalize" the delinquency proceedings. At least in California, each new legislative year would bring new laws and procedures which have slowly evolved into the present juvenile laws that the state has today.

Based upon this very brief and sketchy history of juvenile law in California, we have now arrived at the present procedures of juvenile justice in California in 2008.

To highlight the "evolution" of juvenile delinquency law in California, we must review the various modifications by the state legislature concerning W.I. 202. which sets forth the legislative *purpose* of juvenile delinquency law. Originally the purpose of the juvenile law was for the minor's **rehabilitation**, but slowly additional "purposes" were added. In 1977, one of the major overhauls of California's juvenile system noted above, the legislature added two further purposes; public safety and accountability for the minor's behavior.[16] Prior to 1977, the trial court, when sentencing the minor, could not even use the word "punishment". If the court did so, the appellate courts would reverse the sentence and remand the case back to the trial court for the minor to be re-sentenced. Presently the court can use the term "punishment", as long as this is in conjunction with rehabilitation. Still however, retribution, by itself, cannot be a factor for the court to consider in sentencing.

Arrest:

At the beginning of the juvenile justice process is the arrest of the minor for allegedly committing a criminal offense. If the offensive is an infraction, such as a traffic ticket, the minor is lectured and released or cited to appear before the probation department. If the offense is a misdemeanor or felony, the police officer has the discretion to do one of four options. These options include release of the minor (lecture and release); take the minor to a public or private shelter care facility; cite the minor to appear before the county probation department on a designated day; or take the minor to a detention facility (i.e. juvenile hall).[17] In California, the legislature has given law enforcement discretion to provide treatment or diversion without automatically locking the minor up. Under the statute, the officer is to "prefer the alternative which *least restricts the minor's freedom of movement*, provided that alternative is compatible with the best interests of the minor and the community."[18]

Juvenile Hall (intake):

If the police officer chooses to detain the minor, the officer must transport the minor to the juvenile hall "without unnecessary delay".[19] In California, the county juvenile hall facility is run by the county probation department; unlike the county jail, which is run by the county sheriff. Upon arrival at the hall, the first individual the minor discusses the offense with is *an intake officer* (a probation officer). At this time, the *intake officer* must notify the parent(s) where the minor is and also give the minor his/her constitutional rights. The *intake officer* must immediately investigate the circumstances of the offense and then release the minor to his/her parent(s)/guardian(s) *unless* it is determined that continuance in the minor's home is contrary to the minor's welfare.

The *intake officer* must consider seven conditions (or factors) in deciding whether a minor can be released to a parent. These factors include the fol-

13 In re Gault 387 U.S. 1 (1967)
14 Breed v Jones 421 U.S. 519 (1975)
15 In re Winship 397 U.S. 358 (1970)
16 W.I. 202(b)
17 W.I. 625(a),(b),(c),(d)
18 W.I. 625
19 W.I. 625(d)

lowing: whether or not a responsible parent is available, is the home unfit, whether the minor will flee, whether the minor violated a previous court order, and whether the minor is physically dangerous.[20] If released, the intake officer can cite the minor to return or place him/her on "home supervision". Unlike an adult, the juveniles do not have the right to bail.

Petition/Detention Hearing:

Unlike adult proceedings where police reports are sent directly to the district attorney's office (prosecutor), almost all police reports are sent to the probation department (the *intake* unit). The probation department then determines if the minor is to be:

1. lectured and released (no further proceedings);
2. placed on informal probation (for a period of six months);
3. have the police reports referred to the petitioner to determine if the minor should be sent to the juvenile court for formal proceedings.

