



## **JUVENILE JUSTICE SYSTEM**

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## **OVERVIEW OF THE JUVENILE PROCESS**

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## **DEPENDENCY LAW**

### **GOALS**

1. TO PROTECT THE CHILD
2. TO REUNIFY THE FAMILY
3. STABLE, PERMANENT HOME  
FOR THE CHILD

DESIGNED NOT TO PUNISH THE PARENT BUT TO  
PROTECT THE CHILD

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## **TYPES OF CASES**

1. ABUSED
2. NEGLECTED
3. MOLESTED
4. ABANDONED

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## **DELINQUENCY LAW**

- **DETENTION**
- **JURISDICTION**
- **DISPOSITION**

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## **OUR GOAL: PURPOSE OF DISPOSITION**

### **W&I 202**

**Minors under the jurisdiction of the court as a *consequence* of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance....consistent with their best interest, that holds them accountable for their behavior and appropriate for their circumstances. This may include *PUNISHMENT*...consistent with rehabilitative objectives.**

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## UPPER AGE OF JURISDICTION

- EACH STATE HAS AN AGE DIFFERENCE BETWEEN AN ADULT AND JUVENILE, USUALLY RANGING BETWEEN 16 AND 18 YEARS:
- IN TEN STATES , THE UPPER AGE OF JURISDICTION IS 16 (AGE 17 IS CONSIDERED AN ADULT.)
- IN THREE STATES, THE UPPER AGE OF JURISDICTION IS 15 (MEANING AN PERSON IS CONSIDERED AN ADULT AT 16.)
- THE AGE OF JUVENILES IN CALIFORNIA WAS SET AT 17 (AGE 18 IS CONSIDERED AN ADULT.) SB 889 WOULD RAISE THIS TO 19 ( MEANING AGE 20 WOULD BE CONSIDERED AN ADULT.)

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## MINIMUM AGE OF RESPONSIBILITY

- MINIMUM AGE IS 10 IN ELEVEN STATES
- MINIMUM AGE IS 8 IN ONE STATE
- MINIMUM AGE IS 7 IN THREE STATES
- MINIMUM AGE IS 6 IN ONE STATE
- THE REMAINING STATES: JUVENILE CAN BE PROSECUTED AT ANY AGE

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## SB 439

### 2018

- **THIS BILL MODIFIED THE AGE THAT A PERSON MUST BE TO FALL WITHIN THE JURISDICTION OF THE JUVENILE COURT TO 12 YEARS OF AGE**
- **Exception: Murder, Rape by force, Oral copulation by force, Sodomy by force or Sexual penetration by force. 602(a) W&I**

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## JUVENILE STATISTICS

- **2018:**
  - *JUVENILE ARRESTS FOR THOSE UNDER 12*
  - **TOTAL ARRESTS: 636**
  - **FELONY ARRESTS: 230**
  - **VIOLENT FELONIES: 90**
  - **MISDEMEANOR ARRESTS: 335**
  - **PETITIONS FILED: FELONY: 58 MISDEMEANOR: 59**

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## **UPPER AGE OF JURISDICTION IN JUVENILE COURT**

- A JUVENILE IN CALIFORNIA IS ANYONE UNDER THE AGE OF 18
- THE MAXIMUM AGE OF JURISDICTION (WARD) IN JUVENILE COURT IS 21
- UNLESS COMMITTED TO THE DIVISION OF JUVENILE JUSTICE-AGE IS 23\*
- \* AS OF 7/2018, IF THE AGGREGATED TIME IS OVER 7 YEARS, THEN JURISDICTION IS UNTIL AGE OF 25. IF THE AGGREGATED TIME IS LESS THAN 7 YEARS, THEN JURISDICTION IS UNTIL 23

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## **COMPARISON BETWEEN THE DELINQUENCY & CRIMINAL SYSTEMS**

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## PURPOSES OF THE PROCEEDINGS GENERALLY

### CRIMINAL COURT

- TO ASCERTAIN  
GUILT OR  
INNOCENCE
- TO PUNISH THE  
GUILTY & PROTECT  
SOCIETY

### JUVENILE COURT

- TO ASCERTAIN TRUTH  
OF THE ALLEGATIONS IN  
THE PETITION; AN  
ORDER OF WARDSHIP IS  
NOT A CONVICTION OF A  
CRIME
- TO PRESERVE &  
PROMOTE THE  
WELFARE OF THE CHILD

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## PERSON WHO IS THE SUBJECT OF THE PROCEEDING

### CRIMINAL COURT

- DEFENDANT

### JUVENILE COURT

- MINOR OR CHILD

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## **PROBATION'S ROLE (THE POWER-BROKER)**

- **PROBATION CAN HANDLE ALL MISDEMEANORS AND SOME FELONIES (SOME CASES REQUIRE A MANDATORY REFERRAL)  
(W&I 653.5)**
- **PROBATION CAN GRANT INFORMAL PROBATION  
(W&I 654) (DISTINGUISH W&I 654.2)**
- **PROBATION CAN SETTLE CASES OUT OF COURT AND TAKE NO ACTION  
(W&I 653.7) (CAL. RULES OF CT., RULE 5.516(A))**
- **IN 2018, NINE OUT OF TEN JUVENILES (88.9%) ARRESTED WERE REFERRED TO COUNTY JUVENILE PROBATION DEPARTMENTS**

