ASSIGNED JUDGES JUVENILE CASE LAW REVIEW

October 26-27, 2017

POMONA, CALIFORNIA

CASE LAW REVIEW

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CASE LAW REVIEW

- Selected cases
- Focus on reversals and recurring topics
- Questions welcome throughout

DELINQUENCY

- ARBUCKLE (1):
- **K.R. v Superior Court (2017) 3 Cal. 5th 295**
- Before this case *Arbuckle* held that whenever a judge accepts a plea bargain and retains sentencing discretion under the agreement, an implied term of the bargain is that sentence will be imposed by that judge. Later ruled that this applied to juvenile cases.
- Some appellate courts declined to recognize this right unless the record contained sufficient evidence that the defendant subjectively intended that the judge who accepted the plea would pronounce sentence.

DELINQUENCY

- In this case K.R. admitted two probation violations. A delay in the case resulted in another judge hearing the disposition. That judge was more inclined to commit the minor to DJJ.
- Writ of Mandate – HELD: *ARBUCKLE* controls. It is always an implied term that the judge who accepts the plea will be the judge who pronounces sentence.
- Dissent by the Chief Justice.
- **K.R. v Superior Court (2017) 3 Cal. 5th 295**

DELINQUENCY

- *ARBUCKLE* (2):
- At a restitution hearing the judge who had held 14 hearings over many months was unavailable. Another judge heard the matter and determined the restitution amount. On appeal: **Held**: *Arbuckle* does not require the same judge to hear the restitution phase of a case. Here the minor received a fair hearing and that is all that is required.
- **In re Christian S. (2017) 9 Cal.App.5th 510.**

DELINQUENCY

- RECORD SEALING (1):
- The juvenile court dismissed J's adjudication after he successfully completed probation, but declined to seal his record. J had an ongoing probation condition stating he was not permitted to own a firearm before he turned 30 per P.C.§29820.

DELINQUENCY

- Citing W § 786, the court **reversed** the trial court and ordered the record sealed. The court "harmonized" the apparently conflicting statutes by holding that the Firearm Form need not be destroyed until J's 30th birthday.
- **In re Joshua R. (2017) 7 Cal.App.5th 864**

DELINQUENCY

- RECORD SEALING (2):
- J committed a residential burglary at 17. He was made a ward and ordered to pay restitution of $2,100. Several years later (J was 22) the court dismissed the case finding that J had performed well in the community, but had not paid the entire restitution. J's request to seal his record was denied and his probation performance deemed unsatisfactory.

DELINQUENCY

- On appeal: **REVERSED.** Failure to pay restitution is an insufficient basis to find that the a minor has not completed probation satisfactorily. The restitution can be converted to a civil judgment per W & I § 786(c)(2). The court's power to convert restitution to a civil judgment does not end when the minor reaches 22.
- **In re J.G. (2016) 3 Cal.App.5th 521**

DELINQUENCY

- RECORD SEALING (3):
- A delinquency petition was filed on G.F. for possessing a sharpened letter opener at school. The court granted the prosecutor's motion to dismiss the petition and proceed with informal supervision per § 654.
- G.F. successfully completed probation and moved to have his record sealed. Denied. Appeal.

DELINQUENCY

- **REVERSED:** Prosecution argued that § 786 does not apply to cases not filed under §654.2. But here a petition was filed and the case proceeded under §654. Then the prosecution asked the court to dismiss it. The People cannot deprive minors their right to this relief simply by initiating a premature dismissal of 602 petitions pursuant to a "motion" that is contrary to the controlling statutory scheme.

DELINQUENCY

- The purpose of the statute is to provide a streamlined sealing process for minors who satisfactorily complete a program of supervision or term of probation after a delinquency petition has been filed against them.
- **In Re G.F. (2016) 12 Cal. App. 5th 1**

DELINQUENCY

- RECORD SEALING (4):
- The juvenile court dismissed a delinquency petition and sealed the minor's (J's) record. A criminal defendant (D) filed a request for disclosure of those records. The juvenile court ordered a redacted portion of the file be released to D. PETITION FOR MANDATE.
- **GRANTED!**

DELINQUENCY

- There is no applicable exception under the law permitting discovery of these sealed records. The courts cannot create an exception to the law.
- Juvenile records are confidential and certain parties can have access to them. But sealed records are of a different category. The sealed proceedings are deemed not to have occurred.
- There is no statutory exception that allows a juvenile court to release a minor's delinquency file to a third party criminal defendant after that confidential file has been sealed.

