

CALIFORNIA JUDGES BENCHGUIDES

**Benchguide 118**

**JUVENILE DELINQUENCY  
JURISDICTION HEARING**

[REVISED 2011]



ADMINISTRATIVE OFFICE  
OF THE COURTS

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JUDICIAL AND COURT OPERATIONS  
SERVICES DIVISION

CENTER FOR JUDICIARY EDUCATION AND RESEARCH

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# JUVENILE DELINQUENCY JURISDICTION HEARING

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### 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) *The case is called by the bailiff, court clerk, or probation officer.*

(2) *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 people in the courtroom:

- Interpreters for parent or child, or both (see [Cal Rules of Ct 2.893](#); [§§118.32, 118.34](#));
- Crime victims and their family members (see [§118.33](#));
- Support persons for prosecuting witnesses (see [§118.32](#));
- Child’s family members (see [§118.32](#));
- Media (see [§118.33](#));
- Public (see [§118.33](#)); and
- Court-appointed special advocate (CASA) (see [§118.32](#)). There may also be agency workers from the mental health agency, department of health services, or other agencies.

(3) *If the child is not represented by counsel, advise the child of his or her right to an attorney and appoint one to represent the child.* [Welf & I C §700](#); [Cal Rules of Ct 5.534\(h\)\(2\)\(A\)](#).

(4) *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\(a\)](#).

(5) *If appropriate, grant a continuance to allow newly appointed counsel to prepare or for other good reason (see §§118.8–118.11), such as:*

- To allow the child or parent to prepare for the hearing,
- When the child denies an admission previously made, or
- To permit the child to enter into an informal supervision program.

(6) *If the child appears to be mentally ill or disabled, stay the proceedings and proceed under* [Cal Rules of Ct 5.645](#). See discussion in [§118.37](#).

(7) *If appropriate, place the child in an informal supervision program.* See discussion in [§§118.26–118.28](#).

(8) *Advise the child of his or her rights (see §118.40) and inquire whether the child is going to admit or deny the allegations (see §118.42).*

(9) *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 [§118.29](#).

(10) *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 [§118.45](#)). The court should also let the child know the maximum term of confinement. If there is a plea, proceed to step (11); otherwise, proceed to step (12).

➤ **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.

(11) *After accepting an admission or a plea of no contest, proceed to disposition, making the findings required by* [Welf & I C §702](#) *and* [Cal Rules of Ct 5.778\(f\)](#). See [Cal Rules of Ct 5.778\(g\)](#) and step (18). See discussion in [§118.55](#) and [§118.59](#).

(12) *If the child denies the allegations, hold a contested jurisdiction hearing.* See discussion in [§118.46](#) and [§§118.56–118.57](#).

(13) *Hear evidence on whether the allegations in the petition should be sustained.* see [Welf & I C §701](#). The court may not consider a child’s

confession unless its voluntariness has been established, nor may it consider the probation officer's social study. See discussion in §§118.47–118.48.

(14) *If necessary, advise the witness of the privilege against self-incrimination.* The judge may also wish to grant a witness immunity. See discussion in §§118.51–118.52.

(15) *Hear a motion to dismiss, if any, at the close of the prosecutor's evidence, or make such a motion if the prosecution has not met its burden of proof.* See [Welf & I C §701.1](#) and discussion in §118.53.

(16) *Determine whether the child is described by [Welf & I C §602](#), by finding either that ([Welf & I C §702](#)):*

- The allegations in the petition have not been proved beyond a reasonable doubt, or
- The allegations have been proved beyond a reasonable doubt.

(17) *If the allegations have not been proved (see step 16), order the child released from detention and restrictions.* [Welf & I C §702](#); [Cal Rules of Ct 5.780\(g\)](#). Findings are in §118.56.

(18) *If the allegations have been proved, 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\(e\)\(5\)](#). Findings are in §118.57.

(19) *If not held immediately following the jurisdiction hearing, set the disposition hearing.* See [Welf & I C §702](#); [Cal Rules of Ct 5.782\(a\)](#) and discussion in §118.60.

(20) *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 that the parents be involved in a discussion with the court about the child. Such a discussion may assist the court when arriving at disposition.

(21) *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**

With some exceptions, anyone under the age of 18 who violates a law or ordinance comes within juvenile court jurisdiction. [Welf & I C §602\(a\)](#). When a juvenile who is 14 years old or older has personally committed murder with special circumstances or certain sex offenses, however, he or she must be tried directly in adult criminal court. [Welf & I C §602\(b\)](#). Moreover, in some circumstances, a prosecutor has the discretion to file charges directly against a juvenile in criminal court under [Welf & I C §707\(d\)](#), or to seek transfer to adult criminal court after a fitness hearing in juvenile court. See [Welf & I C §707](#) and discussion in California Judges Benchguide 117: *Juvenile Delinquency Fitness Hearing* §§117.3–117.4 (CAL CJER). 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. [§118.5] Initiating the Hearing**

The district attorney initiates a jurisdiction hearing by filing a petition to declare a child a ward of the court under [Welf & I C §602](#) after receiving an affidavit from the probation officer who recommends that proceedings should be started. [Welf & I C §§630\(a\), 650\(c\), 653.5\(b\)](#). The probation officer will have received an affidavit from the victim or other person who alleges that the child has committed the stated offense. [Welf & I C §653.5\(a\)](#). The prosecutor may not file a petition unless the probation officer provides an affidavit requesting that a petition be filed or an applicant requests a review of the probation officer's decision not to

take such an affidavit to the prosecutor. *Marvin F. v Superior Court* (1977) 75 CA3d 281, 285, 142 CR 78. The applicant may request the prosecutor to review the decision of the probation officer. [Welf & I C §653.5](#). See discussion in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.13 (Cal CJER).

