CALIFORNIA JUDGES BENCHGUIDES

Benchguide 118

JUVENILE DELINQUENCY JURISDICTION HEARING

[REVISED 2017]

JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION

CENTER FOR JUDICIAL EDUCATION AND RESEARCH

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JUVENILE DELINQUENCY JURISDICTION HEARING

I. [§118.1] SCOPE OF BENCHGUIDE

This benchguide covers jurisdiction hearings in juvenile court held generally under Welf & I C §§675–705 and Cal Rules of Ct 5.774–5.782. This benchguide includes a procedural checklist, a brief summary of the applicable law, and two sample scripts.

II. [§118.2] PROCEDURAL CHECKLIST

(1) *Any subordinate judicial officer must obtain a stipulation from the parties under Cal Rules of Ct 2.816. In re Perrone C.* (1979) 26 C3d 49, 57, 160 CR 704 (a stipulation is essential for a subordinate judicial officer to conduct a jurisdiction hearing). See discussion in §118.18.

(2) *Ask the bailiff, court clerk, or probation officer to call the case.*

(3) *Determine who is present and their interest in the case before the court*. Welf & I C §§676, 676.5, 679; Cal Rules of Ct 5.530(b), (e). The judge may be asked to rule on the presence of the following in the courtroom:

- Interpreters for parent and/or child (see California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.16 (Cal CJER))
- Crime victims and their support persons (see §116.10)
- Family members or other support persons for prosecuting witnesses (see §116.12)
- Child's family members (see §116.12)
- Media (see §116.15)
- Public (see §§116.13–116.14)
- Court-appointed special advocate (CASA) (see §116.11). There may also be agency workers from the mental health agency, department of health services, or other agencies.

(4) *If the child is not represented by counsel, advise the child of the right to an attorney and appoint one to represent the child.* Welf & I C §700; Cal Rules of Ct 5.534(h)(2)(A). See California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.17 (Cal CJER)).

(5) *Read the petition to those present and, if requested, explain the meaning of the allegations, the nature of the hearing, and possible consequences and outcomes.* Welf & I C §700; Cal Rules of Ct 5.778(a). See discussion in §118.20.

(6) *Advise the child of his or her rights* (see §118.21) *and inquire whether the child is going to admit or deny the allegations* (see §118.22).

(7) *If the child wishes to make an admission or enter a plea of no contest and child's counsel consents, inquire as to whether the child understands the nature of the allegations and consequences of admission and also understands and waives the rights set out in Welf & I C §702.5 and Cal Rules of Ct 5.778(b)* (see §118.23). The court should also let the

child know the maximum term of confinement. If there is a plea, proceed to step (8); otherwise, proceed to step (9).

☛ JUDICIAL TIP: Even when the district attorney or the child's attorney advises the child and obtains waivers, most judges also question the child as to the child's understanding of his or her rights and the waiver of those rights.

(8) *After accepting an admission or a plea of no contest, make the findings required under Welf & I C §702 and Cal Rules of Ct 5.778(f) and proceed to the disposition hearing.* Cal Rules of Ct 5.778(g). See discussion in §118.23 and §118.35. Proceed to step (18).

(9) *If the child denies the allegations, hold a contested jurisdiction hearing*. See discussion in §118.27.

(10) *If appropriate, grant a continuance to allow newly appointed counsel to prepare for the hearing or for other good cause* (see §§118.7–118.10), *such as:*

- To allow the child or parent to prepare for the hearing,
- To enable the prosecutor to subpoena witnesses when the child denies an extrajudicial admission previously made, or
- To permit the child to enter into an informal supervision program.

(11) *If appropriate, place the child in an informal supervision program.* See discussion in §§118.15–118.17.

(12) *Otherwise hear evidence on whether the allegations in the petition should be sustained.* See Welf & I C §701. See discussion in §118.28.

(13) *If necessary, advise the witness of the privilege against self-incrimination.* The judge may also wish to grant a witness immunity. See discussion in §§118.31–118.32.

(14) *Hear a motion to dismiss, if any, at the close of the prosecutor's evidence, or on court's own motion if the prosecution has not met its burden of proof.* See Welf & I C §701.1 and discussion in §118.33.

(15) *Determine whether the child is described by Welf & I C §602, by finding either that the allegations in the petition have or have not been proven beyond a reasonable doubt.* Welf & I C §702.

(16) *If the allegations have not been proven, make the findings required under Welf & I C §702 and Cal Rules of Ct 5.780(g) and dismiss the petition and terminate related detention orders.* Welf & I C §702; Cal Rules of Ct 5.780(g). See §118.36.

(17) *If the allegations have been proven, make the findings required under Welf & I C §702 and Cal Rules of Ct 5.780(e), state the degree of the offense and, if the offense is a wobbler, consider on the record whether it is a misdemeanor or felony.* Welf & I C §702; Cal Rules of Ct 5.780(e)(5). See §118.37.

(18) *If not held immediately following the jurisdiction hearing, set the disposition hearing.* Welf & I C §702; Cal Rules of Ct 5.782(a). See §118.40.

(19) *With counsel's consent, ask the child if he or she has anything to add or wishes to address the court.* The court may also wish to ask this of the parents.

☛ JUDICIAL TIP: Many judges feel that it is important to involve parents in a discussion with the court about the child to assist the court when arriving at disposition.

(20) *Order parties to return to the next hearing.*

III. APPLICABLE LAW

A. [§118.3] Purpose of Jurisdiction Hearing

The purpose of the jurisdiction hearing is to determine whether the allegations of the petition can be sustained (*In re Randy B.* (1976) 62 CA3d 89, 95, 132 CR 720) and therefore whether there might eventually be a need for wardship (see *Raul P. v Superior Court* (1984) 153 CA3d 294, 299, 200 CR 360). If the allegations are sustained, a disposition hearing is held. *In re Randy B., supra.*

B. [§118.4] Grounds for Jurisdiction

Anyone under the age of 18 who violates a law or ordinance comes within juvenile court jurisdiction. Welf & I C §602(a). However, the prosecutor may make a motion before the juvenile court to transfer certain minors aged 14 years or older to adult criminal court. Welf & I C §707(a). California juvenile courts have jurisdiction even when the juvenile violates a federal statute: neither the supremacy clause nor 18 USC §3231 (giving federal courts exclusive jurisdiction over federal offenses) preempts Welf & I C §602 from authorizing a state juvenile court to handle a case in which a juvenile is charged with violating a federal statute. *In re Jose C.* (2009) 45 C4th 534, 539–540, 87 CR3d 674.

Whether a case should proceed in juvenile court or adult criminal court is not a question of subject matter jurisdiction because each county has only one superior court and that court has jurisdiction over all those who commit felonies regardless of age. *In re Harris* (1993) 5 C4th 813, 837, 21 CR2d 373. If the child is under the statutory age limit, however,

the adult court lacks jurisdiction to *act* and, if it tries the child, it acts in excess of jurisdiction. *In re Harris, supra.* In that situation, the child has a duty to call his or her age to the attention of the court. 5 C4th at 838. Similarly, if the child is over 18 and in juvenile court, the juvenile court's acts are in excess of jurisdiction. *People v Malveaux* (1996) 50 CA4th 1425, 1439–1440, 59 CR2d 371 (but if child committed fraud on the court regarding age, double jeopardy will not bar a retrial).