In Stanislaus County, roughly 60% of the minors referred to the intake unit of probation are diverted without being sent to the *petitioner* or juvenile court. (Within the first six months of 2008, 2,066 minors were referred to the intake unit of Stanislaus County. Out of that total, 697 minors were referred to the juvenile court.)[21]

If the *intake officer* determines that the police reports need to be sent to the *petitioner*, the *petitioner* will review the reports and determine if a *petition* should be filed against the minor. A *petition*, if filed, must be filed with 48 hours from the time the minor was taken into custody (arrested).[22] The *petitioner* may determine that the minor should be handled directly in the adult court, and a "complaint" is filed in the adult court. If a *petition* has been filed, the minor must be brought before the juvenile court within the next judicial day after the *petition* was filed or 48 hours ("time" is determined based upon the criminal offense, whether a felony or misdemeanor).[23]

The first court appearance is called a *detention hearing* if the minor is in custody. If the minor has been released with a "promise to appear" citation, the proceeding is called an arraignment. At the first court appearance, the minor and parents are given a copy of the *petition*, informed of the minor's constitutional rights, provided an attorney if the minor wishes one (parents also have right to counsel for themselves). If the minor has been detained, the court determines if the minor should remain in custody or released under their own recognizance (released to parents with no conditions set by the court), under *house arrest*, under an *electronic monitoring device*, or remains in custody. If continued in detention, the court, on the record, must set forth reasons for continual *detention*. Depending upon the courts ruling, a further "formal" detention hearing or rehearing may be held.[24]

If detained the minor must have his/her *jurisdictional hearing* within 15 judicial days, or if released within 30 calendar days of the minor's initial appearance in juvenile court.[25]

Note: All hearings that are held before the court are recorded, either by a court reporter or an electronic recording devise. This is done so that the minor has a "record" of all the legal proceedings held before the trial court and a transcript of these proceedings can then be sent to the appellate judges if an appeal is filed.

Direct Filing/Fitness Hearing:

The California legislature has given the district attorney (the *petitioner*) the authority to file some of the most serious state criminal offenses directly to the adult criminal courts. The district attorney "shall" file criminal charges in the adult court if the criminal offense is one listed under W.I. 602(b). If the criminal offense(s) alleged to have been committed by the minor is listed under W.I. 707(b) (d), the district attorney "may" file criminal charges in adult court. This procedure is called *direct filing,* which means that the juvenile does NOT go through the juvenile process at all and is treated as if he/she was an adult for all criminal proceedings. Thus, any court appearances are held before a judge of the adult courts. In Stanislaus County, during the first six months of 2008, there were 4 direct filings.

The *petitioner* "may" ask the court to set a *fitness hearing*[26] on any criminal offenses that the minor has allegedly committed. Unlike *direct filing,* the *fitness hearing* is held before the juvenile court judge and based upon evidence presented at this "formal"

20 W.I. 628(a) (1), (2), (3), (4), (5), (6), (7)
21 Conversation with Stanislaus County supervising intake officer Ms. Martha Gonzales on November 18, 2008
22 W.I. 631(a), (b)
23 W.I. 632(a), (b)
24 W.I. 637
25 W.I. 657(a)(1)
26 W.I. 707(a)

hearing the court determines if the minor is *fit* (appropriate to stay in juvenile court) or *unfit* (transferred to the adult court for further proceedings).

The *fitness hearing* is not held to determine if the charges against the minor are true. The hearing is held to determine if the minor remains in the juvenile court for further hearings. The legislature has provided a very specific format to follow and very specific findings have to be set forth by the court on the record. Evidence may be presented at this hearing by either party, including a social study report (*fitness report*) prepared by the probation department for the court to consider in making its finding.

Direct filings or *fitness hearings* are for minors that are 14 years of age (on specific codes) or 16 years of age (on all others). The *petitioner* is not mandated to *direct file* (except under W.I. 602 (b) offenses) or file a *fitness hearing*. This is at the discretion of the *petitioner* to do so, not the juvenile court or the minor.

Pretrial:

In Stanislaus County, in all of our juvenile procedures, the court sets a *pretrial* hearing before the *jurisdictional hearing* is held. The purpose of this hearing is for the court to determine if all parties are ready to proceed to trial (*jurisdictional hearing*) and whether there are any "pretrial motions" such as speedy trial, venue, or search and seizure motions. At the pretrial, the minor may wish to plea to the offense or an offense approved of by the *petitioner* and minor's counsel. This type of plea is commonly called a "plea-bargain". If the minor pleas, the court gives the minor his/her constitutional rights and asks if the minor understands those rights, understands the consequences of the plea, and waives those rights. In juvenile court, the minor's attorney must concur with the plea but it is up to the minor, not his/her counsel, to decide if he/she will plead. If there is a plea, the court must make specific findings on the record.