If the petition that is filed to begin proceedings is not verified, it may be dismissed without prejudice. [Welf & I C §656.5](#).

## D. Time Considerations

### 1. [§118.6] 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 time 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\(c\)](#).

In cases of officially declared states of emergency, [Govt C §68115\(i\)](#) establishes procedures for limited extensions of time.

### 2. [§118.7] 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. Under former [Cal Rules of Ct 1486\(a\)\(1\)](#) (now [5.776\(a\)\(1\)](#)) and [Welf & I C §682](#), when a jurisdictional hearing is continued to a date certain, a minor must be released from custody if the hearing is continued over his or her objection beyond seven days, even if there is good cause for the continuance. *In re Kerry K.* (2006) 139 CA4th 1, 5-6, 42 CR3d 467.

Moreover, without a continuance, 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\(d\)](#). But, 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 G.), *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. [§118.8] 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 limited to the period of time that is absolutely necessary. [Welf & I C §682\(a\), \(b\)](#); [Cal Rules of Ct 5.776\(a\)](#). The child's objection to the continuance past the time limits, however, would require him or her to be released from custody. See *In re Kerry K.* (2006) 139 CA4th 1, 5–6, 42 CR3d 467, discussed in [§118.7](#).

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\(a\)\(1\)](#). When a child has been detained, unless there are valid grounds for a continuance, the court is required either to release the child and reset the jurisdiction hearing or proceed with the jurisdiction hearing within the statutory 15-day period. *A.A. v Superior Court* (2003) 115 CA4th 1, 6, 9 CR3d 1. Also, [Pen C §1050.1](#) (providing for continuances in cases of

jointly charged codefendants) does not apply in a delinquency case because it could eviscerate the time frames. *A.A. v Superior Court, supra*.

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](#). 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).

When the 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 seven 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. [§118.9] When Child Denies Admission**

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

#### **c. [§118.10] For Appointment of Counsel**

The court may also continue the hearing for up to seven 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 may continue the hearing for up to seven 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\(b\)\(2\)\(C\)](#).

#### **d. [§118.11] For Informal Supervision Program**

The court may continue the jurisdiction hearing for six months with the consent of the child and the parent or guardian and a waiver by the child and counsel of the right to a jurisdiction hearing within the statutory time. 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 under [Welf & I C §654](#), together with the child. [Welf & I C §654](#); [Cal Rules of Ct 5.776\(d\)](#). For a discussion of informal supervision, see [§§118.26–118.28](#).

## **E. Service and Notice Requirements**

### **1. [§118.12] Right to Notice**

The child who is the subject of the petition has right to notice of the hearing. [Welf & I C §679](#).

### **2. [§118.13] Who Must Be Served**

Once the petition has been filed, the clerk of the juvenile court must cause notice and an attached copy of the petition to be served on ([Welf & I C §§658\(a\), 656\(e\)](#); see [Cal Rules of Ct 5.524\(f\)](#)):

- The child if eight years old or older, and
- The parents or guardians, if they reside within the state, or
- Any adult relative residing within the county or, if none,
- The adult relative residing nearest to the location of the court and, if applicable,
- Any foster parents, preadoptive parents, legal guardians or relatives providing care, and any court-appointed special advocate (CASA).

Also entitled to notice are attorneys for the child and parent or guardian, if any, and the prosecutor, if he or she has requested notice. [Welf & I C §658\(a\)](#); see [Cal Rules of Ct 5.524\(f\)\(3\)](#). For the purpose of meeting the time requirements (see [§118.6](#)), service on the child's attorney constitutes service on the parent or guardian. [Welf & I C §660\(d\)](#).

### **3. [§118.14] Contents of Notice**

The notice must contain ([Welf & I C §659](#)):

(a) The name and address of the person to whom the notice is directed.

(b) The date, time, and place of the hearing on the petition.

(c) The name of the child who is the subject of the petition.

(d) Each section and subdivision under which the proceeding has been instituted.

(e) A statement that:

- The child and his or her parent or guardian or adult relative are entitled to have an attorney present at the hearing.
- If the parent or guardian or the adult relative is indigent and wishes an attorney, the court should be notified promptly.

- If an attorney is furnished by the court, the parents, guardians, or adult relatives will be liable for legal representation expenses to the extent of their financial ability.

(f) A statement that the parent or guardian or the responsible relative may be liable for the costs of supporting the child in a county institution.

(g) A statement that the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments.

#### **4. Service Time and Methods**

##### **a. [§118.15] When Child Is Detained**

If the child has been detained, the notice and a copy of the petition must be served either by personal service or by certified mail, as soon as possible, but no later than five days before the time set for hearing, unless the hearing is set less than five days from the filing of the petition, in which case service must take place at least 24 hours before the hearing. ([Welf & I C §660\(a\)](#)).

##### **b. [§118.16] When Child Is Not Detained**

If the child has not been detained, the notice and a copy of the petition must be served either by personal service or by first-class mail at least 10 days before the time set for hearing. [Welf & I C §660\(c\)](#). If the person being served is known to reside outside the county, notice must be by personal service or by first-class mail, as soon as possible after the filing of the petition, but no later than 10 days before the time set for hearing. [Welf & I C §660\(c\)](#).

#### **5. [§118.17] Waiver of Service**

Service may be waived by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court before or during the hearing. [Welf & I C §660\(c\)](#); [Cal Rules of Ct 5.524\(g\)](#).