C. Time for Hearing

1. [§118.5] In General

If the child is not detained, the jurisdiction hearing must begin within 30 calendar days from the date the petition is filed. Welf & I C §657(a); Cal Rules of Ct 5.774(a). If the child is detained, the hearing must begin within 15 judicial days from the date of the order of the court directing detention. Welf & I C §657(a)(1); Cal Rules of Ct 5.774(b). If the child is initially detained and then released from detention before the jurisdiction hearing, the court may reset the jurisdiction hearing within the 30-day limit. Cal Rules of Ct 5.774(b).

In the case of a child who is not before the court at the time of the filing of the petition and for whom a warrant of arrest has been issued under Welf & I C §663, the hearing on the petition must be stayed until the child has been brought before the court on an arrest. Welf & I C §657(a)(2). But in calculating the time for holding the jurisdiction hearing, any delay caused by the child's unavailability or failure to appear is not included in computing time. Cal Rules of Ct 5.774(c).

2. [§118.6] Failure To Meet Time Limits

A juvenile is entitled to a speedy trial under Welf & I C §682. *In re Chuong D.* (2006) 135 CA4th 1303, 1306, 38 CR3d 351. If a child consents to a continuance, the "statutory time limit" for detention of the child, as referred to in Cal Rules of Ct 5.776(a)(1), is 7 days after the date to which the hearing has been continued. After such time, the child must be released from such detention. Welf & I C §682(e); *In re Kerry K.* (2006) 139 CA4th 1, 5–6, 42 CR3d 467.

Moreover, absent a continuance under Welf & I C §682, the petition must be dismissed if the jurisdiction hearing does not begin within the time limits of Welf & I C §657. Cal Rules of Ct 5.774(d). If the petition has been dismissed because the hearing could not be held within required time limits, the prosecutor may file another petition based on the same allegations, but the child may not be detained. Cal Rules of Ct 5.774(d).

Whether the court proceeds with the hearing on the new petition depends on many factors, including whether or not there has been prejudice to the child. *People v Superior Court* (Jorge C.) (1990) 224

CA3d 1114, 1118, 274 CR 439. Generally, however, petitions dismissed because of a time problem may be refiled and new jurisdiction hearings held. *People v Superior Court* (Jorge C.), *supra.* A petition alleging commission of a misdemeanor that has been dismissed may be refiled despite the fact that Pen C §1387 would preclude such refiling for an adult. *Alex T. v Superior Court* (1977) 72 CA3d 24, 31–32, 140 CR 17. There is generally no difference between felonies and misdemeanors as far as juvenile court procedural and substantive law is concerned. 72 CA3d at 31.

3. Continuances

a. [§118.7] In General

Whether or not the child has been detained, the court may grant a continuance beyond the required time limits on request of the prosecutor or counsel for the parent or child, as long as it is for good cause and no later than is absolutely necessary. Welf & I C §682(a), (b); Cal Rules of Ct 5.776(a)(1). The child's objection to the continuance past the time limits, however, would require the child's release from custody. See *In re Kerry K.* (2006) 139 CA4th 1, 5–6, 42 CR3d 467, discussed in §118.6.

Supporting documents must contain specific facts demonstrating good cause (Welf & I C §682(a)), and the court must state the facts in its order. Cal Rules of Ct 5.776(a)(2). Neither stipulation between counsel and/or parties nor convenience of parties constitutes good cause. Welf & I C §682(b); Cal Rules of Ct 5.776(a). Good cause, however, is not limited to the grounds set out in Cal Rules of Ct 5.776(b)–(d), but may be "general good cause" within the discretion of the court. *In re Maurice E.* (2005) 132 CA4th 474, 480–481, 33 CR3d 683.

If a party fails to comply with the requirements of Welf & I C §682(a) (notice of request for continuance must be filed and served at least two days before the hearing to be continued) the court must deny the motion for the continuance unless that party has shown good cause for failing to meet the procedural requirements. Welf & I C §682(c); Cal Rules of Ct 5.776(a)(1). Unless there is a time waiver, the child may not be detained beyond the statutory time limits. Cal Rules of Ct 5.776(a)(1).

The court must continue the hearing as necessary to provide reasonable opportunity for the child and parent, guardian, or adult relative to prepare for the hearing. Welf & I C §700; Cal Rules of Ct 5.776(b)(1). In one case, it was held to be an abuse of discretion to deny a continuance to accommodate a parent's illness when the parent's assistance was necessary for preparation of the defense and a few days remained before the statutory deadline for the jurisdiction hearing. *In re Eric J.* (1988) 199 CA3d 624, 630, 244 CR 861 (abuse of discretion was based on *child's* due process rights to a fair and just hearing).

If a child is represented by counsel and counsel does not object to a continuance beyond the time limits, the absence of objection is deemed to be consent. Welf & I C §682(d); Cal Rules of Ct 5.776(a)(3). Once continued, the hearing must begin on the date to which it was continued or within 7 days thereafter when the court is satisfied that there was good cause for the continuance and that the party seeking the continuance is prepared to proceed. Welf & I C §682(e).

b. [§118.8] When Child Denies Extrajudicial Admission

The court may continue the hearing for up to 7 calendar days to enable the prosecutor to subpoena witnesses if the child made an extrajudicial admission but later denies it or previously indicated to the prosecutor or court an intention to admit the allegations but denies them at the hearing. Welf & I C §701; Cal Rules of Ct 5.776(c).

c. [§118.9] For Appointment of Counsel

The court must continue the hearing for up to 7 calendar days if necessary to appoint counsel or enable counsel to become acquainted with the case. Welf & I C §700; Cal Rules of Ct 5.776(b)(2)(A), (B). In addition, the court must continue the hearing for up to 7 days to determine whether the parent, guardian, or adult relative is able to afford counsel. Welf & I C §700; Cal Rules of Ct 5.776(b)(2)(C). See §118.11.

d. [§118.10] For Informal Supervision Program

The court may continue the jurisdiction hearing for 6 months with the consent of the child and the parent or guardian. See Welf & I C §654.2; Cal Rules of Ct 5.776(d). If the court grants this continuance, it must order the child to participate in informal supervision under Welf & I C §654. Welf & I C §654.2(a); Cal Rules of Ct 5.776(d). The court must also order the parent or guardian to take part in a program of counseling or education with the child, under Welf & I C §654. Welf & I C §654; Cal Rules of Ct 5.776(d). For a discussion of informal supervision, see §§118.15–118.17.

D. [§118.11] Appointment of Counsel

If counsel has not already been appointed, the court must first determine whether the child and the parent, guardian, or adult relative has been informed of the child's right to representation. Welf & I C §700. If not, the judge must advise the child and the parent or other adult, if present, of the right to counsel, in general, and the right to appointed counsel, if applicable. Welf & I C §700.

Unless the child has intelligently waived the right to counsel, if the child appears at the hearing without counsel, the court must appoint counsel regardless of the child's and parent's ability to pay for these

services. Welf & I C §700; Cal Rules of Ct 5.534(h)(2)(A), 5.663(c). See discussion of right to counsel in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.17–116.20 (Cal CJER).

E. [§118.12] Prehearing Motions

Generally, prehearing motions and accompanying points and authorities must be served on the child and opposing counsel and filed with the court at least 10 judicial days before the jurisdiction hearing is to begin if the child is not detained and the motion is not a suppression motion. Otherwise, the time for service is 5 judicial days before the planned start of the jurisdiction hearing. Cal Rules of Ct 5.544; see §118.14. All prehearing motions must be specific; the grounds must be stated and they must be supported by points and authorities. Cal Rules of Ct 5.544.