DELINQUENCY

- Indeed, the juvenile court should not even have inspected those sealed records.
- **S.V. v Superior Court (2017) 13 Cal. App. 5th 1174**

DELINQUENCY

- RECORD SEALING (5):
- In 1995 J was convicted of armed robbery at the age of 17. J sought to have the finding set aside and the petition dismissed per WIC § 782. The trial court dismissed the petition, but refused to seal the record stating it was a WIC §707(b) offense.

DELINQUENCY

- On appeal **REVERSED.**
- Section 782 is a general dismissal statute, and when a juvenile court sets aside findings and dismisses a petition under §782, the court's action operates, as a matter of law, to erase the prior sustained petition as if the defendant had never suffered it in the initial instance;
- When that proceeding is “erased” the conviction as though it never existed. Therefore, the motion to seal should have been granted.

- **In re David T. (2017) 13 Cal. App. 5th 866**

DELINQUENCY

- RECORD SEALING (6):
- In 2002, J, aged 13, admitted to a petition alleging lewd and lascivious conduct (288(a)) was made a ward and on probation. He did well until a stabbing incident at school in 2005. Charged with attempted 187 and ADW with a weapon and GBI. He admitted the ADW and CYA was recommended and ordered by the court with a maximum of 9 years. He was released after 5 years in 2013. In 2015 J requested his record be sealed. The 707(b) could not be sealed but the earlier offence was sealable.

DELINQUENCY

- The clerk's office reported they could only seal the entire record or nothing. The judge wanted to seal the earlier offense, but could not and did not.
- On appeal: **Affirmed**. Neither record could be sealed.
- The sealing request involves the entire juvenile history and not severable offenses. Unlike adult criminal cases which are severable, the juvenile system looks to the entire career of the juvenile.
- **In re Jose S.(2017) 12 Cal. App. 5th 1107**

DELINQUENCY

- RECORD SEALING (7)
- A juvenile, Y.A., with 2 wardship petitions regarding 2 unrelated incidents was placed on probation for each. YA successfully completed probation for the second offense, but not the first.
  HELD: Record sealing was only possible on the 2nd offense, not the first.
- **In re Y.A. (2016) 246 Cal.App.4th 523**

DELINQUENCY

- RECORD SEALING (8)
- In 2012 I.F., 15, admitted grand theft and was made a ward. During probation I.F. sustained 8 additional wardship petitions (4 sustained felonies and 8 sustained misdemeanors). I.F. was place in a treatment facility in Iowa until 18. The juvenile court then found that I.F. had successfully completed probation and dismissed probation and terminated jurisdiction. I.F. asked that his juvenile record be sealed.

DELINQUENCY

Before the sealing issue was decided I.F. was charged with attempted murder and robbery as an adult. In that case the prosecutor filed a petition for disclosure (WIC §827) for impeachment purposes and a second petition for 10 police reports in I.F.'s juvenile file. Probation recommended denying I.F.'s petition stating "rehabilitation has not been attained." The trial court denied the petition to seal and also granted partial discovery of the police reports.