The court continues the proceeding for a *dispositional hearing*, if the minor pleas to the charges. The *dispositional hearing* must be held with 10 judicial days if the minor is in custody or 30 calendar days if the minor is out of custody.[27] A *dispositional social study* is prepared.

If there is not a plea, the matter is continued for a *jurisdictional hearing* (court trial) within 15 judicial days from the time of detention, or 30 days from the time of the filing of the *petition*.

Jurisdictional Hearing:

The *jurisdictional hearing* is the court trial to determine if the *petition* charged against the minor is true or not true. The United States Supreme Court, in In re Winship held that the burden is upon the *petitioner* in juvenile "trials" to prove "beyond a reasonable doubt"[28] that the minor committed the offense. This is the same burden that the district attorney has in adult criminal proceedings.

For the most part, the "rules of evidence" is the same in juvenile proceedings as in the adult proceedings. One difference however, is when the minor is under 14 years of age when the offense was committed. The *petitioner* in that case, besides proving all the "elements" of the criminal offense, must also show that the minor understood "right from wrong" at the time he/she committed the offense.[29] Specific evidence concerning the minor's understanding between "right and wrong" needs to be presented by the *petitioner* at this time. If evidence is not presented, the *petition* is dismissed.

There is no right to a jury trial in juvenile proceedings. The United States Supreme Court held in 1971, in the case of McKeiver vs Pennsylvania, that there was not a constitutional right to a jury trial in juvenile cases under the United States Constitution.[30] The Court further held, however, that if the states wished to do so, the states may provide jury trials to *minors* under independent state grounds. Some states do provide jury trials to minors. In California, the California Supreme Court held in In re Daedler, that there was not a right to a jury trial for juveniles under the California Constitution.[31] This California case was decided in 1924 and is still the law of California even though numerous legal commentators and counsel have argued that Daedler should be overruled and jury trials provided to *minors* in California.

After the *petitioner* and the *minor* has presented all of their evidence to the court, the court determines whether the *petitioner* has met its burden of proof. The *petition* is dismissed if the *petitioner* did not meet their burden of proof, and the minor is released if he/she is in custody. There are no further proceedings for the minor to attend. If the *petition*

27 W.I. 702
28 In re Winship 397 U.S. 358 (1970)
29 Penal Code 26; In re Gladys R. 1 C3d 855 (1970); burden of proof: "clear and convincing" evidence
30 McKeiver v Pennsylvania 403 U.S. 528 (1971)
31 In re Daedler 194 C 320 (1924)

is sustained, (the *petition* was found true), the court sets a court date for a *dispositional hearing*. The *dispositional hearing* must be held ten (10) judicial days from the time of the *jurisdictional hearing* if the minor is in custody, or 30 (thirty) calendar days if the minor is released. The probation department prepares a *dispositional social study* for the next court date.

Dispositional Hearing:

As noted above, the *dispositional hearing* must be held within 10 judicial days from the taking of a plea or a true finding at a *jurisdictional hearing* if the minor is in custody. If the minor is out of custody, the hearing must be heard within 30 calendar days of the findings.

As noted earlier, the general philosophy underlying juvenile proceedings is *REHABILITATION*. Because of this, juvenile courts have substantially more discretion than adult courts when it comes to sentencing options.

First of all, the juvenile court can consider all "*relevant and material evidence*"[32] in considering the sentence. This would include the *dispositional social study*, minor's statement, victim's statement, parents' statement, dismissed offenses, evidence that was excluded at the *jurisdictional hearing*, schoolwork, etc.