1. [§118.13] Discovery

Once a petition is filed, the child is entitled to discovery of copies of the police, arrest, and crime reports and any favorable evidence or information. *In re Jesse P.* (1992) 3 CA4th 1177, 1183, 5 CR2d 321; see Cal Rules of Ct 5.546(b)–(c). The prosecutor has an affirmative duty to make these disclosures. See Cal Rules of Ct 5.546(b)–(c). The rule must be liberally construed to encourage informal disclosure. Discovery is subject to the right of a party to show privilege or other good cause not to disclose. Cal Rules of Ct 5.546(a).

See discussion of discovery in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.43 (Cal CJER).

2. [§118.14] Suppression Motions

Motions to suppress evidence based on unlawful search and seizure apply in delinquency proceedings because, generally, a child has a constitutional right to be free from unreasonable searches and seizures. *In re Scott K.* (1979) 24 C3d 395, 402, 155 CR 671. These motions must be heard before the attachment of jeopardy (see §118.38) and at least 5 judicial days after receipt of notice by the prosecutor unless the prosecutor is willing to waive a portion of that time. Welf & I C §700.1.

If the court grants the motion to suppress, it must dismiss all counts except those on which the prosecutor chooses to proceed without the suppressed evidence. See Welf & I C §700.1.

After evidence has been suppressed, the prosecution is bound by that suppression order in subsequent proceedings; at that point, it may either proceed with the jurisdiction hearing without the evidence or have the case dismissed and appeal the dismissal. *Derrick J. v Superior Court* (1983)

146 CA3d 748, 750, 194 CR 348. Pretrial writ review is not available to challenge a ruling on a suppression motion in juvenile court. *Abdullah B. v Superior Court* (1982) 135 CA3d 838, 844, 185 CR 784. The ruling may be appealed, however, by the child (Welf & I C §800(a)) and by the prosecution even if the ruling results in dismissal of the petition or of some counts (Welf & I C §800(b)(1)).

The suppression motion should not be merged with the jurisdiction hearing. *In re Steven H.* (1982) 130 CA3d 449, 454, 181 CR 719. If the opportunity for the motion did not previously exist or the child was unaware of the grounds for the motion, however, the child may object to the admission of evidence and seek to suppress it during the hearing. Welf & I C §700.1. When a suppression motion is held simultaneously with the jurisdiction hearing and the motion is granted, thereby requiring the court to dismiss the petition, double jeopardy prevents any further proceedings. *In re Mitchell D.* (1990) 226 CA3d 66, 71–72, 276 CR 245.

When a child submits the jurisdiction on the transcript of the suppression motion, the court must advise the child of his or her rights (see §118.21) before accepting the submission. *In re Steven H., supra.*

F. Informal Supervision

1. [§118.15] In General

The court may, without adjudging a child a ward of the court and with the consent of the child and the child's parents or guardian, continue any hearing on a petition for 6 months and order the child to participate in a program of informal supervision as described in Welf & I C §654. Welf & I C §654.2(a). If the probation officer recommends additional time to enable the child to complete the program, the court at its discretion may order an extension. Welf & I C §654.2(a).

Although the Welf & I C §654.2 informal supervision is post-petition, it must be implemented before the charges in the petition have been adjudicated. Once a court holds a jurisdiction hearing and finds allegations in the petition to be true, it is precluded from ordering informal supervision. *In re Abdirahman S.* (1997) 58 CA4th 963, 968, 68 CR2d 402; *In re Adam R., supra.* Therefore, it is inconsistent to accept an admission in exchange for being placed on informal supervision because the acceptance of an admission constitutes an adjudication of the charges. *In re Omar R.* (2003) 105 CA4th 1434, 1438, 129 CR2d 912. It is also error to accept an admission but hold it "in abeyance," before beginning the informal supervision program. *Ricki J. v Superior Court* (2005) 128 CA4th 783, 791, 27 CR3d 494.

In determining whether the child is eligible for informal supervision, the court must independently exercise its discretion and not just review the probation officer's decision. *In re Armondo A.* (1992) 3 CA4th 1185,

1189–1190, 5 CR2d 101. The court may order informal supervision (or decline to do so) despite the recommendation to the contrary of the probation officer (*Raymond B. v Superior Court* (1980) 102 CA3d 372, 378–379, 162 CR 506) or the prosecutor (see *Charles S. v Superior Court* (1982) 32 C3d 741, 747, 187 CR 144) (both cases based on earlier versions of the relevant statutes).

If the probation officer recommends additional time to enable the child to complete the program, the court in its discretion may order an extension of the program. Welf & I C §654.2(a). However, if the child fails to complete the program, the court must proceed on the petition no later than 12 months from the date the petition was filed, therefore no extension may be granted beyond the 12-month date. Welf & I C §654.2(a).

Under the program, the probation officer must submit a follow-up report to the court 15 days before the conclusion of the program. Welf & I C §654.2(a). The child and parent or guardian must be ordered to appear at the conclusion of the 6-month period and at 3-month intervals thereafter. If the child successfully completes the program, the court must order dismissal of the petition and order the record sealed. Welf & I C §§654.2(a), 786; see discussion of sealing procedures in California Judges Benchguide 119: *Juvenile Delinquency Disposition Hearing* §119.108 (Cal CJER). If the child fails to complete the program, the court must proceed on the petition no later than 12 months from the date the petition was filed. Welf & I C §654.2(a). See §118.17.

The informal supervision program must include constructive assignments that will help the child learn to be responsible for his or her actions. The assignments may include, but not be limited to, requiring the child to perform at least 10 hours of community service, requiring the child to repair damaged property or to make other appropriate restitution, or requiring the child to participate in an educational or counseling program. Welf & I C §654.6. The child may also be ordered to obtain care and treatment for substance abuse. Welf & I C §654.

Additionally, the program requires the parents or guardians of the child to participate with the child in counseling or education programs, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court. Welf & I C §654.

A child who is placed in an informal supervision program for a violation of an offense involving unlawful possession, use, sale, or furnishing of a controlled substance under Health & S C §§11053–11058 (defining controlled substances) or for a violation of Pen C §647(f) (public intoxication) or Veh C §23140 or §23152 (driving under influence) must participate in and complete a drug or alcohol education program provided

by a county mental health or other appropriate community agency. Welf & I C §654.4.

The court has no jurisdiction to impose a Fourth Amendment waiver as a condition of informal supervision. *Derick B. v Superior Court* (2009) 180 CA4th 295, 305−306, 102 CR3d 634.

The court and the probation department must view each child individually. Because of this, a policy that denies informal supervision to all juveniles who have been charged with driving under the influence is invalid (*Mark F. v Superior Court* (1987) 189 CA3d 206, 211, 234 CR 388), as is the probation department's policy of conditioning the use of informal supervision on the child's willingness to admit the alleged offense (*Kody P. v Superior Court* (2006) 137 CA4th 1030, 1037, 40 CR3d 763).

Moreover, a court may not deny informal supervision to an eligible child merely because the county lacks adequate resources to provide it. *John O. v Superior Court* (1985) 169 CA3d 823, 828, 215 CR 592 (based on earlier version of the law).

2. [§118.16] When Precluded

The following circumstances render a child ineligible for informal supervision except in an unusual case in which the interests of justice would be served (Welf & I C §654.3(a)–(h)):

- The petition alleges a violation of an offense listed in Welf & I C §707(b);
- The petition alleges a violation of Health & S C §§11053 et seq (sale or possession for sale);
- The petition alleges a violation of Health & S C §11350 or §11377 when the violation takes place at a school or a violation of Pen C §245.5, §626.9, or §626.10;
- The petition alleges a violation of Pen C §186.22 (gang participation);
- The child has previously been in informal supervision;
- There was a prior wardship judgment;
- The petition alleges an offense in which the restitution owed to the victim exceeds $1000; and
- The child is alleged to have committed a felony when 14 years of age or older (except in unusual circumstances, these cases should proceed under Welf & I C §§790 et seq or §§675 et seq).