#### **6. [§118.18] Consequences of Failure To Appear**

Failure to respond to the notice will not result in arrest or detention; instead, the court must direct personal service of the person who did not appear after he or she had been served by first-class mail. [Welf & I C §660\(c\)](#). Personal service is not required, however, if the whereabouts of the child are not known; in such a case, the court may issue an arrest warrant under [Welf & I C §663](#). [Welf & I C §660\(c\)](#).

## F. Appointment of Counsel

### 1. [§118.19] In General

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 for the child regardless of his or her ability to pay for these services. [Welf & I C §700](#); [Cal Rules of Ct 5.534\(h\)\(2\)\(A\)](#), [5.663\(c\)](#). The child's counsel is charged with defending the child against allegations in all petitions and advocating for care, treatment, and guidance for the child within the delinquency system. [Cal Rules of Ct 5.663\(b\)](#).

In the absence of a waiver, if the parent or guardian has the ability to pay for counsel but does not hire an attorney to represent the child, the court must appoint counsel and order the parent or guardian to reimburse the county. [Welf & I C §700](#); [Cal Rules of Ct 5.534\(h\)\(2\)\(A\)](#).

The court may, but is not required to, appoint counsel for a parent or guardian who cannot afford counsel. See [Cal Rules of Ct 5.534\(h\)\(2\)\(B\)](#). If the parent has retained counsel for the child and a conflict should arise, the court must take steps to ensure that the child's interests are protected. [Cal Rules of Ct 5.534\(h\)\(2\)\(C\)](#).

#### ☛ JUDICIAL TIPS:

- Most judicial officers do not appoint separate counsel for parents but advise the parents to retain counsel for themselves if they disagree with the child's counsel.
- If there seems to be emotional or legal conflicts between parents and child and the parent has retained counsel for the child, the court may wish to consider appointment of a separate attorney for the child.

Although a child is entitled to retain counsel of his or her choice, the choice must indeed be that of the child; an adult friend of the child has no standing to object to appointed counsel to whom the child does not object. *In re Timothy E.* (1979) 99 CA3d 349, 353, 160 CR 256.

See discussion in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §§116.22–116.27 (Cal CJER).

## 2. [§118.20] Waiver of Right to Counsel

The basic standard for competency to waive counsel is a rational, factual understanding of the proceedings which is the same for children as for adults. *In re Shawnn F.* (1995) 34 CA4th 184, 195–196, 40 CR2d 263. But the mere fact that the party is a child, as well as the child’s age, are also important in determining competency. *In re Shawnn F.*, *supra*. Because one of the purposes of the juvenile court system is protection of the child, courts should use great caution in determining the child’s competency to waive right to counsel. 34 CA4th at 196. See [§§118.35–118.38](#) for discussion of competency issues in general.

Once the child has waived the right to counsel, he or she may not be assisted by a nonattorney parent in presenting the child’s case. *In re Gordon J.* (1980) 108 CA3d 907, 914, 166 CR 809. See discussion in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.27 (Cal CJER).

## G. [§118.21] Prehearing Procedures; Motions

Although there is no preliminary hearing in juvenile court, a juvenile may learn about the charges in the petition by: (1) seeking pretrial review of sufficiency by a motion akin to a demurrer; (2) requiring that the probation officer present a prima facie case at the detention hearing (see [Welf & I C §637](#); [Cal Rules of Ct 5.764\(a\)](#); *In re Dennis H.* (1971) 19 CA3d 350, 355, 96 CR 791), and/or (3) seeking discovery (see [§118.22](#)), including copies of police and crime reports. *In re Jesse P.* (1992) 3 CA4th 1177, 1182–1183, 5 CR2d 321 (because of these avenues, the minor, who took none of these actions, was unsuccessful in appealing a finding that he had committed first-degree murder when the petition merely alleged murder).

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 days before the jurisdiction hearing is to begin if the child is not detained and the motion is not a suppression motion. [Cal Rules of Ct 5.544\(2\)](#). Otherwise, the time for service is five days before the planned start of the jurisdiction hearing. [Cal Rules of Ct 5.544\(1\)](#); see [§118.23](#). 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. [§118.22] Discovery

Once a petition is filed, the child is entitled to discovery of copies of the police, arrest, and crime reports and any other 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\(b\)–\(c\)](#). Rule 5.546 must be liberally construed to encourage informal disclosure, unless the requested party can show privilege or other good cause not to disclose. [Cal Rules of Ct 5.546\(a\)](#).

In addition, on timely request, the petitioner is required to disclose the following to the child, parent or guardian, or counsel ([Cal Rules of Ct 5.546\(d\)](#)):

- Probation reports prepared in connection with the current case;
- Records of statements, admissions, or conversations by the child, parent, guardian, or alleged coparticipant;
- Names and addresses of witnesses interviewed by the investigating authority;
- Records of statements or conversations of witnesses or other persons interviewed by the investigating authority;
- Reports or statements of experts;
- Photographs or physical evidence; and
- Records of prior felony convictions of any potential witness.

If the requested party refuses to permit inspection or disclosure, the requesting party may seek an order for disclosure; the disclosure motion must clearly designate the items sought, specify relevancy, and state that a timely request had been made and refused. [Cal Rules of Ct 5.546\(f\)](#).

- **JUDICIAL TIP:** Many courts encourage informal discovery and therefore formal discovery motions are rarely necessary. See, *e.g.*, [Santa Clara rule 1](#), providing that only after all informal means have been exhausted may a party petition the court for discovery.

Disclosure may be restricted on a showing of privilege or other good cause ([Cal Rules of Ct 5.546\(g\)](#)), including by order excising the nondiscoverable material ([Cal Rules of Ct 5.546\(h\)](#)). The court may specify conditions for the time, place, and manner of discovery, with a goal towards timely completion ([Cal Rules of Ct 5.546\(i\)](#)), and may issue sanctions for noncompliance ([Cal Rules of Ct 5.546\(j\)](#)).