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## **PROBATION**

### **PROBATION MUST SUBMIT REQUEST FOR PETITION IF**

- **707(b) OFFENSE**
- **MINOR IS OVER 14 AND OFFENSE IS A FELONY OR UNDER 14 AND SECOND FELONY**
- **PENAL CODE SECTION 186.22**
- **PREVIOUSLY PLACED ON INFORMAL**
- **SALE OF NARCOTICS**
- **RESTITUTION EXCEEDS \$1,000.00**

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## CALIFORNIA DOJ STATS

- CALIFORNIA JUVENILE ARRESTS 2018
- FELONIES: 17,265
- VIOLENT FELONIES: 7,320
- MISDEMEANORS: 24,223
- STATUS OFFENSES: 4,935
  
- MORE THAN THREE-FOURTHS (76.5 PERCENT) OF THE JUVENILES TRIED IN ADULT COURT WERE CONVICTED

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## CALIFORNIA DOJ STATS

2015 JUVENILE ARREST	2018 JUVENILE ARRESTS
• FELONIES: 21,381	• FELONY ARREST: 17,265
• MISDEMEANORS: 41,848	• MISDEMEANOR ARRESTS: 24,223
• STATUS OFFENSE ARRESTS: 8,694	• STATUS OFFENSE ARRESTS: 4,935
• (TRUANCY, RUNAWAY, CURFEW)	

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## **REFERRALS TO PROBATION IN 2018**

- 65,020 REFERRALS TO PROBATION WERE REPORTED
  - 57,804 OF THOSE REFERRALS WERE FROM LAW ENFORCEMENT (88.9 PERCENT)
  - 1,482 OF THOSE WERE FROM SCHOOLS AND PRIVATE AGENCIES (2.3 PERCENT)
  - 1,393 OF THOSE WERE FROM OTHER COUNTIES (2.1 PERCENT)
  - 35,760 RESULTED IN PETITIONS BEING FILED (55.0 PERCENT)
  - 21,395 WERE CLOSED AT INTAKE (32.9 PERCENT)
  - REMAINING WERE DIVERTED, INFORMAL OR TRANSFERRED

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## **DOCUMENT INITIATING THE PROCEEDINGS**

### **CRIMINAL COURT**

- COMPLAINT

### **JUVENILE COURT**

- PETITION MUST BE FILED WITHIN 48-HOURS (IN-CUSTODY)
- W&I 631(A)

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## EXAMPLE

### ADULT

- ARREST: SAT 3:00 PM
- FILING: WED 5:00 PM

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- ARREST: MON 7:00 AM
- FILING: WED 5:00 PM

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- ARREST: THURS 3:00 AM
- FILING: MON 5:00 PM

### JUVENILE

- ARREST: SAT 3:00 PM
- FILING: TUES 5:00 PM

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- ARREST: MON 7:00 AM
- FILING: TUES 5:00 PM

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- ARREST: THURS 3:00 AM
- FILING: FRI 5:00 PM

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## DISTRICT ATTORNEY'S ROLE

- FILE PETITION (IN-CUSTODY FELONIES WITHIN 48-HOURS, NOT INCLUDING WEEKENDS OR HOLIDAYS); MISDEMEANORS WITHIN 24-HOURS (UNLESS VIOLENT, THEN 48-HOURS)
- REJECT CASE
- ROUTE IT BACK TO AGENCY
- RETURN MISDEMEANORS TO PROBATION (W&I 653.5(C))

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## **FILING OF PETITION-IN CUSTODY**

- **POLICE BRING JUVENILE TO JH**
- **JH ACCEPTS AND NOTIFIES D.A. OF IN CUSTODY AND TIME LIMITS**
- **CLERK NOTIFIES POLICE DEPT. AND REQUESTS COPY OF REPORT**
- **REPORT EMAILED OR BROUGHT IN BY PD**
- **FILING MUST BE BY TIME LIMIT OR MINOR IS RELEASED**

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## **WHAT IF MINOR IS A W&I 300?**

- **CAN A MINOR HAVE DUAL STATUS?**
- **YES, AS OF 1/1/2005 (COUNTIES ARE AUTHORIZED TO DEVELOP PROTOCOLS FOR DUAL STATUS)**
- **W&I 241.1(E) (12 CRITERIA TO CONSIDER)**
- **UNDER SINGLE STATUS PROTOCOL, PROBATION AND SOCIAL SERVICES MUST INITIALLY DETERMINE WHICH STATUS WILL SERVE THE BEST INTERESTS OF THE MINOR AND PROVIDE RECOMMENDATION TO COURT**
- **THIS DETERMINATION SHOULD BE MADE PRIOR TO THE PETITION BEING FILED (Cal. Rules of Ct. Rule 5.512(a)(2))**

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## WHAT IF MINOR IS A W&I 300

- RULES OF COURT STATE THE HEARING ON THE JOINT ASSESSMENT MUST BE HEARD PRIOR TO THE JURISDICTIONAL HEARING (CAL RULES OF CT. 5.512(e))
- A COURT MAY DECIDE TO WAIT UNTIL AFTER THE JURISDICTION HEARING BUT PRIOR TO THE DISPOSITIONAL HEARING TO MAKE THE CALL
- *IN Re AARON J* (2018) 22 CAL.APP.4<sup>TH</sup> 1495, 1511