If the court determines that this is an unusual case requiring informal supervision despite the presence of one or more factors specified above, it must specify the reasons for its decision on the record. Welf & I C §654.3.

3. [§118.17] Completion of Informal Supervision

When the child successfully completes a program of informal supervision, the court must order the petition dismissed and order all records pertaining to the dismissed petition sealed. Welf & I C §§654.2(a), 786. The arrest on which the judgment was deferred is deemed not to have occurred. Welf & I C §786. If the informal supervision is unsuccessful, a jurisdiction hearing must be held no later than 12 months from the filing of the petition. Welf & I C §654.2(a). Under CCP §12 (time period excludes the first day and includes the last day), the 12-month period includes the 1-year anniversary of the filing date of the petition. *In re Anthony B.* (2002) 104 CA4th 677, 681–682, 128 CR2d 349.

Failure to declare a child a ward within 12 months of the filing of the petition does not deprive the court of jurisdiction under Welf & I C §654.2, which is not mandatory, but merely directory. *In re C.W.* (2007) 153 CA4th 468, 62 CR3d 851 (child had been placed on informal probation, but had not paid restitution as ordered).

☛ JUDICIAL TIP: Many courts dismiss the petition and drop the calendared review hearing if the required probation report provides sufficient information to support a determination that the child has successfully completed the program as ordered.

G. Hearing Officers

1. [§118.18] Referees and Commissioners

Jurisdiction hearings, like all juvenile court hearings, may be conducted by referees or by superior court commissioners who are assigned to sit as judges pro tem. See Cal Rules of Ct 5.536; *In re Gregory M.* (1977) 68 CA3d 1085, 1093–1094, 137 CR 756. For a delinquency jurisdiction hearing, a written stipulation conferring judicial power is necessary before a subordinate judicial officer may conduct the hearing. Welf & I C §248(a); *In re Perrone C.* (1979) 26 C3d 49, 57, 160 CR 704. Otherwise, because principles of double jeopardy would prevent a rehearing, failure to obtain a stipulation could cause the case to be dismissed. *Jesse W. v Superior Court* (1979) 26 C3d 41, 48, 160 CR 700.

With a jurisdiction hearing, it is not clear that the stipulation may be implied from the failure to object or other conduct of the parties. See *In re Mark L.* (1983) 34 C3d 171, 179–180, 193 CR 165; *In re P.I.* (1989) 207 CA3d 316, 321–322, 254 CR 774 (court stated that *Mark L.* had held that the "tantamount stipulation" rule may not be applicable to referees who preside over jurisdiction hearings because the required stipulation must be in writing). Nevertheless, a commissioner may preside over a *disposition* hearing with only a "tantamount stipulation." See *In re Courtney H.* (1995) 38 CA4th 1221, 1223, 45 CR2d 560.

When the jurisdiction hearing is waived because the child admits the allegations, however, the rule of *In re Perrone C.* (1979) 26 C3d 49, 57, 160 CR 704 does not apply, and a referee may immediately make appropriate findings and dispositions without obtaining a stipulation. *In re William B.* (1982) 131 CA3d 426, 185 CR 468.

For a general discussion of powers of referees, see California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.7 (Cal CJER).

2. [§118.19] Disqualification

The provisions of CCP §§170 and 170.6 relating to the disqualification of judges apply in juvenile court proceedings and are specifically made applicable to disqualification of referees. *Pamela H. v Superior Court* (1977) 68 CA3d 916, 918, 137 CR 612; Welf & I C §247.5.

When a judge properly disqualifies him or herself during a jurisdiction hearing and declares a mistrial, double jeopardy does not prevent the holding of a new jurisdiction hearing because the mistrial was compelled as a matter of "legal necessity." *In re Carlos V.* (1997) 57 CA4th 522, 525–528, 67 CR2d 155. But because a party does not have a right to peremptorily challenge a judge under CCP §170.6 if that judge has made a determination of contested fact issues relating to the merits (see CCP §170.6(a)(2)), a peremptory challenge made after a judge has heard a motion to suppress would be untimely because the suppression motion involves just such a determination. *In re Abdul Y.* (1982) 130 CA3d 847, 857–861, 182 CR 146.

A judge may hear a delinquency case when he or she had previously heard the case of a coparticipant or passed on the application of a codefendant for probation. *In re Richard W.* (1979) 91 CA3d 960, 968, 155 CR 11.

If a disqualification motion is granted, the presiding judge of the juvenile court must reassign the matter to another referee or to a judge of the juvenile court. Welf & I C §247.5.

H. Conduct of Hearing

1. [§118.20] Reading the Petition

At the beginning of the jurisdiction hearing, the judge or clerk must read the petition to those present. Welf & I C §700; Cal Rules of Ct 5.778(a). On request of the child, or the parent, guardian, or adult relative, the court must explain the meaning and contents of the petition, as well as the nature of the jurisdiction hearing, the upcoming procedures, and possible consequences. Welf & I C §700; Cal Rules of Ct 5.778(a). A

petition is adequate if it provides notice to the person who is accused. *In re Michael D.* (2002) 100 CA4th 115, 127, 121 CR2d 909 (despite variance between the allegations and the proof).

2. [§118.21] Advisement of Rights

The court must advise an unrepresented child, parent, or guardian of the right to representation and, if applicable, of the right to have counsel appointed, subject to a claim of reimbursement. Welf & I C §700; Cal Rules of Ct 5.534(g), 5.663. For discussion of right to counsel, see Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §§116.17–116.20 (Cal CJER).

The court must also advise the child of the following rights (Welf & I C §702.5, Cal Rules of Ct 5.534(k)(1)):

- The right to assert the privilege against self-incrimination,
- The right to confront and cross-examine witnesses and preparers of reports,
- The right to subpoena witnesses, and
- The right to present evidence.

The child, parent, guardian, and their attorneys have the right to receive the probation report and to inspect the documents used by the preparers of the report, and unless prohibited by court order, to receive all documents filed with the court. Cal Rules of Ct 5.534(k)(2), (3).

After giving the advice required by Cal Rules of Ct 5.534, the court must also advise those present of each of the following rights of the child: (Cal Rules of Ct 5.778(b)):

- The right to a hearing by the court on the issues raised by the petition,
- The right to assert the privilege against self-incrimination,
- The right to confront and cross-examine any witness called to testify against the child, and
- The right to use the process of the court to compel the attendance of witnesses on the child's behalf.

The court must also advise those present that if the petition is sustained and if restitution**,** fines, or penalty assessments are ordered, the parent or guardian may be liable for the payment of these items. Welf & I C §700.

3. [§118.22] Inquiry Into Admission or Denial

The court must inquire whether the child will admit or deny the allegations. Cal Rules of Ct 5.778(c). If the child does neither, the judicial

officer must state on the record that the child does not admit the allegations. Cal Rules of Ct 5.778(c).

4. [§118.23] Admission or No-Contest Plea

With the consent of counsel, the child may admit the allegations of the petition or enter a plea of no contest at the jurisdiction hearing. Welf & I C §657(b); Cal Rules of Ct 5.778(c)–(e); *In re Alonzo J.* (2014) 58 C4th 924, 934–939, 169 CR3d 661.

In taking a plea of a child who was under 14 years of age at the time of the alleged offense, the court must determine under Pen C §26 whether the child understood the wrongfulness of that act. See Pen C §26 (child under age 14 may not be convicted of a crime in absence of clear proof that the child knew acts were wrong); see also discussion in §118.25.