The court also has discretionary authority to order reciprocal discovery consistent with [Pen C §§1054–1054.10](#), despite the fact that these reciprocal criminal discovery provisions do not expressly apply to juvenile court. *Robert S. v Superior Court* (1992) 9 CA4th 1417, 1422, 12 CR2d 489. Generally, discovery practice is discretionary and should parallel that of adult criminal court. See *Clinton K. v Superior Court* (1995) 37 CA4th 1244, 1248–1249, 44 CR2d 140. Accordingly, a juvenile is subject to the same kind of exclusions from disclosure when seeking police records under a *Pitchess* motion that an adult defendant would be

subject to. *City of San Jose v Superior Court* (1993) 5 C4th 47, 53, 19 CR2d 73; [Evid C §1045\(b\)](#) (exclusion of certain police records concerning prior complaints).

In the absence of an express order for reciprocal discovery, there is nothing in [Cal Rules of Ct 5.546](#) or any other provision that would provide for preclusion sanctions for failing to notify the prosecution about defense witnesses until after the jurisdiction hearing had begun. *In re Thomas F.* (2003) 113 CA4th 1249, 1254–1255, 7 CR3d 19.

## 2. [§118.23] 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 [§118.58](#)) and at least five judicial days after the prosecutor receives notice. [Welf & I C §700.1](#); see [Cal Rules of Ct 5.544\(1\)](#) (five days before the jurisdiction hearing is set to begin). Because the hearing on a suppression motion occurs before the jurisdiction hearing begins, a motion for a deferred entry of judgment may be made after a suppression hearing is completed. *In re A.I.* (2009) 176 CA4th 1426, 1436, 98 CR3d 501. See discussion in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.36 (Cal CJER).

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](#). Suppression motions under [Pen C §1538.5](#) are not applicable to juvenile delinquency cases. *In re David G.* (1979) 93 CA3d 247, 252, 155 CR 500.

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 trial. *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, he or she may object to the admission of evidence and seek to suppress it during the jurisdiction 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 will prevent any further proceedings. *In re Mitchell D.* (1990) 226 CA3d 66, 71–72, 276 CR 245.

There are some major differences between search and seizure standards applicable to adults and those applicable to children. Although the Fourth Amendment applies to searches by school authorities, school searches can be conducted on less than probable cause. *New Jersey v T.L.O.* (1985) 469 US 325, 341, 105 S Ct 733, 83 L Ed 2d 720; *In re William G.* (1985) 40 C3d 550, 558–566, 221 CR 118. Indeed, *New Jersey v T.L.O.* applies to a school official’s search of a student’s belongings whether or not the police have been involved. *In re K.S.* (2010) 183 CA4th 72, 83–84, 108 CR3d 32. School officials may stop a student in order to ask questions or conduct an investigation even in the absence of reasonable suspicion, if the authority is not exercised in an arbitrary, capricious, or harassing manner. *In re Randy G.* (2001) 26 C4th 556, 567, 110 CR2d 516. A police officer assigned to a school on a temporary basis is a school official for Fourth Amendment purposes. *In re William V.* (2003) 111 CA4th 1464, 1467, 4 CR3d 695.

And peace officers may take a child into temporary custody without a warrant with reasonable cause for belief that the child is described by [Welf & IC §601 or §602](#). [Welf & IC §625\(a\)](#).

A mother may have authority to consent to a search of a child’s room over the child’s objection, although she did not spend much time in the room. *In re D.C.* (2010) 188 CA4th 978, 986–987, 115 CR3d 937.

When a child submits on the transcript of the suppression motion, the court must advise the child of his or her rights (see [§118.40](#)). *In re Steven H., supra*.

### 3. [§118.24] Reading Probation Reports

The court must not read or consider any part of a probation report that relates to a contested jurisdiction hearing before or during the contested hearing. [Cal Rules of Ct 5.780\(c\)](#); see also *In re Gladys R.* (1970) 1 C3d 855, 860, 83 CR 671 (court may not consider report’s contents at the adjudication hearing). However, if the court reviews the entire 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.

### H. [§118.25] Mediation

If mediation is used in a delinquency proceeding, the confidentiality provisions of [Evid C §1119](#), which would otherwise ensure that statements made during mediation would be kept confidential, must yield to the

child's constitutional right to effective cross-examination and impeachment of an adverse witness. *Rinaker v Superior Court* (1998) 62 CA4th 155, 161, 74 CR2d 464.

## I. Informal Supervision

### 1. [§118.26] In General

There are a number of ways in which a child may enter informal supervision. A probation officer may elect to place the child under informal supervision instead of filing a petition under [Welf & I C §602](#) either on the recommendation of the prosecutor (see [Welf & I C §653.5\(c\)](#)) or on his or her own conclusion. See [Welf & I C §654](#). In addition, once a petition has been filed, the court may order a program of informal supervision for the child after obtaining a time waiver for six months. See [Welf & I C §654.2\(a\)](#). For discussion of continuances in this context, see [§118.11](#).

The child and parent or guardian must be ordered to appear at the conclusion of six months and at three-month intervals thereafter, and the court must order dismissal of the petition if the child successfully completes the program. [Welf & I C §654.2\(a\)](#). 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\(a\)](#). 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\(a\)](#).

The purpose of the informal supervision program is to avoid making findings of criminal culpability that would result in a criminal record. *In re Adam R.* (1997) 57 CA4th 348, 352–353, 67 CR2d 76.