The juvenile court has much broader discretion when setting probation terms since the court, by statute, "*may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced"*.[33]

The court may order any of the following:

1. Dismiss the petition (lecture and release);
2. Place the minor on court probation for six months with terms of probation ("informal")
   c. Adjudge the minor a "ward" of the court ("formal" probation)
   a. Return minor home under probation terms
   b. Remove minor from home and commit to a "placement"
   c. Remove minor from home and commit to a "camp"
   d. Remove minor from home and commit to D.J.J. (Department of Corrections and Rehabilitation, Division of Juvenile Justice).

As a ward, the juvenile court can maintain "jurisdiction" of the minor, for purposes of treatment, until he/she attains the age of 21 years of age. (W.I. 607(a))

Ward at Home:

If the court allows the minor to remain home as a "ward", there are numerous terms and conditions that can be imposed by the court. This can include, but not limited to: curfew, school terms, search terms, abstain from drugs/alcohol, direct parent(s) and minor to go to counseling, no weapons, restitution, etc.

In Stanislaus County we created a "*Drug Court*" for juveniles. (Our juvenile drug court was the 45th such court in the United States.) This is a voluntary program that the minor may enroll in if the minor has a drug or alcohol problem. In "*Drug Court*" the minor would be assigned a probation officer and a mental health counselor. The minor would appear before the court every two weeks along with the probation officer, mental health counselor and the minor's parents. Information would be provided to the court concerning how the minor was doing at home, school, and in counseling. The minors would also be randomly drug tested throughout the week. If the minor was found to be in violation of court orders, the court could place the minor in the juvenile hall for a few days and then return home for further supervision or remove the minor from the home and place in a treatment program. The *Drug Court* program is very intensive and the minor could be in this program from six to twelve months. The caseload for the drug court probation officer is presently 42 minors. A "normal" caseload for probation officers in Stanislaus County has been at least 60 minors per probation officer.

Ward in Placement:

Depending on the "needs" of the minor, he/she could be removed from the custody of their parents and placed into a "placement facility". This placement could be a foster home or an intensive treatment center. If removed from the parents, a treatment plan[34] must be prepared. The court, in removing minor(s) from their parents' custody, must make specific findings on the record.[35] The placement must be a safe setting that is the least restrictive and in the closest proximity to the parents home, and best suited for the minor's special needs.[36] There

32 W.I. 706
33 W.I. 730(b)
34 W.I. 706.6
35 W.I. 726(a)
36 W.I. 727.1(a)

must be a court review every six months while the minor is out of the custody of his/her parent(s). The burden, at each review, is upon probation to show that placement is still necessary.[37]

Ward in Camp:

"Camp" is an intensive program, usually outside the community or county of the minor. In Stanislaus County, the court usually places a minor in a "placement" (described above) instead of a camp.

Ward in D.J.J.:

Previously this state facility was called the California Youth Authority and is the "most restrictive" placement for juveniles. This facility would be best described as state prison for juveniles. Juveniles are sent to this facility that have committed the most serious offenses and/or have been unsuccessful in less restrictive settings such as a ward at home, in placement, or camp. The court should consider the *least restrictive alternatives* before committing the minor to D.J.J.[38] However, the California Supreme Court has held that a juvenile may be committed to D.J.J. even if no previous alternatives were tried, based on the seriousness of the offenses.[39] Generally, the court may retain jurisdiction of a minor in this facility until his/her 25th birthday. (W.I. 607(b))

Appeals:

In all three juvenile proceedings in California (W.I. 300, W.I. 601, W.I. 602) the minor has the right to appeal. There are certain time constraints and procedures, but for purposes of this paper, they will not be discussed.

Sealing of Records/Destruction of Records:

Sealing:

In all three proceedings discussed above, the minor may petition the court to have his/her record sealed. In this process, the court decides if the individual's record can be sealed and may do so at the court's discretion. However, if the minor committed a crime listed under W.I. 707(b), the court CANNOT seal the records.