APPEAL

DELINQUENCY

- **REVERSED:**
- WIC §786 controls. The legislature "mandated automatic sealing of a juvenile's records so long as the juvenile completed probation for a non-section 707(b) offense.
- All matters remanded to the trial court to apply WIC §786 to this case.
- **In re I.F., (2017) 13 Cal.App.5th 64**

DELINQUENCY

- RECORD SEALING/EXPUNGEMENT (9)
- Pursuant to Proposition 47 and Penal Code §299, a trial court does not authorize the juvenile or adult court to order expungement of a minor's DNA record from the state DNA databank.
- **In re J.C. (2016) 246 Cal.App.4th 1462**

DELINQUENCY

- RECORD SEALING/EXPUNGEMENT (10)
- N.R. stole a car. He also was flunking all of his high school classes (except P.E.) A petition was filed, and the court placed N.R. on the Community Detention Program so he could earn the right to have DEJ imposed instead of home on probation. NR was successful and was granted DEJ. One condition was that he attend school every day and bring his grades up to C's and graduate. At a review hearing NR had not attended every class, but made some progress.

DELINQUENCY

- At the next review NR was doing well, but at the one year mark NR flunked 2 classes. The court gave NR one more chance (Summer School) and reviewed the case in October. But NR dropped out of summer school and got a job. The court lifted the DEJ, made NR a ward and terminated jurisdiction. Record sealing was denied. The judge told him to get a high school diploma or a GED and the court may reconsider.
- **In re N.R.** (2017) 15 Cal. App. 5th 590

DELINQUENCY

- CONDITIONS OF PROBATION (1):
- R admitted to 211 and 148. Committed to the ranch and conditions of probation: (1) warrantless search of possessions; (2) not be in a car with a minor unless a responsible adult is also in the car.
- Appeal: **AFFIRMED.**
- R forfeited his right to appeal these issues by not raising them at trial. Moreover, none of the conditions raise facial constitutional concerns.
- **In re R.S.**, (2017) 11 Cal. App. 5th 239
- **SUPREME COURT REVIEW GRANTED**

DELINQUENCY

- CONDITIONS OF PROBATION (2):
- I.V. was made a ward because of vandalism. I.V. was diagnosed as ADHD and ODD and received a psychological evaluation during pendency of the case. No learning disabilities detected. At disposition the court ordered: (1) complete the Reflections Day Treatment program and (2) warrantless search of I.V.'s possessions.

- APPEAL regarding conditions of probation. **AFFIRMED.**

DELINQUENCY

- (1) Argued that court did not take into consideration I.V.'s special education needs when ordering day treatment program. "Here, the court expressly considered I.V.'s educational needs…"
- (2) Argued the search condition was overbroad and vague, pointing out that it could include searches of electronic devices. Not raised at trial, but challenged for constitutionality. Appellate Court finds "property" is overbroad and therefore is a facial challenge. Held: the search condition is not vague.
- **In re I.V. (2017) 11 Cal. App. 5th 249**

DELINQUENCY

- CONDITIONS OF PROBATION (3)
- The minor was placed on probation for intoxication in public with a condition that he submit to warrantless searches of his “electronics including passwords.”
- Appeal as overbroad:
  REVERSED.
- (1) The constitutional language should read:
  “submit all electronic devices under his/her control to a search of any medium of communication reasonably likely to reveal whether he or she is boasting about

DELINQUENCY

- "…his or her drug use or otherwise involved with drugs, with or without a search warrant, at any time of the day or night, and provide the probation or peace officer with any passwords necessary to access the information specified, and further, that the media of communication include text messages, voicemail messages, photographs, e-mail accounts, and social media accounts."
- (2) A condition of probation that the juvenile "be of good behavior and perform well" at school is unconstitutionally broad.

DELINQUENCY

- (3) A condition that a juvenile probationer "be of good citizenship and good conduct" is unconstitutionally vague.
- **In re P.O. (2016) 246 Cal.App.4th 288**

DELINQUENCY

- CONDITIONS OF PROBATION(4):
- A condition of probation in a child molest case that restricts the probationer's use of electronics, requires giving over passwords, and allows the devices to be subject to search is neither invalid nor constitutionally overbroad.
- **In re George F. (2016) 248 Cal.App.4th 734**
- Accord for extortion related to video of sexual activity
- **In re Q.R. (2017) 7 Cal.App.5th 1231**

DELINQUENCY

- CONDITIONS OF PROBATION(5):
- Burglary. Only issues on appeal related to probation conditions.
- (1) A condition of probation not to use, possess, or be under the influence of alcohol or drugs does not need an express scienter requirement.
- (2) A condition of probation not to possess drug paraphernalia needs an express scienter requirement.
- (3) A juvenile probation condition to not consume any poppy seed products or other substances known to adulterate or interfere with chemical testing needs no express scienter requirement because it protects the juvenile from a false positive test.