If the child is alleged to have violated [Veh C §23140](#) or [§23152](#) (driving under influence of alcohol or drugs), the probation officer may elect informal supervision instead of filing a wardship petition. [Welf & I C §654.1\(a\)](#). When doing so, the probation officer must cause a citation under those sections to be heard and disposed of by the court as a condition of bringing the child into the informal supervision program. [Welf & I C §654.1\(a\)](#). A child who has committed 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 be required to 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](#).

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).

Once a court holds a jurisdiction hearing and finds allegations in the petition to be true, however, it is precluded from ordering informal supervision. *In re Adam R.*, *supra*. Although a program of informal supervision is available postpetition, it must be implemented before the charges in the petition have been adjudicated. *In re Abdirahman S.* (1997) 58 CA4th 963, 968, 68 CR2d 402. 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.

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. [§118.27] 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 [Welf & I C §707\(b\)](#) (serious felonies);
- 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 old or older (except in unusual circumstances, these cases should proceed pursuant to [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. [§118.28] Completion of Informal Supervision

When the child successfully completes a program of informal supervision, the court must order the petition dismissed. [Welf & I C §654.2\(a\)](#). 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 one-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.

## J. Judicial Officers

### 1. [§118.29] 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 *In re Gregory M.* (1977) 68 CA3d

1085, 1093–1094, 137 CR 756. For a delinquency jurisdiction hearing, a stipulation is necessary before a subordinate judicial officer may conduct the hearing. *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* §116.35 (Cal CJER).

## 2. [§118.30] Disqualification

When a judge properly disqualifies him or herself under [CCP §170.1\(a\)\(6\)](#) during a jurisdiction hearing, double jeopardy does not prevent the holding of a new jurisdiction hearing because the new hearing is required by “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. *In re Richard W.* (1979) 91 CA3d 960, 968, 155 CR 11.

## **K. Who May Be Present**

### **1. [§118.31] The Child**

At the jurisdiction hearing, the child who is the subject of the proceeding is a party and is therefore entitled to be present. [Welf & I C §679](#). The court should do nothing to preclude the child from being present at the jurisdiction hearing. *In re Sidney M.* (1984) 162 CA3d 39, 48, 208 CR 378. If the child refuses to attend, however, the hearing may be held in the child's absence if the court determines that the child has knowingly and intelligently waived the right under [Welf & I C §679](#) to be present; in determining the validity of the waiver, the court should consider the child's age, experience, and ability to understand the meaning and effects of his or her acts. *In re Sidney M., supra*.

### **2. [§118.32] Other Participants and Relatives**

Under [Welf & I C §§676, 676.5, and 679](#) and [Cal Rules of Ct 5.530\(b\)](#) the following persons may be present:

- Parents, or guardians or, if none can be found or none reside within the state, any adult relatives residing within the county or, if none, any adult relatives residing nearest the court.
- Counsel for child.
- Probation officer.
- Prosecuting attorney. See [Welf & I C §681\(a\)](#); [Cal Rules of Ct 5.530\(c\)](#).
- Up to two family members or support persons of a prosecuting witness's choosing (see [Pen C §868.5](#)). [Welf & I C §§676\(a\), 676.5\(a\)](#); [Cal Rules of Ct 5.530\(e\)\(2\)\(B\), \(D\)](#).
- Alleged crime victim and possibly the victim's family members. See [Welf & I C §676.5](#); [Cal Rules of Ct 5.530\(e\)\(2\)\(B\), \(D\)](#).
- Court clerk.
- Court reporter.
- Bailiff, at the court's discretion.
- Court-appointed special advocate (CASA). See [Cal Rules of Ct 5.530\(b\)\(6\)](#).
- Interpreter (see [Cal Rules of Ct 2.893](#)).

The court may also permit any of the child's relatives to be present at the jurisdiction hearing on a sufficient showing. See [Cal Rules of Ct 5.534\(f\)\(1\)](#). Relatives may submit information to the court at any time. [Cal Rules of Ct 5.534\(f\)\(2\)](#). In addition, the court may admit anyone who it determines has a direct and legitimate interest in the case or in the work of

the court ([Welf & I C §676\(a\)](#)). No person who has been accused of a crime or is on trial or awaiting trial (other than a parent, guardian, or relative) may be present except as a witness. [Welf & I C §675\(a\)–\(b\)](#); [Cal Rules of Ct 5.530\(a\)](#).

### 3. [§118.33] Public, Media, and Crime Victims

The court may admit the public if the parent or guardian requests that the public be admitted or the child requests an open hearing ([Welf & I C §676\(a\)](#); [Cal Rules of Ct 5.530\(e\)\(2\)\(A\)](#)). In certain situations, the public *must* be admitted. See discussion in California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.20 (Cal CJER).

The public and crime victims and their support persons must be admitted on the same basis as that used for a criminal trial if the petition alleges that the child has committed one of the crimes listed in [Welf & I C §676](#). [Welf & I C §§676\(a\), 676.5\(a\)](#); [Cal Rules of Ct 5.530\(e\)\(2\)\(C\)](#). A prosecuting witness may be accompanied by up to two family members as support persons. [Welf & I C §675\(a\)](#).

There is an exception to open hearings for serious offenses when the petition alleges that the child committed certain crimes such as rape or sodomy with force or violence. [Welf & I C §676\(b\)](#). In such an instance, the entire hearing may be closed on the victim's motion. [Welf & I C §676\(b\)\(1\)](#). The hearing must also be closed during the testimony of a child victim witness who is under 16 years of age. [Welf & I C §676\(b\)\(2\)](#); [Cal Rules of Ct 5.530\(e\)\(2\)\(C\)](#). The court may also exclude victims and their support persons, after a hearing at which the person sought to be excluded has an opportunity to be heard and the court has taken each of the following steps and has ([Welf & I C §676.5\(b\)](#); see [Cal Rules of Ct 5.530\(e\)\(2\)\(E\)](#)):

- Found that the moving party, who may be the child, has demonstrated a substantial probability that overriding interests will be prejudiced by the victim's presence;
- Considered reasonable alternatives to excluding the victim;
- Narrowly tailored limitations on a victim's presence, including total exclusion, to serve the identified overriding interests; and
- Made specific factual findings that support limitations on the victim's presence.