The purpose for the sealing of records is to give the minor an opportunity to "start over" after he/she has turned 18. Once the records are sealed, the individual can legally state that he/she was never arrested or convicted (in W.I. 601 and 602 proceedings) or was never a dependent (in W.I. 300 proceedings). There are "exceptions" under federal laws.

Destruction of Records:

The records of the minor may be destroyed when the minor reaches the following ages: W.I. 826(a):

1. W.I. 300: 28 years of age
2. W.I. 601: 21 years of age
3. W.I. 602: individual is now 38 years old (If the offenses are W.I. 602(b) or 707(b) offenses, the records are NOT destroyed)

Personal Observations of W.I. 602 proceedings:

As noted at the beginning, I have taken an active part in juvenile proceedings in Stanislaus County for over 30 years, either as an attorney or judicial officer. The following observations are mine alone. Since they are personal to me, the reader needs to be aware that I am a very strong supporter of separate proceedings for juveniles, such as those listed above. I say this at the very beginning of my comments because there are other legal commentators, lawyers, and judicial officers throughout the state and country that believe a separate "juvenile court" is ineffective (at least in W.I. 602 proceedings) and should be relegated as a historical footnote and be combined with criminal adult proceedings.

The focus of the juvenile court on *rehabilitation* over retribution is commendable. Because of this focus, the *juvenile* courts are able to order substantially more "conditions" of probation based on rehabilitation than the adult courts are allowed either by case law or statute in the adult arena because of its retributive nature or focus. There is also more flexibility by the juvenile courts in considering ways to assist the minor and family to remain a family unit.

Statutes, in all three categories, have very specific requirements that must be followed by the courts before making any rulings. If a child is removed from the home, time periods are specified and review hearings must be held. Furthermore, the burden of proof is upon the state to prove that the minor should not be returned to the home, instead of the burden placed upon the minor or parent(s). At each step of the juvenile process there is broad discretion placed upon the arresting officer, probation officer or social worker, and the courts in order to determine what options should be considered. At

37 W.I. 727.2(c),(g)
38 In re Eddie M. 31 C4th 480 (2003)
39 In re Ricky H. 30 C3d 176 (1981)

the same time, the options considered must be the least restrictive to the minor or family.

With this in mind, based upon research throughout the country[40] and my personal observations in Stanislaus County, it has been determined that at least six critical components are needed for any successful juvenile program. I have added a seventh component. These include:

1. A continuous case management component where there is one probation officer or staff member who monitors a youth's progress toward any well defined treatment goals.
   a. Changing probation officers or having different staff members during the treatment of a juvenile can cause inconsistency within the minor's treatment – each probation officer or staff member may have different "expectations" of the minor.
2. The probation officer or staff must have the ability to offer a broad range of individualized services that relate to the minor's personal needs.
   a. Just as with adults, each minor has different needs.
3. It is imperative that there is special attention to community reentry and reintegration for the minor if he/she has been removed from his/her home.
   a. If the minor has made great strides in "changing" his/her behavior but the home environment hasn't changed, the minor will quickly revert back to his/her previous ways.
4. Any treatment or program prepared for the minor must permit the minor to participate in making any program or treatment decisions.
   a. If the minor has taken an active role in creating a "program", he or she is more apt to be successful in any treatment.
5. Any treatment must offer clear opportunities for the minor to demonstrate achievement of any knowledge or skills that he or she has learned.
   a. This enhances the minor's self esteem.
   b. The treatment must offer enriched educational or vocational programs.
6. Any program must have clear and consistently applied consequences for the minor if he or she violates program rules.
   a. It has been shown that minors, even if they don't wish to admit it, wants structure to their lives.
7. The court's ability to meet the goals of juvenile justice's stress on rehabilitation is determined by the resources available to each county.
   a. Because of budgetary constraints, many times the treatment "needs" are not met, which in turn undermines the whole treatment program.

Juvenile policies that are presently in place are continually amended or modified by the state legislature. Because of media hype, many modifications are based upon incorrect information.[41] From this information, the public is in fear of juvenile "criminals' and as a result, the legislature over the past 10 years have lowered the age requirements to 14 (in California) in which a fitness hearing can be held. There were further changes with the advent of *direct filing*, sending a minor as young as 14 years old to the adult courts based on specified offenses filed by the prosecution. Both of these changes gave the prosecution the discretion or authority to transfer the minors to adult court without any judicial overview.