DELINQUENCY

- (4) A juvenile probation condition to not possess or use any program on any electronic data storage device that can delete data from that device is unconstitutionally vague on its face.
- (5) A juvenile probation condition to obey all rules and regulations of a specified "Electronic Monitoring Program" is unconstitutionally vague, but it can be cured by referring the probationer to obey the rules as posted on the probation department's website, as approved by the court and explained to the probationer by his or her probation officer.
- **In re J.E. (2016) 1 Cal. App. 5th 795**
- **SUPREME COURT REVIEW GRANTED.**

DELINQUENCY

- DUAL STATUS (1)
- J.S. was made a dependent in 2015. Placed in a group home where J.S. vandalized property associated with the group home school. Later J.S. was involved in an altercation and a 602 petition was filed. A dual status assessment was ordered and dual status was recommended and then court ordered.
- APPEAL: **AFFIRMED**

DELINQUENCY

- (1) Dual status order not an abuse of discretion. The dependency system was not meeting all of J.S.'s needs.
- (2) Not an abuse of discretion to refuse to dismiss the delinquency petition.
- (3) Not an abuse of discretion to have J.S. remain in detention awaiting placement. J.S. posed a harm to herself and others.
- **In Re J.S. (2016) 6 Cal.App.5th 414**

DELINQUENCY

- TRANSFER BETWEEN COUNTIES (1):
- In 2013 I.S. was made a ward by Contra Costa Juvenile Court for felony grand theft. In 2014 I.S. was charged with possession of a firearm and after a plea of no contest the case was transferred to San Francisco County. I.S. petitioned the S.F. court to reduce the felony to a misdemeanor per Proposition 47. The juvenile court denied the petition holding that only the Contra Costa juvenile court could act on that request.

DELINQUENCY

- Appeal: **REVERSED!**
- Held: WIC § 750 gives the transferee court the authority to act on a Proposition 47 petition.
- **In re I.S. (2016) 6 Cal.App.5th 517**

DELINQUENCY

- TRANSFER BETWEEN COUNTIES (2):
- Ray and siblings were removed from mother in 2012 and placed with aunt and uncle. In 2014 the aunt and uncle asked that Ray be removed from their home – placed in San Diego group home. Drugs, alcohol, two group homes then a robbery. Recommendation: place in Michigan in special program. Delays. Ray brandished a knife at a group home in Kern County. Petition filed in Kern. 241.1 report filed, sustained and case transferred to Imperial County for disposition.

DELINQUENCY

- Before dependency was dismissed, Ray's Imperial County attorney objected that Ray had not received notice of the §241.1 proceeding. Imperial County juvenile court said it did not have the authority to review what Kern county had done. A motion to address this issue was rejected by Kern County juvenile court.
- APPEAL: **REVERSED and REMANDED**

DELINQUENCY

- (1) When a second juvenile court has jurisdiction over a child who originated in a first county, §241 requires the original county receive notice of the dual status proceedings within 5 calendar days of presentation of the recommendations.
- (2) If a child has cases pending in two counties CRC Rule 5.512 requires that the probation and child welfare departments in both counties conduct joint assessments.
- (3) Notice must be served on the child, parent(s) or guardian, all attorneys of record, CASA volunteer, and any other juvenile court with jurisdiction.