For each day the court is in session, the court must post in an accessible, conspicuous place, a list of hearings that are open to the general public, as well as their location and time. [Welf & I C §676\(g\)](#).

For a discussion of media presence and coverage, see California Judges Benchguide 116: *Juvenile Delinquency Initial or Detention Hearing* §116.29 (Cal CJER).

#### 4. [§118.34] Interpreters

The court must appoint an interpreter whenever a party or witness cannot speak or understand English well enough to be understood or to participate fully in the proceedings. [Cal Const art I, §14](#); [Evid C §752\(a\)](#); [Cal Rules of Ct, Standards of J Admin 2.10\(a\)](#). [California Rules of Court 2.893](#) sets out the circumstances under which the presiding judge may appoint a noncertified interpreter in a delinquency case. If the child needs an interpreter and one has been assigned to him or her, the court may not even temporarily borrow the interpreter to interpret for various witnesses unless the child has made a knowing and intelligent waiver. *In re Dung T.* (1984) 160 CA3d 697, 709, 206 CR 772.

The child's father is not constitutionally entitled to a substitute interpreter of his choice. *In re Bryon S.* (1986) 176 CA3d 822, 829, 223 CR 319 (deafness).

- **JUDICIAL TIP:** If the child speaks English and the parents do not, the court should seriously consider obtaining an interpreter for the parents. The parents need to know what is happening at the jurisdiction hearing, and the court should not leave it to the child to keep the parent apprised of the proceedings.

### L. Competency Issues

#### 1. [§118.35] 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\(a\)](#).

#### 2. [§118.36] When Insanity Found

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 recovered his or her 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\(d\)](#).

### 3. [§118.37] When Court Suspects Mental Illness or Disability

When the court believes that the child may be mentally disabled or mentally ill, the court may stay the proceedings and order the child evaluated. [Cal Rules of Ct 5.645\(a\)](#). If the mental health professional who has evaluated the child believes that the child is not in need of intensive treatment, the child must be returned to the court and the case may proceed. [Cal Rules of Ct 5.645\(b\)\(1\)](#). If the child is in need of treatment, the Lanterman-Petris-Short (LPS) Act will apply. See [Cal Rules of Ct 5.645\(b\)\(2\)](#); [Welf & I C §§6550–6552](#).

If the court believes that the child may not be competent to stand trial or cooperate with counsel, it must proceed as follows ([Cal Rules of Ct 5.645\(d\)](#)); see *James H. v Superior Court* (1978) 77 CA3d 169, 176–178, 143 CR 398):

- If the court finds that there is reason to doubt the child’s present ability to cooperate with counsel or understand the proceedings, it must stay the proceedings and conduct a hearing on competency;
- The court must appoint an expert to evaluate whether the child is capable of cooperating with counsel and understanding the proceedings;
- If, after the hearing, the court finds that the child is able to cooperate with counsel, the jurisdiction hearing should continue; and
- If the court finds that the child is unable to understand the proceedings or cooperate with counsel, the judge should institute proceedings under [Welf & I C §6550](#) and [Cal Rules of Ct 5.645\(a\)–\(c\)](#).

In addition, [Welf & I C §705](#) provides that if the court is in doubt concerning the mental health of the child, it may proceed under [Welf & I C §6550](#) or [Pen C §4011.6](#). These two provisions ([Welf & I C §6550](#) or [Pen C §4011.6](#)) should be considered complementary. *In re Robert B.* (1995) 39 CA4th 1816, 1823, 46 CR2d 691. Together, [Welf & I C §6550](#) and [Pen C §4011.6](#) authorize the court to refer children for evaluation or treatment, after which the provisions of the LPS Act will apply. *In re Patrick H.* (1997) 54 CA4th 1346, 1358, 63 CR2d 455; [Cal Rules of Ct 5.645\(a\)](#).

The test for competency is not whether the child can become competent in the future with assistance, but whether he or she presently understands the charges and has a reasonable factual understanding of the proceedings. *In re Ricky S.* (2008) 166 CA4th 232, 236, 82 CR3d 432.

#### 4. [§118.38] Developmental Immaturity

In addition to a finding of incompetence based on [Cal Rules of Ct 5.645](#) and [Welf & I C §§6550–6552](#), the court may base a finding of incompetence to stand trial on a child’s developmental immaturity alone, without finding either mental disorder or disability. *Timothy J. v Superior Court* (2007) 150 CA4th 847, 860–861, 58 CR3d 746.

### M. Conduct of Hearing

#### 1. [§118.39] In General

The judge must control all proceedings with a view to the expeditious determination of both the jurisdictional facts and the present condition and future welfare of the child. [Welf & I C §680](#). Unless there is a contested issue of fact or law, the proceedings must be conducted in an informal nonadversarial manner with a view to obtaining the maximum cooperation of the child and all those interested in the child’s welfare. [Welf & I C §680](#). Informality does not extend, however, to ex parte communications. It is a violation of due process for a judicial officer to question the sole witness in the absence of the prosecutor and the probation officer and then adjudicate the case. *In re Jesse G.* (2005) 128 CA4th 724, 731, 27 CR3d 331 ([Welf & I C §601](#) case).