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## JURISDICTION

### ADULT

- WHERE THE CRIME WAS COMMITTED

### JUVENILE (W&I 651)

- WHERE THE CRIME WAS COMMITTED
- WHERE THE JUVENILE LIVES
- WHERE THE JUVENILE IS A WARD

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## **JURISDICTION**

- **JOHNNY LIVES IN CONTRA COSTA COUNTY**
- **JOHNNY COMMITS A CRIME IN ALAMEDA COUNTY**
- **CRIME CAN BE PROSECUTED IN ALAMEDA COUNTY OR CONTRA COSTA COUNTY**
- **WHAT IF CRIME IS PROSECUTED IN ALAMEDA COUNTY?**
- **IF COURT DECIDES TO TRANSFER-MUST ORDER TRANSFER BEFORE DISPOSITION HEARING BEFORE DECLARING THE MINOR A WARD *CAL RULE CT. 5.610(C)***

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## **DEFENSE ROLE**

- **RULE 5.663 CALIFORNIA RULES OF COURT, 634 W&I**
- **DEFENSE LAWYER HAS A DUAL FUNCTION- DEFENDING THE CHILD AGAINST THE ALLEGATIONS IN ALL PETITIONS FILED IN DELINQUENCY COURT**
- **ATTORNEY MUST ADVOCATE IN THE DELINQUENCY PROCEEDING THAT THE CHILD RECEIVE CARE, TREATMENT & GUIDANCE WITH HIS OR HER BEST INTEREST**

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## INITIAL HEARING

### CRIMINAL COURT

- ARRAIGNMENT

### JUVENILE COURT

- DETENTION HEARING W/IN 24-HOURS OF FILING OF PETITION (IN-CUSTODY)
- DEFENSE CAN ASK FOR A PRIMA FACIE HEARING
- FIRST APPEARANCE HEARING FOR THOSE NOT IN CUSTODY

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## DETENTION HEARING

- DETENTION HEARING IS TO DETERMINE IF THE MINOR TEMPORARILY DETAINED SHOULD REMAIN DETAINED (W&I 632)
- PROBATION PROVIDES A DETENTION HEARING SHEET TO THE COURT
- FINDINGS MAY BE BASED UPON WRITTEN POLICE REPORTS, PROBATION REPORTS OR OTHER DOCUMENTS (CALIF. RULES OF CT. 5.762, PEOPLE V. RONALD H. 219 CAL.APP.3d 1475)
- DETENTION HEARING MUST BE HEARD NO LATER THAN THE EXPIRATION OF THE NEXT JUDICIAL DAY AFTER THE PETITION IS FILED (W&I 632(A); CAL RULES OF CT. 5.752(f))

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## PRIMA FACIE HEARING

- ALSO KNOWN AS A DETENTION RE-HEARING OR A DENNIS H. HEARING (*IN RE DENNIS H.*, 19 CAL APP.3d 350)
- OCCURS WHEN A DECISION OF DETENTION IS MADE
- MINOR OR MINOR'S ATTORNEY REQUESTS FURTHER EVIDENCE REGARDING THE GROUNDS OF DETENTION BY INVOKING THE RIGHT TO CONFRONT AND CROSS EXAMINE THE PREPARERS OF THE REPORTS OR DOCUMENTS RELIED ON BY THE COURT IN SUPPORT OF ITS DECISION. THE ISSUE IS DETENTION, NOT GUILT.

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## PRIMA FACIE HEARING

- DETENTION RE-HEARING MUST BE HELD WITHIN *THREE JUDICIAL DAYS* TO CONSIDER TESTIMONY BY THOSE PREPARERS OF THE REPORTS
- IF THE WITNESSES ARE UNAVAILABLE, THE COURT CAN CONTINUE THE HEARING FOR UP TO *FIVE DAYS* FROM THE COMMENCEMENT OF THE DETENTION HEARING.
- IF PREPARERS OF THE REPORTS ARE NOT MADE AVAILABLE TO THE MINOR, COURT CANNOT CONSIDER THE DOCUMENT IN MAKING A DETENTION DECISION

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## PRIMA FACIE HEARING

- THE "PRIMA FACIE CASE" THAT THE PROSECUTION IS REQUIRED TO SHOW IS THAT THERE IS A REASONABLE PROBABILITY ("SUFFICIENT CAUSE")
  - (1) THAT A CRIME HAS OCCURRED
  - (2) THAT THE MINOR COMMITTED THE CRIME
- THIS IS NOT A PRELIMINARY HEARING (*IN RE KORY K.* 120 CAL.APP.3D 1475) AND THE STANDARD OF PROOF IS LESS THAN PROBABLE CAUSE
- A MINOR DOES NOT HAVE THE RIGHT TO PROVE AN AFFIRMATIVE DEFENSE FOR THE SOLE PURPOSE OF HAVING CHARGES AGAINST HIM DISMISSED

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## DEFERRED ENTRY OF JUDGMENT

- **ELIGIBILITY:** FIRST TIME FELONY OFFENDER
- D.A. DECIDES IF MINOR IS ELIGIBLE AND GIVES NOTICE AT THE TIME THE PETITION IS FILED (J.V. 750, J.V. 751 *FAILURE TO DO SO IS REVERSIBLE ERROR*)
- 14 YEARS OF AGE OR OLDER
- NOT A 707(b) OFFENSE
- NOT BEEN A WARD FOR A FELONY
- NO PRIOR PROBATION REVOCATIONS (*P.V. NOT ENOUGH*)

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## DEFERRED ENTRY OF JUDGMENT