DELINQUENCY

- In this case Kern County failed to notice the Imperial County juvenile court and the attorneys.
- The error was not harmless. Notice should have been provided so Ray could be heard on the issue of the appropriate status.
- Moreover, no ICWA inquiry was made.
- REMAND TO CORRECT THESE ERRORS
- **In re Ray M. (2016) 6 Cal.App.5th 1038**

DELINQUENCY

- REDUCTION OF FELONY: PC 17(b)(3)
- E.G. was adjudged a ward after committing a battery causing serious injury and grand theft. After an appeal the battery charge was declared to be a felony. E.G. petitioned to have the felony battery charge reduced to a misdemeanor. The trial court said it did not have the power to do so under PC 17(b)(3).
  Appeal: **REVERSED**
- P.C. 17(b)(3) is applicable to juveniles
- **In re E.G. (2016) 6 Cal.App.5th 871**

DELINQUENCY

- DETENTION
- A.T. is a high school student with no prior delinquent history. On 10/24/2016 she was riding in car with her brother. The police stopped the car – no registration. No one had a valid driver's license so the brother was arrested. In a backpack in the trunk they discovered a gun. Everyone in the car was arrested.
- A.T. said her brother found the gun. They were going to show it to their father.

DELINQUENCY

- A petition was filed charging A.T. with 3 gun related charges. The court detained her – over the recommendation of the probation department. At a readiness hearing on 11/3/16, the court joined the cases of the two siblings over their objections. The prosecution offered the siblings a "package deal" for misdemeanors for both. A.T. refused. A.T.'s request to be released to her mother in Vallejo was denied, the court stating he was worried about A.T.'s safety in that part of town.
- After much back and forth, the matter was set for contest on November 15th, A.T. remained in custody.

DELINQUENCY

- At a readiness hearing on 11/9/16, the minor changed her plea. After she was released she filed writ of mandate and then a motion to withdraw her admission.
- APPELLATE COURT: **WRIT GRANTED!**
  "The record reveals beyond a doubt that the juvenile court detained A.T. for 15 days in order to pressure her to accept a plea bargain."
- The trial court is directed to consider A.T.'s motion to withdraw her guilty plea.
- **A.T. v Superior Court (2017) 10 Cal.App.5th 314**

DELINQUENCY

- SEARCH AND SEIZURE (1)
- When school officials found a firearm in a school trash can, have detained a student suspect, and the minor student (RC) is outside the school office walking back and forth and then tries to walk away when told to stop and then starts to finger the cell phone in his/her pocket, then resists school officials trying to stop RC from continuing to do that…school officials have reasonable grounds to seize and search a minor student's cell phone without a warrant.
- **In re Raphael C. (2016) 245 Cal.App.4th 1288**

DELINQUENCY

- SEARCH AND SEIZURE (2)
- The police had a rumor of a gun. They approached the minor and smelled marijuana. The minor admitted he had been smoking marijuana. The police searched his backpack and found a gun.
- Motion to suppress. Denied. Appeal. **REVERSED.**
- **In re D.W.(2017) 13 Cal. App. 5th 1249**

DELINQUENCY

- -A warrantless search of a minor's person was not justified under the 4th Amendment, as a search incident to arrest, even though the minor smelled like marijuana and admitted to recently smoking, because at the time of the search, possession of less than 28.5 grams of marijuana was an infraction punishable by a fine of not more than $100, and ingestion or possession of marijuana was a minor, non-jailable offense; it would have been mere conjecture to conclude that the minor possessed enough marijuana to constitute a jailable offense.

DELINQUENCY

- This decision relies on People v Macabeo. In *Macabeo*, the court considered whether search of the defendant's cell phone incident to his arrest was justified where the defendant was initially stopped for a Vehicle Code infraction of rolling through a stop sign while riding a bicycle. Officers found pictures of underage girls in Macabeo's phone. The parties stipulated that this was a violation of Penal Code section 311.11(a).After reviewing the United States Supreme Court's Fourth Amendment cases on the arrest exception, the *Macabeo* court made clear that a lawful arrest supported by probable cause provides authority for a search, but that "[t]here is no exception for a search incident to citation." *Macabeo* 1 Cal. 5th at 1206.

DELINQUENCY

- MIRANDA –
- 13 year-old T.F. (now 15) prosecuted for committing a lewd act. Defense counsel argued that inculpatory statements be excluded. Statements made at school and later at police department. The court suppressed the former, but admitted the latter.
- 60 minute interrogation at school with no Miranda warning. All denials from T.F. who was sobbing and very emotional. Handcuffed and taken to police station.