☛ JUDICIAL TIP: The court should consider questioning the child on this issue and may wish to receive information from the parents or others regarding the child's knowledge that the conduct was wrong.

If the child wishes to admit the allegations, the court must find and state on the record that it is satisfied that the child understands the nature of the allegations and the direct consequences of the admission and also understands and waives the following rights (Cal Rules of Ct 5.778(b)–(c)):

- The right to a jurisdiction hearing,
- The right to assert the privilege against self-incrimination,
- The right to confront and to cross-examine any witness called to testify against the child, and
- The right to use the court's process to compel the attendance of witnesses on the child's behalf.

California Rules of Ct 5.778 codifies and extends the *Boykin-Tahl* advisements to delinquency cases. See *In re Regina N.* (1981) 117 CA3d 577, 582–583, 172 CR 810 (discussing the predecessor rule to Rule 5.778). The *Boykin-Tahl* advisements are satisfied if the record demonstrates that the accused had fair notice of what he or she has been asked to admit. *In re Ronald E.* (1977) 19 C3d 315, 324, 137 CR 781. Before an admission may be taken, the juvenile must be given notice of the maximum period of confinement (*In re Michael B.* (1980) 28 C3d 548, 554, 169 CR 723) as well as other possible consequences (*In re Richard W.* (1979) 91 CA3d 960, 978, 155 CR 11), including:

- Placement on supervised or unsupervised probation;
- Payment of victim restitution and restitution fine;

- Registration with law enforcement;
- Immigration consequences;
- Suspension, restriction, or delay of driving privileges; and
- Providing DNA sample for inclusion in the California Department of Justice (DOJ) DNA database.
- Prohibition on possessing or owning any firearm until the age of 30 years.

☛ JUDICIAL TIPS:

- It is important to obtain a personal waiver from the child of the rights set out in Cal Rules of Ct 5.778(b) as well as from the child's attorney and to obtain these on the record. Many judges ask if the attorney joins the child in the waiver. Counsel for the child must consent to any admission; such admissions must be made by the child personally. Cal Rules of Ct 5.778(d).
- Many judges counsel the child that the offense admitted may count as a strike under the three-strikes law. See *People v Davis* (1997) 15 C4th 1096, 1101–1102, 64 CR2d 879.

The child may enter a plea of no contest to the allegations, subject to the approval of the court. Cal Rules of Ct 5.778(e). The consent of the child's attorney is required for a no-contest plea, just as it is for an admission of the charging allegations. *In re Alonzo J., supra*.

On an admission or no-contest plea, the court must make all of the following findings noted in the minutes of the court (Cal Rules of Ct 5.778(f)):

- Notice has been given as required by law.
- The child's date of birth and county of residence.
- The child has knowingly and intelligently waived the following rights:
  - — To have a hearing on the issues,
  - — To confront and cross-examine adverse witnesses,
  - — To use the court's process to compel attendance of witnesses on the child's behalf, and
  - — To assert the privilege against self-incrimination.
- The child understands the nature of the conduct alleged in the petition and the consequences of an admission or no-contest plea.
- The admission or no-contest plea is freely and voluntarily made.
- There is a factual basis for the admission or no-contest plea.

- The allegations in the petition that are admitted are true. State which allegations are dismissed under a plea agreement.
- The child is described by Welf & I C §601 or §602.
- The degree of the offense and whether it would be a misdemeanor or felony had the offense been committed by an adult. If any offense may be found to be either a felony or misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration and must state its determination as to whether the offense is a misdemeanor or a felony. These determinations may be deferred until the disposition hearing.

For a written advisement and waiver form, see Judicial Council form JV-618: *Waiver of Rights—Juvenile Delinquency.*

5. [§118.24] When Child Pleads Not Guilty by Reason of Insanity

When a child denies the allegations in the petition by a plea of not guilty by reason of insanity and generally denies the conduct alleged in the petition, the court must first hold a hearing without regard to the issue of insanity. Welf & I C §702.3(a). If the petition is sustained or if the child denies the allegations only by reason of insanity, then the court must hold a hearing on the issue of whether the child was insane when the offense was committed. Welf & I C §702.3(a).

If the court finds insanity, it continues to have jurisdiction over the child under Welf & I C §602. *People v Superior Court* (John D.) (1979) 95 CA3d 380, 396, 157 CR 157 (retroactive application of Welf & I C §702.3). Unless it appears to the court that the child has completely regained sanity, the court must order the child confined in a mental health facility. Welf & I C §702.3(b). Once the child is confined, Pen C §§1026–1027 generally govern applications for release or other changes in circumstance. Welf & I C §702.3(d).

6. [§118.25] Determining Knowledge of Wrongfulness

Children under the age of 14 are deemed not capable of committing crimes unless there is clear proof that they knew the wrongfulness of the act at the time it was committed. Pen C §26. Therefore, in order to find that a child who was under 14 years of age at the time of the offense comes under Welf & I C §602, the court must find that the child knew the wrongfulness of the act. *In re Gladys R.* (1970) 1 C3d 855, 867, 83 CR 671. To rebut the presumption of Pen C §26, the prosecution must prove *by clear and convincing evidence* that a child under 14 knew of the

wrongfulness of the charged conduct when it was committed. *In re Manuel L.* (1994) 7 C4th 229, 234, 27 CR2d 2.

As children approach closer to the age of 14, the more likely it is that they appreciate the wrongfulness of their actions. *People v Lewis* (2001) 26 C4th 334, 378, 110 CR2d 272. Knowledge of wrongfulness may not be inferred from the offense itself, but the court may consider the circumstances of the offense, including preparation, commission, and concealment. *In re Tony C.* (1978) 21 C3d 888, 900, 148 CR 366. Some examples in which knowledge of wrongfulness was found are:

- Youth, nearly 14 years of age, made steady use of deadly force, while moving victim to a concealed place in order to rape her; afterwards, he fled the scene (*In re Tony C., supra,* 21 C3d at 901).
- Youth, also nearly 14 years of age, ran away from the scene and lied to police officers after dousing the sleeping occupant of a car with gasoline and throwing a lit match into the car (*People v Lewis, supra,* 26 C4th at 379).
- Four months before the child committed the offense in question, a petition had been sustained for a different offense (*In re Nirran W.* (1989) 207 CA3d 1157, 1160–1161, 255 CR 327).
- Youth, 12 years and 10 months old, initially lied, then hid the evidence, but finally led the deputy to it, indicating awareness of the wrongfulness of his actions. *In re James B.* (2003) 109 CA4th 862, 873, 135 CR2d 457.

Evidence of prior petitions sustained for the *same* offense may also be relevant to knowledge of wrongfulness under Evid C §1280 (official records). See *In re Nirran W.*, *supra*, 207 CA3d at 1161. On the other hand, just because the juvenile committed the offense in full public view is not necessarily relevant to *not* knowing the wrongfulness of the act. *In re Marven C.* (1995) 33 CA4th 482, 487, 39 CR2d 354.

7. [§118.26] Advisory Jury

Because the court has the power to control proceedings with the goal of ascertaining jurisdictional facts, it may empanel an advisory jury to help it determine those facts. Advisory juries should only be used in exceptional cases, where the benefits to be derived from the use of an advisory jury far outweigh any benefits of informality and confidentiality that can be achieved in the circumstances. *People v Superior Court* (Carl W.) (1975) 15 C3d 271, 280, 124 CR2d 47. The child has no due process right to a jury trial, however. *In re Myresheia W.* (1998) 61 CA4th 734, 741, 72 CR2d 65. This remains the law even though the juvenile adjudication may count as a strike. *People v Davis* (1997) 15 C4th 1096, 1100–1102, 64 CR2d 879.