- IF *ELIGIBLE*, PROBATION DOES A SOCIAL STUDY WITH A RECOMMENDATION REGARDING DEJ *SUITABILITY* OR IT CAN BE SUMMARILY GRANTED
- COURT HAS COMPLETE DISCRETION
- MINOR NEEDS TO ADMIT TO ALL CHARGES  
(W&I 791(A)(3)) \* (IN RE JOSHUA S. (2011) 192 CAL.APP.4TH 670)
- TERMS AND CONDITIONS OF PROBATION ARE IMPOSED INCLUDING RESTITUTION
- NO OUT OF HOME PLACEMENT BECAUSE NOT A WARD
- IF MINOR PROCEEDS TO CONTEST, NO DEJ

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## DEFERRED ENTRY OF JUDGMENT

- UPON SUCCESSFUL COMPLETION, THE MINOR CAN SAY HE WAS NEVER ARRESTED (W&I 793(C))
- THE DISTRICT ATTORNEY AND PROBATION CAN SEE THE RECORDS FOR A LIMITED PURPOSE BUT THE COURT RECORDS ARE DEEMED SEALED
- IF UNSUCCESSFUL, DEJ IS LIFTED (W&I 751)

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## DEFERRED ENTRY OF JUDGMENT

- If unsuccessful, DEJ is lifted (W&I 751)
- Notice requirements to counsel and minor
- Burden of Proof in these proceedings is Preponderance of the Evidence
- New social study to recommend a disposition upon the lifting of DEJ
- UNSUCCESSFUL: 1 FELONY; 2 MISDOS
- NOTE: A MINOR MAY FILE AND ARGUE A MOTION TO SUPPRESS EVIDENCE PRIOR TO A JURISDICTIONAL HEARING WHILE RESERVING THE RIGHT TO ADMIT THE PETITION AS ALLEGED AND REQUEST DEJ IF THEY DO NOT PREVAIL (IN RE A.I. 176 CAL. APP.4TH 1426)

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## TRIAL

### CRIMINAL COURT

- PRELIMINARY HEARING (HEARSAY ADMISSIBLE)
- SUPPRESSION MOTIONS 1538.5
- 60 DAYS (FELONY) AFTER P.H.

### JUVENILE COURT

- NO PRELIMINARY HEARING (HEARSAY NOT ADMISSIBLE. NO PROP 115!)
- SUPPRESSION MOTIONS 700.1 (SAME PROCEDURES AS ADULT)
- TRIAL (IN CUSTODY) 15 COURT DAYS!!!
- TRIAL (OUT OF CUSTODY) 30 CALENDAR DAYS!!!

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## **PENAL CODE 26**

**ALL PERSONS ARE CAPABLE OF COMMITTING CRIMES  
EXCEPT THOSE BELONGING TO THE FOLLOWING  
CLASSES:**

- **CHILDREN UNDER THE AGE OF 14, IN THE  
ABSENCE OF CLEAR PROOF THAT AT THE TIME OF  
COMMITTING THE ACT CHARGED AGAINST THEM,  
THEY KNEW OF ITS WRONGFULNESS**
- **COURT CONSIDERS AGE, EXPERIENCE, AND  
UNDERSTANDING. CAN BE INFERRED BY CONDUCT.**

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## **BAIL**

### **CRIMINAL COURT**

- **MAY BE  
APPLICABLE**

### **JUVENILE COURT**

- **NOT  
APPLICABLE**

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## PLEA BARGAINING

### CRIMINAL COURT

- OFTEN DONE
- CHARGES
- SENTENCING
- COURT MUST AGREE

### JUVENILE COURT

- OFTEN DONE
- CHARGES ONLY
- NO AGREEMENT TO SENTENCE (IN RE TRAVIS  
J. 222 CAL. APP. 4TH 187-DJJ OK)
- WHY??
- COURT MUST AGREE

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## FACT FINDING

### CRIMINAL COURT

- TRIAL

### JUVENILE COURT

- JURISDICTIONAL  
HEARING

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## **RIGHT TO A JURY TRIAL**

### **CRIMINAL COURT**

- YES, IN MANY INSTANCES

### **JUVENILE COURT**

- NO  
(*In re Myresheia W.* (1998) 61 Cal. App.4th 734, 741.)

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## **RIGHT TO APPOINTED COUNSEL**

### **CRIMINAL COURT**

- YES, FOR INDIGENT DEFENDANTS

### **JUVENILE COURT**

- YES, FOR INDIGENT JUVENILES OR THOSE WHOSE PARENTS REFUSE TO PAY

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## **CONTEST JURISDICTIONAL HEARING**

- **SAME RULES OF EVIDENCE APPLY**
- **BURDEN OF PROOF ON D.A.  
(BEYOND A REASONABLE DOUBT)**
- **NO NEED TO CORROBORATE ACCOMPLICE  
TESTIMONY (*IN RE MITCHELL* P 22 CAL.3RD.  
946)**

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## **JUDGEMENT**

### **CRIMINAL COURT**

- **GUILTY OR NOT  
GUILTY VERDICTS**

### **JUVENILE COURT**

- **PETITION IS  
SUSTAINED OR  
NOT SUSTAINED**

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## OUTCOME

### CRIMINAL COURT

#### • SENTENCE

### JUVENILE COURT

#### • DISPOSITION

IN-CUSTODY: 10 COURT DAYS

NOTHING

HOME SUPERVISION

ELECTRONIC MONITORING

PLACEMENT

UNLOCKED FACILITY

BOY'S RANCH-UNLOCKED

DIV. OF JUVENILE JUSTICE

COUNTY JAIL? NO!

STATE PRISON? NO!