In order to shackle a juvenile who is the subject of a delinquency proceeding, the court must first determine on a case-by-case basis, that there is a manifest need for such restraints. *Tiffany A. v Superior Court* (2007) 150 CA4th 1344, 1354, 1362, 59 CR3d 363. The burden is on the prosecutor to demonstrate such a need. 150 CA4th at 1357. The showing needed to justify physical restraints is not as great in a juvenile court proceeding as in a jury trial. *In re Deshaun M.* (2007) 148 CA4th 1384, 1387, 56 CR3d 627.

#### 2. [§118.40] Advisement of Rights and Consequences

Juveniles are entitled to the due process considerations of the exclusionary rule and the *Miranda* warning. *People v Malveaux* (1996) 50 CA4th 1425, 1436, 59 CR2d 371. In addition, the court must advise the child of the following rights to (see [Welf & I C §702.5](#); [Cal Rules of Ct 5.534\(k\)\(1\)](#)):

- Assert the privilege against self-incrimination,
- Confront and cross-examine the preparers of reports and any other witnesses,
- Use the process of the court to bring in witnesses, and
- Present evidence.

The child also has the right to receive the probation report and to inspect the documents used by the preparers of the report. [Cal Rules of Ct 5.534\(k\)\(2\)](#).

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 to ([Welf & I C §702.5](#); [Cal Rules of Ct 5.778\(b\)](#)):

- A hearing by the court on the issues raised by the petition,
- Confront and cross-examine any witness called to testify against the child, and
- 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. [§118.41] 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).

### **4. [§118.42] Inquiry Into Admission or Denial**

The court must inquire whether the child is going to 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\(c\)](#).

### **5. [§118.43] 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 old at the time of the offense comes under [Welf & I C §602](#), the court must find that the child knew the wrongfulness of his or her 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 at the time it was committed. *In re Manuel L.* (1994) 7 C4th 229, 234, 27 CR2d 2.

The closer a child approaches the age of 14, the more likely it is that he or she appreciates the wrongfulness of his or her 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, who was nearly 14 years old, 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 old, 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 initially lied, then hid the evidence, but finally led the deputy to it, indicating that youth, who was 12 years and 10 months old, was aware of the wrongfulness of his actions. *In re James B.* (2003) 109 CA4th 862, 873, 135 CR2d 457.

Evidence that there have been 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.

Once the rebuttable presumption of incapacity of [Pen C §26](#) has been overcome, the child may be found to have violated [Pen C §288\(a\)](#) (lewd conduct with child under 14) despite the youthfulness of the offender. *In re Billie Y.* (1990) 220 CA3d 127, 132, 269 CR 212, disapproved on other grounds in 7 C4th 229, 239 n5.

## 6. [§118.44] Jury Trial

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. *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.

### 7. [§118.45] When Child Admits Allegations; Submission

The child may admit the allegations in court with consent of counsel and thereby waive the jurisdiction hearing. [Welf & I C §657\(b\)](#); [Cal Rules of Ct 5.774\(c\)](#). The child may also plead no contest, subject to the court’s approval. [Cal Rules of Ct 5.778\(e\)](#). Once the hearing has begun, if the child intends to admit the allegations, the admissions must be made by the child personally and, if the child is represented by counsel, counsel must consent. [Cal Rules of Ct 5.778\(d\)](#). [Civil Code §35](#), permitting a child to disaffirm contractual obligations made while under the age of majority, does not apply to admissions. *People v Mortera* (1993) 14 CA4th 861, 864, 17 CR2d 782.

If the child admits the allegations, the court must find that the child understands the nature of those allegations, as well as the consequences of an admission, and that he or she waives the rights set out in [Welf & I C §702.5](#) and [Cal Rules of Ct 5.778\(b\)](#). [Cal Rules of Ct 5.778\(c\)](#). See [§118.40](#). The court must state these findings on the record. [Cal Rules of Ct 5.778\(c\)](#). If accepting the admission, the court must make the findings set out in [§118.55](#).

An example of a valid waiver of a contested hearing is found in *In re Ian J.* (1994) 22 CA4th 833, 836, 27 CR2d 728. In that case, the court informed the child of the maximum term of confinement and of his rights to trial, to remain silent, to confront and cross-examine witnesses, and to compel witnesses’ attendance, and the child knowingly and intelligently waived those rights. If the child is on probation, the court must also advise the child that a consequence of an admission may be probation revocation at the disposition hearing, leading to a longer sentence. *In re Gary O.* (1978) 84 CA3d 38, 41, 148 CR 276.

Once the child has made a valid admission, the court need not hear evidence (*In re Patterson* (1962) 58 C2d 848, 853, 27 CR 10) and may go directly to disposition ([Cal Rules of Ct 5.778\(g\)](#)). The child’s admission not only establishes the corpus delicti of the offense but is sufficient to justify a judgment. *In re Patterson, supra*. If the child was under 14 at the time of the offense, the court must make a determination of whether he or she understood the wrongfulness of the conduct. See [Pen C §26](#); *In re Gladys R.* (1970) 1 C3d 855, 867, 83 CR 671.

- **JUDICIAL TIP:** The court should question the child or request additional information so the record will reflect a basis for the [Pen C §26](#) finding.

When a child submits the issue of jurisdiction on a transcript of the suppression motion, the court must advise the child of the rights set out in §118.40. See *In re Steven H.* (1982) 130 CA3d 449, 454, 181 CR 719.

### **8. [§118.46] 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 §118.57. The child is also entitled to a fully contested hearing, with the right to receive notice, obtain a current social study if needed for disposition, and produce evidence if the jurisdiction hearing is being held because of reinstatement of wardship proceedings after violation of probation. *In re Deon W.* (1998) 64 CA4th 143, 146–147, 74 CR2d 802.