8. [§118.27] Right to Contested Hearing

If the child denies the allegations, the court must hold a contested hearing to determine if the allegations are true. Cal Rules of Ct 5.780(a). In a contested hearing, the allegations must be proved true beyond a reasonable doubt if the child is to be found to be described by Welf & I C §602. Welf & I C §701. See §118.37.

9. Evidence

a. [§118.28] In General

At the hearing, the main question the court must consider is whether the child is described by Welf & I C §602. Welf & I C §701. This must be established by proof beyond a reasonable doubt. Welf & I C §701. Evidence must be admitted or excluded under rules of evidence applicable to criminal cases. Welf & I C §701; Cal Rules of Ct 5.780(b).

Except as otherwise provided by law, the court must not read or consider any portion of a probation report that relates to the contested petition before or during the contested jurisdictional hearing. Cal Rules of Ct 5.780(c); see also *In re Gladys R.* (1970) 1 C3d 855, 860, 83 CR 671 (the court must first determine whether the facts of the case would support the jurisdiction of the court in declaring a wardship and may thereafter consider the probation report). However, if the court reviews the report before making its jurisdictional finding, counsel must object to preserve the error on appeal. *In re Christopher S.* (1992) 10 CA4th 1337, 1344, 13 CR2d 215.

The following have been ruled insufficient evidence to sustain a petition:

(1) A noncommittal courtroom identification of the child, coupled with irrelevant and hearsay testimony regarding criminal gang activities, is not the kind of proof beyond a reasonable doubt needed to support a finding that the child is a person described by Welf & I C §602 (*In re Wing Y.* (1977) 67 CA3d 69, 79, 136 CR2d 390).

(2) An extrajudicial identification that cannot be confirmed by an identification at the trial is insufficient to sustain a conviction unless there is other evidence that would connect the child with the crime (*In re Johnny G.* (1979) 25 C3d 543, 547, 159 CR 180).

A petition may be sustained, however, when the only evidence is the uncorroborated testimony of an accomplice because a delinquency determination is not equivalent to a conviction of a crime for any purpose (see Welf & I C §203), and therefore Pen C §1111 (no conviction based solely on accomplice testimony) does not apply in juvenile court proceedings (see *In re Mitchell P.* (1978) 22 C3d 946, 949, 151 CR 330). Applying the same logic, it would appear that Pen C §1111.5

(corroboration of in-custody informant required) also does not apply in juvenile court proceedings.

b. [§118.29] Objections to Evidence When Child Is Unrepresented

If the child is not represented by counsel at the hearing, objections that could have been made to the evidence are deemed to have been made. Welf & I C §701; Cal Rules of Ct 5.780(d).

c. [§118.30] Privileges

Although a child is entitled to invoke privileges generally, the child is not entitled to invoke the psychotherapist-patient privilege of Evid C §1024 when the dangerous-patient exception applies by virtue of the child's having confessed prior dangerous behavior to the psychotherapist. See *In re Kevin F.* (1989) 213 CA3d 178, 181, 183, 261 CR 413.

d. [§118.31] Advisement of Witnesses

If the court determines that a witness may be in a position in which the evidence or testimony sought might tend to incriminate that witness, the court must advise the witness of the privilege against self-incrimination and the possible consequences of testifying, as well as the right to retain counsel or, if indigent, to have one appointed. Cal Rules of Ct 5.548(a).

e. [§118.32] Immunity

A court may order a witness to answer a question or produce evidence under Pen C §1324 (immunity in criminal court) when the prosecuting attorney makes a written or oral request for use or transactional immunity in exchange for compelling evidence. Cal Rules of Ct 5.548(c). Once the witness testifies or produces the evidence, neither the evidence nor information directly or indirectly derived from it may be used against the witness in any criminal or juvenile case. Cal Rules of Ct 5.548(c)(1); see also *Ramona R. v Superior Court* (1985) 37 C3d 802, 809–810, 210 CR 204 (generally, admissions made by the child in juvenile court may not be used against the child in a later criminal court proceeding).

A judge may also grant immunity at the request of the prosecutor and order a witness to produce evidence or answer a question when the witness has refused to do so based on a claim of the privilege against self-incrimination. Cal Rules of Ct 5.548(b), (c). A witness may be subject to prosecution, however, for perjury, false swearing, or contempt in providing or failing to provide evidence in accordance with the order to testify in exchange for immunity. Cal Rules of Ct 5.548(e).

10. [§118.33] Dismissal After Presentation by Prosecutor

After the prosecution concludes presenting evidence, if, on weighing the evidence before it, court finds the child is not a person described by Welf & I C §602, it must order, on its own motion or the child's motion, the petition dismissed and the child discharged from any detention or restriction previously ordered. Welf & I C §701.1; Cal Rules of Ct 5.534(d)(2). The prosecution's burden of proof in this context is "beyond a reasonable doubt." *In re Andre G.* (1989) 210 CA3d 62, 66, 258 CR 127.

Once a petition is dismissed following a jurisdiction hearing, jeopardy attaches and the case cannot be refiled. *Richard M. v Superior Court* (1971) 4 C3d 370, 378, 93 CR 752. Penal Code §1118 (providing for motion of acquittal at end of prosecution case in an adult criminal trial), however, is not applicable to juvenile proceedings. *In re Joseph H.* (1979) 98 CA3d 627, 631, 159 CR 681.

If the court finds that the child committed a lesser included offense, the court should not grant the motion to dismiss even if the allegations in the petition cannot be sustained. *In re Stonewall F.* (1989) 208 CA3d 1054, 1067–1068, 256 CR 578, overruled on other grounds in 25 C4th 76, 90 n5.

If a motion to dismiss is not granted, the child may then offer evidence without having reserved the right to do so. Welf & I C §701.1.

11. [§118.34] Amendment of Petition

The provisions of CCP §§469–475, relating to variances and amendment of pleadings in civil actions, apply to petitions and proceedings in the juvenile court to the same extent and effect as if the juvenile court were civil actions. Welf & I C §678; Cal Rules of Ct 5.524(d).

A petition may not be sustained on findings that the child committed an offense or offenses other than one specifically alleged in the petition or necessarily included within an alleged offense, unless the child consents to a finding on the substituted charge. *In re Robert G.* (1982) 31 C3d 437, 440–445, 182 CR 644. In *Robert G.*, the court held that, under due process principles, Welf. & I C §678 could not be construed to permit an amendment, without the child's consent, to charge an offense other than one necessarily included in the offense charged in the original petition. *In re Robert G.* (1982) 31 C3d 437, 440–441, 182 CR 644. This is true whether the amendment is sought at the close of the prosecutor's case or merely at the close of direct examination of the prosecutor's principal witness. *In re Johnny R.* (1995) 33 CA4th 1579, 1584, 40 CR2d 43. If the child does not object to such an amendment, the amendment will not violate double jeopardy, as long as the hearing is ongoing and the child has not yet been either convicted or acquitted. 33 CA4th at 1582.

On the other hand, the court may permit an amendment of the petition, not to charge a new offense in mid-trial, but to correct factual allegations (*In re Man J.* (1983) 149 CA3d 475, 479, 197 CR 20) or to delete an unproved allegation (*In re Marcus T.* (2001) 89 CA4th 468, 474, 107 CR2d 451).

Moreover, the prosecution is not barred by Pen C §654 from amending the petition to file a related charge prior to the disposition hearing. *In re R.L.* (2009) 170 CA4th 1339, 1343, 88 CR3d 854 (child had admitted previous charges and had been awaiting disposition).