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## DISPOSITION HEARING

- PRIOR TO EVERY DISPOSITION HEARING THE PROBATION OFFICER MUST PREPARE A SOCIAL STUDY CONCERNING THE MINOR
- MATTERS RELEVANT TO DISPOSITION
- NEITHER AN ORAL REPORT NOR A PRIOR PROBATION REPORT WILL SATISFY THE STATUTORY REQUIREMENTS
- AN INFORMED RECOMMENDATION FROM AMONG A WIDE RANGE OF POSSIBLE PLACEMENT AND COUNSELING PROGRAMS

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## DISPOSITION HEARING

- **COURT CAN CONSIDER THE CONDUCT OF DISMISSED ALLEGATIONS-EVEN IF DISMISSED AS PART OF A PLEA BARGAIN.** *In re Jimmy P.* (1996) 50 Cal.App. 4<sup>th</sup> 1679
- **COURT CAN CONSIDER ILLEGALLY OBTAINED EVIDENCE EVEN IF IT WAS SUPPRESSED FOR USE AT THE DISPOSITION HEARING** *In re Michael V.* (1996) 178 Cal.App. 3<sup>rd</sup> 159

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## DIVISION OF JUVENILE JUSTICE

- **FORMERLY KNOWN AS THE CALIFORNIA YOUTH AUTHORITY**
- **ESTABLISHED IN 1941**
- **DIVISION OF JUVENILE FACILITIES**
- **MAY 10, 2005 (W&I 1000, 1703)**
- **DEPARTMENT OF YOUTH AND COMMUNITY RESTORATION (SHIFTS CONTROL FROM CDCR TO HHSA)**
- **JULY 1, 2020**

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## DJJ/YCR

- 733 W&I (AB 81, 2007)
- A WARD OF THE JUVENILE COURT WHO MEETS ANY CONDITION BELOW SHALL NOT BE COMMITTED TO DJJ:
  - (A) THE WARD IS UNDER 11 YEARS OF AGE
  - (B) THE WARD IS SUFFEREING FROM ANY CONTAGIOUS OR INFECTION DISEASE
  - (C) THE WARD HAS BEEN OR IS ADJUDGED A WARD OF THE COURT PURSUANT TO SECTION 602 AND THE MOST RECENT OFFENSE ALLEGED IN THE PETITION IS NOT A 707(B) OFFENSE OR SUBDIVISION (C) OF SECTION 290.008 OF THE PENAL CODE

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## IN RE D.B.

- (2014) 58 Cal. 4<sup>th</sup> 941
- MINOR COMMITTED A STRING OF SERIOUS FELONIES ON ONE DAY AND EVADED ARREST
- MINOR COMMITTED TWO MISDEMEANORS A WEEK LATER WHEN HE WAS APPREHENDED
- A PETITION WAS FILED ALLEGING *ALL THE OFFENSES* FROM BOTH DAYS. PETITION WAS SUSTAINED.
- BECAUSE THE “MOST RECENT OFFENSES WERE MISDEMEANORS”-INELIGIBLE FOR DJJ

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## 707 WELFARE & INSTITUTIONS CODE

(b) Subdivision (c) shall be applicable in any case in which a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

- (1) Murder
- (2) Arson
- (3) Robbery
- (4) Rape with force or violence or threat of great bodily harm
- (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm
- (6) Lewd or lascivious act with force.
- (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm
- (8) Any offense specified in subdivision (a) of Section 289 of the Penal Code
- (9) Kidnapping for ransom
- (10) Kidnapping for purpose of robbery
- (11) Kidnapping with bodily harm
- (12) Attempted murder
- (13) Assault with a firearm or destructive device
- (14) Assault by any means of force likely to produce great bodily injury
- (15) Discharge of a firearm into an inhabited or occupied building
- (16) Any offense described in Section 1203.09 of the Penal Code
- (17) Any offense described in Section 12022.5 or 12022.63 of the Penal Code

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## 707 WELFARE & INSTITUTIONS CODE

18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code.

(20) Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance.

(21) Any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which would also constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture

(24) Aggravated mayhem

(25) Carjacking while armed with a dangerous or deadly weapon

(26) Kidnapping

(27) The offense described in subdivision (c) of Section 12034 of the Penal Code

(28) The offense described in Section 12308 of the Penal Code

(29) Voluntary manslaughter

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## DNA

- P.C. 295 AND P.C. 296
- ALL PERSONS INCLUDING JUVENILES
- MUST PROVIDE
  - BUCCAL SWAB SAMPLES
  - RIGHT THUMBPRINTS
  - FULL PALM PRINT IMPRESSIONS OF EACH HAND
  - WHO IS CONVICTED (PETITION FOUND TRUE) OR ADMITS OR PLEADS NO CONTEST TO A FELONY, SEX OR ARSON OFFENSE

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## WHAT IF FELONY REDUCED?

- IF FELONY IS REDUCED TO MISDEMEANOR PER PROPOSITION 47-NO EXPUNGEMENT OF DNA
- IN RE C.B. AND IN RE C.H. (2018)

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## SUBPOENING JUVENILES

### CALIFORNIA PENAL CODE SECTION 1328

(b) (1) If service is to be made on a minor, service shall be made on the minor's parent. . . a willful failure to produce the minor is punishable as a contempt pursuant to 1218 of the CCP.

(2) If the minor is alleged to come within the description of Section 300, 601, or 602 of the Welfare and Institutions Code, and the minor is not residing with a parent or guardian, regardless of the age of the minor, service shall also be made upon the designated agent for service of process at the county child welfare department or the probation department under whose jurisdiction the child has been placed.

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## CONFIDENTIALITY

JUVENILE RECORDS ARE CONFIDENTIAL. THEY MAY BE NOT BE INSPECTED OR REVIEWED BY ANYONE NOT LISTED IN 827 W&I.