Depending on one's viewpoint, these changes may or may not be appropriate. No matter what position one takes, clearly the legislature's intent and philosophical underpinnings of *rehabilitation* is eroding. This, at a time when more and more research is being done concerning child development and determining what treatments are more effective in helping the minor and family to become successful members of society.

These legislative modifications provide less flexibility within the juvenile justice system in trying new and different approaches to rectify the "problems" found in all three areas of juvenile justice discussed above. I believe that there have been at least six very important events concerning juvenile justice that have occurred in California or Stanislaus County within the last 15 to 20 years. In California, the juvenile court judicial officers throughout the state meet yearly to be appraised of any new state legislation that will affect them as well as being provided new studies and research on all areas of juvenile justice. This allows the judicial officers to become "experts" in this very specialized field. It also allows them to maintain "contacts" with their judicial peers, so that when they are confronted with an issue that another judicial officer may have dealt with, they can immediately contact that important source for information.

40 Krisberg, B. Juvenile Justice, Redeeming Our Children. Sage. pgs. 150-151
41 Dowd, N., Singer, D., Wilson, R. Handbook of Children, Culture, and Violence. Sage. pg. 376

1. The attorneys, both defense and prosecution, are also provided seminars focusing on juvenile matters, including various alternatives that have been tried and found to be successful in treating the family and minor within their respective communities.
2. The criminal justice department of State University of California, Stanislaus has created a separate concentration in juvenile justice to allow students to focus on this particular field and be ready to respond to juvenile issues immediately upon graduation into this very specialized field.
3. Dr. Gerstenfeld, the chair of the criminal justice department has placed a "mentoring" component into the juvenile justice classes that requires students to "mentor" juveniles that are enrolled in the elementary, middle-schools, and high schools of the city of Turlock. I have continued this outstanding program with my students. I have found that the criminal justice students come back with a better grasp of the specific "needs" of the youth within the community and from this experience can become better police officers, judicial officers, probation officers, or attorneys. The mentoring also helps the youth in the community, based on their experiences with the criminal justice students, realize that someone actually cares whether they graduate from school and stay out of trouble. This is an outstanding program.
4. The creation of the Juvenile Court Drug Court in Stanislaus County has provided an intensive treatment program for the minor with alcohol and drug issues. This program allows the minor to stay within his/her home while being provided mental health counseling and drug counseling. All seven components listed above are used within this program to provide treatment to the minor.
5. There are reports that the California State legislature is considering a phase-out of D.J.J. and providing money to each county to create "camps" within their own county to house and provide treatment to the minors who reside there. If this is done, whether for budgetary reasons by the state or for treatment considerations, I believe this would be a substantial benefit for the minor(s). By remaining within the county, the minor would be closer to his/her parents so they (the parent(s) could visit and also receive training; specific regional treatment can be provided to the minor that would allow a smoother "reentry" or transition into the community in which he/she lives; and the probation officer would could take a consistent, active part of the minor(s) treatment instead of supervising the minor after he/she has returned from another program. Different regions of the state have different "needs". Treatments for minors living in Los Angeles or San Francisco have different treatment "needs" than minors living in Stanislaus County or Riverside County. As noted in "component seven" above, however, the "resources" (money) provided by the state will need to be continuous. The state legislature cannot provide money for one or two years and then, because of the state budget, have each county fend for themselves. If this occurs, there will be no consistent program for the minors and the whole focus on rehabilitation will be completely undermined.

Thus, in California, as in United States as a whole, the juvenile justice system is in flux. There is a continual tension between those that feel it is imperative to maintain a separate juvenile justice system, and those that feel that such a system is no longer working. Time will tell what the future for juveniles in California and throughout the United States will be. Will the focus be more and more on retribution, as found in the adult system, or a return to the focus of *rehabilitation* for minors in a juvenile system of laws?