I. Findings

1. [§118.35] After Admission

Following a plea of no contest or an admission, the court must make the following findings, which must be noted in the minutes (Cal Rules of Ct 5.778(f)):

- Notice has been given as required by law;
- The child's date of birth and county of residence;
- The child has knowingly and intelligently waived the following rights to:
  - — receive a hearing on the issues,
  - — confront and cross-examine adverse witnesses,
  - — use the process of the court to compel the attendance of witnesses on the child's behalf, and
  - — assert the privilege against self-incrimination;
- The child understands the nature of the conduct claimed by the petition and the possible consequences of a no-contest plea or admission;
- The no-contest plea or admission is freely and voluntarily made;
- There is a factual basis for the no-contest plea or admission;
- The allegations of the petition that are admitted are indeed true as alleged;
- The child is described by Welf & I C §602; and
- The degree of the offense and whether the offense would be a felony or a misdemeanor if committed by an adult.

If the court fails to state the degree of the offense, it will not automatically be deemed to be of the lower degree. *In re Andrew I.* (1991) 230 CA3d 572, 580, 281 CR 570.

If an offense is a wobbler (punishable as either a misdemeanor or felony if committed by an adult), the court must at either the jurisdiction or disposition hearing (Cal Rules of Ct 5.778(f)(9)):

- Consider whether the offense is a misdemeanor or felony;
- Declare on the record that it has made such a consideration; and
- State its determination as to whether the offense is a misdemeanor or felony.

These determinations may be deferred until the disposition hearing. Cal Rules of Ct 5.778(f)(9).

2. After Contested Hearing

a. [§118.36] Allegations Not Proved

After hearing the evidence, the court must make a finding, noted in the minutes of the court, as to whether the child is a person described by Welf & I C §602. Welf & I C §702. If the court finds that the child is not described by Welf & I C §602, it must order the petition dismissed and the child released from detention or restrictions theretofore ordered. Welf & I C §702; Cal Rules of Ct 5.780(g).

If the court finds that the allegations in the petition have not been proved beyond a reasonable doubt, it must make findings on each of the following and note them in the order (Cal Rules of Ct 5.780(g)):

- That notice has been given as required by law;
- The child's date of birth and county of residence; and
- The allegations of the petition have not been proved.

b. [§118.37] Allegations True

If, after hearing the evidence, the court finds beyond a reasonable doubt that the allegations in the petition are true, it must make findings on each of the following and note them in the order (Cal Rules of Ct 5.780(e); see Welf & I C §702):

- Notice has been given as required by law;
- The child's date of birth and county of residence;
- The allegations in the petition are true;
- The child is described by Welf & I C §602; and
- The degree of the offense and whether the offense would be a felony or a misdemeanor if committed by an adult.

If the court fails to state the degree of the offense, it will not automatically be deemed to be of the lower degree. *In re Andrew I.* (1991) 230 CA3d 572, 580, 281 CR 570.

If an offense is a wobbler, the court must (Cal Rules of Ct 5.780(e)(5)):

- Consider whether the offense is a misdemeanor or felony;
- Declare on the record that it has made such a consideration; and
- State its determination as to whether the offense is a misdemeanor or felony.

These determinations may be deferred until the disposition hearing. Cal Rules of Ct 5.780(e)(5).

This categorization of an offense as misdemeanor or felony may be done at a jurisdiction or disposition hearing. Welf & I C §702; Cal Rules of Ct 5.780(e)(5); *In re Curt W.* (1982) 131 CA3d 169, 182, 182 CR 266. See also *In re Manzy W.* (1997) 14 C4th 1199, 1210, 60 CR2d 889 (court must exercise its discretion on the record when sentencing as either misdemeanor or felony). And in certain instances, multiple instances of misdemeanors (in this case, vandalism) can be aggregated to support a felony charge unless the instances are separate and distinct and do not arise as part of the same intention or activity. *In re Arthur V.* (2008) 166 CA4th 61, 69, 82 CR3d 148.

If the court finds that the child is described by Welf & I C §602, it must enter its findings and then proceed to the disposition hearing. Welf & I C §702; Cal Rules of Ct 5.780(f), 5.782(a). The court need not make specific findings; it is sufficient to state that the allegations found in the petition are true. *In re Billy M.* (1983) 139 CA3d 973, 981, 189 CR 270. Therefore, there is no statutory requirement that the court give a particular statutory reference when making a factual finding. *In re Billy M., supra* (court failed to cite Pen C §12022.7 in its findings concerning the great bodily injury enhancement). Nor need a court make express findings on each enhancement allegation in a petition.

J. Posttrial Procedures

1. [§118.38] Application of Double Jeopardy

The protection against double jeopardy applies to juvenile offenders at jurisdiction hearings. *In re Carlos V.* (1997) 57 CA4th 522, 525, 67 CR2d 155; *Breed v Jones* (1975) 421 US 519, 541, 95 S Ct 1779, 44 L Ed 2d 346. This protection applies at the adjudicatory phase of the jurisdiction hearing and to proceedings involving further resolution of factual issues of the elements of the offense, but not to subsequent hearings. *In re Steven S.* (1999) 76 CA4th 349, 352–353, 90 CR2d 290 (Welf & I C §1800 hearing does not involve adjudication of factual elements of criminal offense). Jeopardy attaches when the first witness is sworn at the adjudicatory phase of the jurisdictional hearing. *In re Pedro C.* (1989) 215 CA3d 174, 180, 263 CR 428. Jeopardy will even attach at an informal uncontested

jurisdiction hearing even if the child has never been sworn. *Richard M. v Superior Court* (1971) 4 C3d 370, 376–377, 93 CR 752.

2. Setting Disposition Hearing

a. [§118.39] After Accepting an Admission or Plea

After accepting a plea of no contest or an admission, the court must proceed to the disposition hearing under Cal Rules of Ct 5.782 and 5.785. Cal Rules of Ct 5.778(g).

b. [§118.40] After Contested Hearing

Often the disposition hearing is held immediately following the jurisdiction hearing. See Welf & I C §702; Cal Rules of Ct 5.782(a). The court may delay the start of the disposition hearing, if necessary, in order to be able to receive the social study, to refer the child to a juvenile justice community resource program, or to receive other evidence. Welf & I C §702. The continuance may not exceed 10 judicial days if the child is detained. If the child is not detained, the court may continue the disposition hearing up to 30 days from the date of the filing of the petition. Welf & I C §702; Cal Rules of Ct 5.782(a). The court may continue the hearing for an additional 15 days for good cause, but only if the child is not detained. Welf & I C §702; Cal Rules of Ct 5.782(a).

During the period of the continuance, the court may order the child detained or released from detention, if appropriate. Welf & I C §702; Cal Rules of Ct 5.782(b).

The disposition hearing may also be continued for 90 days if the child is eligible for commitment to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ), and the court orders observation and diagnosis at a DJJ Diagnostic and Treatment Center. Welf & I C §704(a); Cal Rules of Ct 5.782(c). In such a case, the court must order the DJJ to submit a diagnosis and recommendation within 90 days. Welf & I C §704(a); Cal Rules of Ct 5.782(c). On return from the DJJ, the child must be brought to court within 2 judicial days and the disposition hearing must be held within 10 judicial days thereafter. Cal Rules of Ct 5.782(c).