- JUVENILE RECORDS ARE KEPT IN THE CUSTODY OF THE COURT
- CALIFORNIA RULES OF COURT 5.552 PROVIDE A MECHANISM FOR THE COURT TO AUTHORIZE DISCLOSURE TO THOSE NOT LISTED IN 827 W&I
- EVERY PERSON OR AGENCY SEEKING TO INSPECT OR OBTAIN JUVENILE CASE FILES NOT LISTED IN 827 W&I MUST PETITION THE COURT FOR AUTHORIZATION USING REQUEST FOR DISCLOSURE OF JUVENILE CASE FILE (JV-570)



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## SEALING OF RECORDS 786 W&I (AUTO-SEALING)

- IF A MINOR SATISFACTORILY COMPLETES A TERM OF PROBATION (654, 654.2, 725 OR PROBATION FOR ANY OFFENSE NOT LISTED IN 707(B) IF OVER 14), THE COURT SHALL ORDER THE PETITION DISMISSED. THE COURT SHALL ORDER SEALED ALL RECORDS PERTAINING TO THAT DISMISSED PETITION IN THE CUSTODY OF L.E.

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## SEALING OF RECORDS

- COURT MAY ORDER SEALED PRIOR PETITIONS THAT HAVE BEEN *FILED OR SUSTAINED*
- DATA MAY BE UTILITZED AND INSPECTED FROM A SEALED RECORD BY PROSECUTING AGENCY AND PROBATION TO EVALUATE JURISDICTION, FUTURE DISPOSITIONS OR TO INITIATE A TRANSFER HEARING OR TO MEET A *BRADY OBLIGATION*
- 29820 P.C. EXCEPTION-NO DESTRUCTION UNTIL PERSON TURNS 33

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## **SEALING OF RECORDS**

- **RECORDS TO BE SEALED: THOSE IN CUSTODY OF LAW ENFORCEMENT AGENCIES, THE PROBATION DEPARTMENT AND DOJ. PERSON WHO WAS SUBJECT TO PROCEEDINGS CAN RESPOND TO ANY EMPLOYER THAT THE ARREST AND PROCEEDINGS NEVER OCCURRED**

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## **SATISFACTORY COMPLETES**

- **NOT FAILED TO SUBSTANTIALLY COMPLY WITH REASONABLE ORDERS OR SUPERVISION WHILE ON PROBATION**
- **NO NEW FINDINGS OF WARDSHIP, OR CONVICTION OF FELONY OR MISDEMEANOR INVOLVING MORAL TURPITUDE**
- **UNPAID ORDERS OF RESTITUTION DO NOT APPLY**

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## **SEALING OF RECORDS 781 W&I**

- **WHERE A PETITION HAS BEEN FILED AND/OR WHEN PROBATION TERMINATES OR A PERSON IS CITED TO APPEAR BEFORE A PROBATION OFFICER OR TAKEN BEFORE A POLICE OFFICER**
- **5 YEARS LATER OR WHEN MINOR REACHES 18**
- **PROBATION MAY PETITION FOR SEALING OF RECORDS INCLUDING RECORDS OF ARREST**

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## **SEALING OF RECORDS**

- **WHERE MINOR WAS 14 OR OLDER:**
  - **RECORD WILL NOT BE SEALED IF MINOR DOES NOT SUCCESSFULLY COMPLETE PROBATION: NO NEW FELONY CONVICTION OR MISD. INVOLVING MORAL TURPITUDE**

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## SEALING OF RECORDS SB 312

- **2017**
- **MODIFIES 781 W&I**
- **PERMITS SEALING OF 707(B) OFFENSES**
- **WHERE PERSON WAS 14 OR OLDER**
- **COMMITTED TO DJJ (EXCEPTION IS 290.008)**
- **HAS ATTAINED THE AGE OF 21 OR**
  1. **NOT COMMITTED TO DJJ**
  2. **HAS ATTAINED THE AGE OF 18**
  3. **SUCCESSFUL COMPLETION OF PROBATION: I.E. MUST SHOW "ATTAINMENT OF REHABILITATION"**

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## SEALING OF RECORDS

**IF 707(B) IS SEALED THE RECORDS CAN BE ACCESSED  
IF:**

- **MAKING A FELONY CHARGING DECISION**
- **TO DETERMINE A FELONY SENTENCE**
- **MAKING A TRANSFER HEARING DECISION**
- **STRIKE ENHANCEMENT**
- **TO MEET A BRADY OBLIGATION**

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## **AB 1537**

- **PROSECUTORS CAN ACCESS SEALED RECORDS OF UNCHARGED INCIDENTS, DISMISSED PETITIONS AND CASES WHERE MINOR WAS ACQUITTED AT TRIAL TO SATISFY BRADY OBLIGATION**
- **1/1/2020**

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## **TRANSFER HEARINGS**

- **HISTORICAL BACKGROUND**
- **PROPOSITION 21**
- **PROPOSITION 57**

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## PROPOSITION 57

- PASSED NOVEMBER 8, 2016
- ELIMINATED DIRECT FILE PROVISIONS FOR PROSECUTORS
  - YES: 64.46%
  - NO: 35.54%

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## PROPOSITION 57

- ALLOWED JUDGES NOT PROSECUTORS TO DECIDE WHETHER TO TRY CERTAIN JUVENILES IN ADULT COURT
- ELIMINATED THE WORDS "FITNESS" AND "UNFITNESS" FROM THE APPLICABLE CODE SECTIONS. THE TERM USED NOW IS "TRANSFER".
- -14 OR OLDER-ANY 707(B) OFFENSE
- -16 OR 17-ANY FELONY OFFENSE
- RETROACTIVE: *PEOPLE V. LARA* (2018) 4 CAL.5<sup>th</sup> 299
  - (CASE NOT YET FINAL ON APPEAL)