GLOSSARY:

CALIFORNIA JUVENILE JUSTICE TERMS

W.I. 300

Dependent: The term used for the minor if a finding has been made by the court that the child falls within one of the provisions of W.I. 300.

Detention Hearing: Hearing where the court determines if the minor should be removed from home until there has been a formal determination of the merits on the petition.

Dispositional: If the *petition* is found true, this is the hearing for the court to determine if the minor should be removed from the parents' physical custody and placed outside the home until the parents complete a treatment program or if the child can remain in the home with treatment program provided with in the home setting. A dispositional social study is prepared by C.P.S. with recommendations to the court as to the proper treatment.

Jurisdictional: The court trial to determine if the *petition* is true or not. There is no right to a jury trial.

Petition: The legal document setting forth the cause of action.

Petitioner: The Department of Child Protective Services (C.P.S.) [this county agency is the "social services" department].

County Counsel are the attorneys that present the evidence upon C.P.S.'s behalf.

Reviews: If a child is removed from the home, the court must hold a review every six months. If at the end of 18 months, if the child has not been returned home, the court must decide if the child needs to be placed in long-term placement, guardianship, or be freed for adoption.

W.I. 601

Dispositional: The "sentencing" hearing by the court to determine what must be done.

Jurisdictional: A court trial to determine if the *petition* is true or not.

Petition: The legal document setting forth the cause of action.

Petitioner: The county probation department.

W.I. 602

Detention Hearing: The court hearing to determine if the minor is to be released from juvenile hall pending any further court hearings.

- This is the first "formal" hearing in which the minor appears in court,
- there are no bail rights for juveniles as there are for adults in the adult criminal proceedings.

Direct Filing: For specific alleged offenses listed in statutes by the state legislature, the district attorney is empowered to file charges directly to the adult system instead of beginning in the juvenile system.

Dispositional: If the petition is found true, this is the court proceeding to determine what should the minor be ordered to do. [sentencing].

- A dispositional social study is a report prepared by the probation department setting forth the social history of the minor with recommendations to the court as to the suggested disposition or sentence.

Drug Court: An intensive program for youth that are heavily addicted to drugs or alcohol.

EMP: [Electronic Monitoring Program] If the minor is detained, the court can consider placing him/her in this program. An ankle bracelet is attached to the minor and the minor is restricted to certain specified locations. If he/she leaves those areas, an electronic signal is sent to the probation officer, notifying probation that the minor has not complied with his/her rules. When the minor is apprehended he/she is returned to the hall pending the completion of the proceedings.

- This can be used pending court proceedings and/or for sentencing purposes.

Fitness Hearings: Court hearing to determine if a minor remains in the juvenile system or is transferred to the adult system.

- A fitness report is prepared by the probation department which sets forth the social history of the minor and sets forth the 5 criteria the court must consider in determining if the minor is "fit" or "unfit" for juvenile proceedings.

Home Commitment: If the minor is detained, the court can release the minor in his or her home with specific terms not to leave the house unless under direct supervision of the parent(s) or to go directly to and from school. This is considered a form of detention.

Jurisdictional: The court trial to determine if the petition is true or not.

- There is no right to a jury trial in juvenile court.

Minor: The "child" is not called a "defendant" as the individual that allegedly committed a crime is called in adult court.

O.R. When a minor is released to parents without any specific rules pending court proceedings (own recognizance).

Petitioner: The district attorney of the county [prosecutor].

Petition: The legal document listing the criminal offense(s) in which the minor allegedly committed.

Pretrial: A court appearance that is held before the jurisdictional hearing, in which the court determines if all parties are prepared for trial. This is also the time any "pretrial motions" are made by counsel.

Probation:
1. "informal" probation,
2. "formal" probation:
   a. minor remains in the home;
   b. placement (foster home, group home, treatment center);
   c. camp;
   d. D.J.J. [Division of Juvenile Justice].

Ward: A minor who is placed on "formal" probation.