## **9. Evidence**

### **a. [§118.47] 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\(b\)](#). The court may not consider the contents of a probation officer's social study report at the adjudication hearing. *In re Gladys R.* (1970) 1 C3d 855, 860, 83 CR 671. See §118.24.

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

(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).

**b. [§118.48] Voluntariness of Confession**

A court must make an explicit determination of the voluntariness of a juvenile's confession. *In re Juma P.* (1988) 204 CA3d 1228, 1236–1237, 251 CR 739. Statements obtained from juveniles in violation of *Miranda* are inadmissible in juvenile proceedings. *In re Roderick P.* (1972) 7 C3d 801, 810, 103 CR 425 (immature and confused 14-year-old child suffered from mental retardation).

**c. [§118.49] Admission of Evidence; Objections**

The court may not refuse an offer of proof that might have been the foundation for exculpatory hearsay statements. *In re Candido B.* (1980) 111 CA3d 803, 806, 168 CR 793. Moreover, the court should not permit the child's counsel to invite a witness to testify to extrajudicial hearsay statements made by prosecution witnesses against the child's interest. See *In re Julius B.* (1977) 68 CA3d 395, 403–406, 137 CR 341. Neither the confrontation clause nor the hearsay rule, however, bars a four-year-old child victim's statements to medical personnel when the victim was unavailable (living out-of-state) after molestation by 17-year-old cousin. *In re Daniel W.* (2003) 106 CA4th 159, 165–169, 130 CR2d 412. In that case, the statements were admissible under [Evid C §1253](#). 106 CA4th at 166.

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

**d. [§118.50] Privileges**

Although a child is entitled to invoke privileges generally, he or she 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.

**e. [§118.51] 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 his or her right to retain counsel and, if indigent, to have one appointed. [Cal Rules of Ct 5.548\(a\)](#).

#### **f. [§118.52] 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 has testified or produced the evidence, neither the evidence or 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 him or her 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. [§118.53] Motion To Dismiss**

After presentation of prosecution evidence, the child or the court on its own motion may offer a motion to dismiss. [Welf & I C §701.1](#). At that point, if the prosecution has not met its burden of proof, the court may, on its own motion or the motion of a party, order whatever action the law requires. See [Welf & I C §701.1](#); [Cal Rules of Ct 5.534\(d\)\(1\)\(B\)](#). 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.

If the court finds that the child is not a person described by [Welf & I C §602](#), it must dismiss the petition and order the child discharged from detention. [Welf & I C §701.1](#). Once a petition has been 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 has 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](#); [Cal Rules of Ct 5.534\(d\)\(2\)](#).

### **11. [§118.54] Amending the Petition During Trial**

A petition may not be augmented during trial over the child's objection to include a charge that is not a lesser included offense. *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 would not violate double jeopardy, as long as the trial 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 if it is done before the disposition hearing has been held. *In re R. L.* (2009) 170 CA4th 1339, 1343, 88 CR3d 854 (juvenile had admitted previous charges and had been awaiting disposition).

## **N. Findings**

### **1. [§118.55] 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\(f\)](#); see [Welf & I C §702](#). Under these sections, the court must find that:

- Notice has been given as required by law;
- The child has knowingly and intelligently waived the following rights to:
  - a hearing on the issues,
  - confront and cross-examine adverse witnesses, 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; and
- The child is described by [Welf & I C §602](#).

The court must also note ([Cal Rules of Ct 5.778\(f\)](#); see [Welf & I C §702](#)):

- The birthday and residence address of the child, and
- The degree of the offense and whether the offense would be a felony or a misdemeanor if committed by an adult.

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,
- State its determination as to whether the offense is a misdemeanor or felony.

## **2. After Contested Hearing**

### **a. [§118.56] 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. [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 birthday and residence address of the child, and
- That the allegations of the petition have not been proved.

### **b. [§118.57] Allegations Proved**

Having heard the evidence, the court must make a finding, noted in the minutes of the court, of whether the child is a person described by [Welf & I C §602](#). See [Welf & I C §702](#). If 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](#)):

- That notice has been given as required by law,
- That the allegations in the petition are true,
- The birthday and residence address of the child,
- That 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.

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. *In re Sergio R.* (1991) 228 CA3d 588, 598, 279 CR 149 (intent to inflict great bodily injury may be implied).

- **JUDICIAL TIP:** If the petition alleges more than one offense, and the court finds that at least one has been proved, it must make the findings described above and proceed to disposition, even if a number of the offenses have not been proved.

## O. Posttrial Procedures

### 1. [§118.58] Application of Double Jeopardy

The protection against double jeopardy applies to juvenile offenders (*In re Carlos V.* (1997) 57 CA4th 522, 525, 67 CR2d 155) at jurisdiction hearings (*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. 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. [§118.59] After Accepting an Admission or Plea

After accepting a plea of no contest or an admission, the court must proceed to the disposition hearing. [Cal Rules of Ct 5.778\(g\)](#).

#### b. [§118.60] 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\(a\)](#) (after finding that child described by [Welf & I C §602](#), court must then proceed to disposition). 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 or 30 days if the child is not detained. [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 two judicial days and the disposition hearing must be held within 10 judicial days after that. [Cal Rules of Ct 5.782\(c\)](#).

### 3. [§118.61] 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. [§118.62] 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 a 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* §116.60 (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?

Understanding this right and the possible consequences, 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. [§118.63] 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 old, 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, 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 and therefore *[name of child]* is not a person described by [Welfare and Institutions Code section 602](#). *[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 birthday and residence address of the child are *[state child's birthday and residence address]*.

(6) After contested hearing when allegations have been proved

The court finds the following:

- Notice has been given as required by law,
- The birthday and residence address of the child are *[state child's birthday and residence address]*,
- 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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