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## COMPARISON

- |                         |                          |
|-------------------------|--------------------------|
| • 2015 STATISTICS       | • 2018 STATISTICS        |
| • DIRECT FILE: 492      | • DIRECT FILE: NONE      |
| • FITNESS HEARINGS: 136 | • TRANSFER HEARINGS: 161 |
| • UNFIT: 76             | • UNFIT: 77              |
| • FIT: 60               | • FIT: 84                |

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**SB 1391**  
SIGNED INTO LAW ON  
**9/29/2018**

**NO TRANSFER HEARINGS FOR  
INDIVIDUALS UNDER THE AGE  
OF 16**

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## **TRANSFER HEARING**

**IN ANY CASE IN WHICH A MINOR IS  
ALLEGED TO BE:**

- 1. 16 YEARS OF AGE OR OLDER AND**
- 2. COMMITS ANY FELONY OR**
- 3. 14 OR OLDER AND**
- 4. COMMIT A 707(B) OFFENSE**

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## **TRANSFER HEARING**

- **THE D.A. MAY MAKE A MOTION TO TRANSFER THE MINOR FROM JUVENILE COURT TO A COURT OF CRIMINAL JURISDICTION.**
- **MOTION MUST BE MADE PRIOR TO THE ATTACHMENT OF JEOPARDY**
- **THE NEW STATUTE HAS ELIMINATED ANY PRESUMPTIONS OF UNFITNESS OR FITNESS**
- **BURDEN OF PROOF IS ON THE PROSECUTION: PREPONDERANCE OF EVIDENCE**

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## TRANSFER HEARING

### 5 CRITERIA

#### DEGREE OF CRIMINAL SOPHISTICATION EXHIBITED BY THE MINOR

- AGE
- MATURITY
- INTELLECTUAL CAPACITY
- PHYSICAL, MENTAL AND EMOTIONAL  
HEALTH

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## TRANSFER HEARING

#### WHETHER THE MINOR CAN BE REHABILITATED PRIOR TO THE EXPIRATION OF THE JUVENILE COURT'S JURISDICTION

- THE MINOR'S POTENTIAL TO GROW AND  
MATURE

#### THE MINOR'S PREVIOUS DELINQUENT HISTORY

- SERIOUSNESS OF MINOR'S PREVIOUS  
DELINQUENT HISTORY
- EFFECT OF MINOR'S ENVIRONMENT
- TRAUMA ON PREVIOUS DELINQUENT  
BEHAVIOR

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## **TRANSFER HEARING**

### **SUCCESS OF PREVIOUS ATTEMPTS BY THE JUVENILE COURT TO REHABILITATE THE MINOR**

- ADEQUACY OF THE SERVICES PREVIOUSLY PROVIDED

### **THE CIRCUMSTANCES AND GRAVITY OF THE OFFENSE ALLEGED IN THE PETITION**

- ACTUAL BEHAVIOR OF THE PERSON
- THE MENTAL STATE
- THE DEGREE OF INVOLVEMENT
- LEVEL OF HARM CAUSED
- MENTAL AND EMOTIONAL DEVELOPMENT

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## **STRIKES**

- JUVENILES ARE NOT CHARGED WITH STRIKES
- AN ADULT CAN BE CHARGED WITH A JUVENILE STRIKE IF:
  - 1) JUVENILE WAS 16 OR OLDER
  - 2) PRIOR OFFENSE IN 707(B)
  - 3) PRIOR ALSO FALLS UNDER 667.5 P.C. AND/OR 1192.7 P.C.
- *People v. Romero* (2019) 44 Cal. App.5th 381

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## **LAWS OF ARREST**

- **ARREST REQUIRES PROBABLE CAUSE OR ARREST WARRANT**
- **A MINOR CAN ONLY BE HELD BY LAW ENFORCEMENT FOR 6 HOURS (W&I 207.1(D)(1)(B))**
- **MISDEMEANORS DO NOT NEED TO BE COMMITTED IN THE OFFICER'S PRESENCE. (W&I 625(A))**
- **MINORS 14 OR OLDER, WHO ARE ARRESTED FOR A FELONY WITH PERSONAL USE OF FIREARM OR ANY 707(B) OFFENSE SHALL NOT BE RELEASED EXCEPT BY A JUDICIAL OFFICER (W&I 625.3)**

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## **MIRANDA & JUVENILES**

**WELFARE & INSTITUTIONS CODE 625(C):**  
**"IN ANY CASE WHERE A MINOR IS TAKEN INTO TEMPORARY CUSTODY . . . THE OFFICER SHALL ADVISE SUCH MINOR THAT ANYTHING HE SAYS CAN BE USED AGAINST HIM AND SHALL ADVISE HIM OF HIS CONSTITUTIONAL RIGHTS. . ."**

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**W&I 625.6****RULE:**

**PRIOR TO A CUSTODIAL INTERROGATION AND BEFORE THE WAIVER OF MIRANDA RIGHTS, A YOUTH 15 YEARS OF AGE OR YOUNGER (15 AND 364 DAYS) SHALL CONSULT WITH LEGAL COUNSEL IN PERSON, BY PHONE, OR VIDEO CONFERENCE. THE CONSULTATION CANNOT BE WAIVED.**