3. [§118.41] Appeals

Although some appellate courts have stated without discussion that a jurisdictional finding—*i.e.,* a finding that the child is described by Welf & I C §602—is before them on appeal (see, *e.g., In re Hector R.* (1984) 152 CA3d 1146, 1149, 200 CR 110), a jurisdictional finding is generally seen as an interim order and not appealable until it is merged into the dispositional order. See *In re James J.* (1986) 187 CA3d 1339, 1342, 232

CR 456. Moreover, although the child may appeal a delinquency judgment (see Welf & I C §800(a)), a parent has no standing to appeal on behalf of a child who has been declared a ward of the court (*In re Almalik S.* (1998) 68 CA4th 851, 854, 80 CR2d 619).

The prosecution may appeal from an order dismissing the action before the child has been placed in jeopardy. Welf & I C §800(b)(4).

IV. SCRIPTS

A. [§118.42] Script: Conduct of Jurisdiction Hearing

(1) Introduction

(2) Appointment of attorney for child

[*If the child is unrepresented by counsel*]

You [*name of child*] have a right to have an attorney represent you during this jurisdiction hearing and during any other hearings in the juvenile court. If you want to employ a private attorney, the court will give you an opportunity to do so.

[*Or*]

The court has reviewed the financial declaration of [*name of parent or guardian*] and finds that [*name of child*] is entitled to appointment of counsel. At this time, the court appoints [*the public defender*/_____] to represent [*him/her*]. If it is later found that [*name of parent or guardian*] can afford to pay for the attorney's services, [*name of parent or guardian*] will have to reimburse the county for the cost of appointed counsel.

[*If child attempts to waive right to counsel*]

This is a serious and important matter. If the court finds that the allegations in the petition are true, you could eventually be confined in a facility such as those run by the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ). Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

Note: If the child still seeks self-representation, a judge might explain the juvenile court process at this point. In addition, a judge might go further and have a *Faretta*-type dialogue with the child. See an example in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.71 (Cal CJER).

(3) Reading of petition and explanation of procedure

I am going to explain to you what will happen today and at future juvenile court proceedings. As you know, there has been a petition filed by the district attorney's office, claiming that you [*read the petition and explain the nature of the charges in simple terms*].

☛ JUDICIAL TIP: Many judges ask counsel whether reading of the petition and advisement of rights are waived.

The purpose of this hearing is to decide whether or not the statements made in the petition are true and therefore whether you should come within the jurisdiction of the juvenile court.

If the court finds that the statements made are not true, the court will dismiss the case. If the court finds them to be true, the court will conduct a disposition hearing.

The purpose of a disposition hearing is to decide what placement, if any, the court should make in view of what has been found to have happened.

(4) Waiver of advisement of rights

[*To counsel*]

Does your client waive advisement of rights?

[*Or*]

(5) Advisement of rights

The court will explain the child's constitutional rights.

These are the right to:

- Remain silent. This means that [*name of child*] need not tell us anything about the offense charged in the petition. If [*name of child*] chooses to speak, anything [*he/she*] says can and will be used today by the court in deciding whether [*name of child*] should be detained. Do you understand this right? Do you have any questions about it?
- See, hear, and question all witnesses who may be examined at this hearing.
- Cross-examine, which means ask questions of, any witness who may testify at this hearing.
- Present evidence and use the court's subpoena power to bring witnesses to court to testify on your behalf.

[*Address the child and the parents*]

Do you understand these rights? Do you have any questions?

(6) Inquiry re: admission or no-contest plea

Do you intend to admit or deny the statements contained in the petition? If you would like to enter a plea of no contest or admission, you must understand that you are giving up the following rights to (Cal Rules of Ct 5.778(b)):

- Present evidence at this hearing,
- Claim the privilege against self-incrimination,
- Confront and cross-examine any witness called to testify against you, and
- Use the court's process to ensure the attendance of witnesses on your behalf.

Do you understand that the offense that you admit having committed may be considered a strike under the three-strikes law, which means that you may be given a harsh sentence if you commit future offenses?

Is this your personal decision? Does counsel consent?

If you admit or do not contest the facts stated in the petition, the court must make its findings on the basis of the petition and any evidence presented by the district attorney. Do you understand this situation?

Would you like any further explanation concerning the petition or any of the facts stated in it?

Do you understand that by [*admitting/not contesting*] the facts contained in the petition, the court has only the petition and any evidence presented by the district attorney on which to base its decision?

Do you have any questions about your right to contest the petition?

Do you understand that if the court takes jurisdiction, it may place you in a state or local facility, or even out of state for a maximum term of [*specify maximum term of confinement*]? Do you have any questions about this process?

In addition to possible confinement, you may be subject to these additional consequences [*list appropriate consequences; e.g., restitution fine, victim restitution, registration with law enforcement, immigration consequences, and suspension or restriction of driving privileges*].

Understanding your rights and the possible consequences of an admission or plea of no contest, do you want to proceed at this time to [*admit the allegations/plead no contest*]? Do you admit the truth of the statements contained in the petition?

(7) Child denies the allegations

The child [*name of child*] does not admit the allegations.

The court will hear evidence on the question of whether the charges in the petition are true. The district attorney must prove them to be true beyond a reasonable doubt.

B. [§118.43] Script: Findings and Orders

(1) Introduction

The court has considered the testimony of the witnesses and their demeanor on the stand, as well as the arguments of counsel.

(2) Confession

[*If the child has confessed, hear evidence on voluntariness*]

The court finds that the confession of [*name of child*] [*is/is not*] voluntary.

(3) Knowledge of wrongfulness

[*If the child is under 14 years of age, hear evidence concerning knowledge of wrongfulness of the act allegedly committed*]

The court finds that the district attorney [*has/has not*] proved by clear and convincing evidence that [*name of child*] knew the wrongfulness of the act at the time it was committed because [*specify reasons*].

(4) After uncontested hearing

Notice has been given as required by law.

[*Name of child*] has knowingly and intelligently waived the following rights to:

- A hearing on the issues,
- Confront and cross-examine adverse witnesses,
- Use the court's process to compel the attendance of witnesses on [*his/her*] behalf; and

- Claim the privilege against self-incrimination.

The court finds that the child understands the nature of the conduct claimed by the petition and the consequences of the [*plea/admission*] and counsel consents.

The [*no-contest plea/admission*] is freely and voluntarily made.

There is a factual basis for the [*no-contest plea/admission*].

The court has found beyond a reasonable doubt that the child has committed the following offense(s) [*make finding for each count*]: [*name of offense and citation of code section violated*] in the [*degree of offense, if applicable*] degree.

The court has considered whether the offense is a misdemeanor or a felony and has determined that the offense would be a [*misdemeanor/ felony*] if committed by an adult.

(5) After contested hearing when allegations have not been proved

The allegations in the petition have not been proved beyond a reasonable doubt. [*Name of child*] is consequently released to the custody of [*his/her*] [*parent(s)/guardian(s)*] and freed from any restrictions. Moreover the court finds:

- Notice has been given as required by law, and
- The child's date of birth and county of residence are [*state child's birthday and county of residence*].

(6) After contested hearing when allegations have been proved

The court finds the following:

- Notice has been given as required by law,
- The child's date of birth and county of residence are [state child's birthday and county of residence],
- The child is described by Welfare and Institutions Code section 602, and
- The court has found beyond a reasonable doubt that the child has committed the following offense(s) [*make finding for each count*]: [*name of offense and citation of code section violated*] in the [*degree of offense, if applicable*] degree.

The court has considered whether the offense is a misdemeanor or a felony and has determined that the offense would be a [*misdemeanor/felony*] if committed by an adult.

(7) Setting disposition hearing

You are ordered to appear at a disposition hearing [*at this time/on* _____, *20__*, *at* _____ [*a.m./p.m.*], *in Department* _____].

Do you have any questions about the court's order or what is going to happen?

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