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**W&I 625.6****EXCEPTION**

- 1. THE OFFICER REASONABLY BELIEVED THE INFORMATION SOUGHT WAS NECESSARY TO PROTECT LIFE OR PROPERTY FROM INHERENT THREAT AND**
- 2. THE QUESTIONS WERE LIMITED TO THOSE QUESTIONS THAT WERE REASONABLY NECESSARY TO OBTAIN THAT INFORMATION**

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## **W&I 625.6**

### **EFFECT**

**COURT SHALL CONSIDER A VIOLATION OF  
THIS IN DETERMINING WHETHER TO ADMIT  
THE STATEMENT IN COURT.**

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## **IN RE ANTHONY L. (12/2019)**

- **Since there was no Constitutional violation,  
no error on allowing evidence of 15 year old  
juvenile statements obtained in interrogation  
where J was not first allowed to speak with  
counsel, in viol of WI 625.6.**

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## **CUSTODY FOR MIRANDA**

### **WHEN IS A JUVENILE SUSPECT UNDER "CUSTODY" FOR *MIRANDA* PURPOSES?**

#### ***YARBOROUGH V. ALVARADO* (2004)**

- **SHOULD A JUVENILE'S AGE AND EXPERIENCE BE CONSIDERED IN MAKING A "FREE TO LEAVE" CUSTODY DETERMINATION?**
- **COURT SAID "NO"**

#### ***JDB V. N. CAROLINA* (2011)**

- **THE SUPREME COURT HAS NOW RULED THAT AN EVALUATION OF A JUVENILE'S AGE AND EXPERIENCE BY POLICE OFFICERS IS REQUIRED TO DETERMINE CUSTODY**

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## **CUSTODIAL INTERROGATION**

- **LAW ENFORCEMENT OFFICERS SHOULD BE CLEAR ON WHAT CONSTITUTES "CUSTODIAL INTERROGATION" FOR PURPOSES OF MIRANDA AND W&I 625.6.**
- **TOTALITY OF CIRCUMSTANCES**
- **WHETHER SUSPECT WAS FORMALLY ARRESTED**
- **LENGTH OF DETENTION**
- **LOCATION**
- **RATIO OF OFFICERS TO SUSPECT**
- ***IN RE B.M.* (2017) 10 CAL.APP. 5<sup>th</sup> 1292**

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## WAIVER OF MIRANDA FOR JUVENILES

**SOME FACTORS TO CONSIDER ARE THE JUVENILE'S**

- AGE
- EDUCATION
- EXPERIENCE
- INTELLIGENCE
- BACKGROUND
- AND WHETHER THE JUVENILE UNDERSTANDS THE WARNINGS GIVEN AND THE CONSEQUENCES OF WAIVING THOSE RIGHTS

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## SEARCHES ON SCHOOL GROUNDS

**SCHOOL OFFICIALS HAVE THE POWER TO STOP A MINOR/STUDENT ON CAMPUS IN ORDER TO ASK QUESTIONS OR CONDUCT AN INVESTIGATION EVEN IN THE ABSENCE OF A REASONABLE SUSPICION OF CRIMINAL ACTIVITY OR A VIOLATION OF SCHOOL RULES, SO LONG AS THIS AUTHORITY IS NOT EXERCISED IN AN ARBITRARY, CAPRICIOUS, OR HARASSING MANNER.**

**(IN RE RANDY G. (2001)  
26 CAL.4TH 556.)**

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## **SEARCHES ON SCHOOL GROUNDS**

**DETAINING A PERSON ON SCHOOL GROUNDS  
FOR PURPOSES OF INVESTIGATING THE  
LAWFULNESS OF HIS PRESENCE THERE, AS AN  
"ADMINISTRATIVE SEARCH," IS LAWFUL.**

**(IN RE JOSEPH F. (2000) 83 CAL.APP.4TH 501)**

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## **SEARCHES ON SCHOOL GROUNDS**

**NEW JERSEY V. T.L.O., SUPRA, ALLOWS FOR  
WARRANTLESS SEARCHES BY SCHOOL  
OFFICIALS BASED UPON NO MORE THAN A  
"REASONABLE SUSPICION." Reaffirmed on  
7/29/2016 by D.H. v. Clayton County School  
District**

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## **SEARCHES ON SCHOOL GROUNDS**

- **A SCHOOL SEARCH WILL BE JUSTIFIED AT ITS INCEPTION IF THE SCHOOL OFFICIAL HAS REASONABLE GROUNDS FOR SUSPECTING THAT THE SEARCH WILL TURN UP EVIDENCE THAT THE STUDENT HAS VIOLATED EITHER THE LAW OR SCHOOL RULES.” HOWEVER-NO STRIP SEARCH UNLESS ALL REASONABLE ALTERNATIVES HAVE BEEN EXHAUSTED.**

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## **SEARCHES ON SCHOOL PREMISES**

**A “SCHOOL RESOURCE OFFICER,” ALTHOUGH EMPLOYED BY A MUNICIPAL POLICE DEPARTMENT, NEED ONLY COMPLY WITH THE RELAXED SEARCH AND SEIZURE STANDARDS APPLICABLE TO SCHOOL OFFICIALS, WHEN WORKING ON CAMPUS HELPING TO ENFORCE SCHOOL RULES AS WELL AS PENAL CODE VIOLATIONS.**

**(IN RE WILLIAM V. (2003) 111 CAL.APP.4TH 1464.)**

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