DELINQUENCY

- At police station 45 minutes of interrogation after rapid recitation of Miranda rights. Finally, an admission.
- T.F. was a special-ed student with an "intellectual disability." No support that appellant understood his Miranda rights and voluntarily, knowingly and intelligently waived them. Never interrogated before.
- Held: Confession not voluntary.
- Police interrogation was "dominating, unyielding, and intimidating"

DELINQUENCY

- Error not harmless.
- Without T.F.'s admission, there would have been insufficient evidence to establish the required intent and to overcome the P.C. section 26 presumption.
- **Judgment Reversed**

- **In re T.F. (2017) A144085**

DELINQUENCY

- PROPOSITION 57 (1)
- A prosecution against a juvenile was direct filed in adult criminal court before passage of Prop. 57 and was still pending in adult court at the time Prop. 57 was passed. HELD: the juvenile defendant is entitled to move for a transfer hearing in juvenile court pursuant to newly enacted WIC § 707.
- **People v Superior Court (Lara) (2017) 7 Cal.App.5th 778 HEARING GRANTED – CANNOT CITE.**

DELINQUENCY

- PROPOSITION 57 (2)
- Proposition 57's repeal of direct filing of a criminal case against a juvenile in adult court is not retroactive to cases pending on appeal at the time of its passage. However, if the court of appeals reverses any part of the judgment. In that case the defendant will be entitled to a fitness hearing.
- **People v Cervantes (2017) 9 Cal.App.5th 569**
- **HEARING GRANTED BY THE SUPREME COURT**

DELINQUENCY

- VIOLATION OF PROBATION (1):
- GT was committed to a correctional facility for 12 months with 6 months suspended. The court further ordered that the juvenile could be returned to the facility for 30 days at any time due to a violation of probation or program rules as determined by the probation officer.
- This condition is illegal as the youth must have notice of the violation and opportunity to be heard.
- **In re Gabriel T. (2016) 3 Cal.App.5th 952**

DELINQUENCY

- RESTITUTION (1):
- Even if a juvenile court has not adjudged a minor a ward of the court, it can convert an unfulfilled restitution order to a civil judgment when it terminates a minor's deferred entry of judgment probation and dismisses the wardship petition.
- **In re J.G. (2017) 7 Cal.App.5th 955 – SUPREME COURT HEARING GRANTED**

DELINQUENCY

- RESTITUTION (2):
- In a PC § 594 graffiti case, an officer testified that according to a city graffiti cost list (prepared by others) it is $400 for each incident of removing graffiti and would be $1,200 to remove the three "tags" in the instant case. No photographs/no labor cost data.
- HELD: This is insufficient by itself to establish that the damage was over $400 so as to establish that the offense was a felony.
- **In re Kyle T. (2017) 9 Cal.App.5th 707**

DELINQUENCY

- COMMITMENT TO JUVENILE HALL
- The minor was committed to a period in juvenile hall. There were alternate placements in the county (camp, juvenile home, ranch/forestry camp). The minor appealed.
- **Affirmed** – This is not in conflict with WIC § 730(a).
- "If there is no county juvenile home, ranch, camp, or forestry camp within the county, the court may commit the minor to the county juvenile hall."

DELINQUENCY

- This only means commitment is possible when the other placements are not available.
- **In re Calvin S. (2016) 5 Cal.App.5th 522**
- This case is in conflict with **In re Debra A. (1975) 48 Cal.App.3d 327.**

DELINQUENCY

- PC 647(b)
- As of 1/1/17 PC 647(b) is amended to read that it does "not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate" this section.

DELINQUENCY

- DISPOSITION
- A minor charged with numerous crimes. The prosecutor filed directly in criminal court. As a result of convictions on all counts, the judge sentenced the minor to 66 years to life.
- APPEAL: **SENTENCE MODIFIED TO 50 YEARS TO LIFE** as the P.C. § 667.61 sentencing renders the offender ineligible for a P.C. § 3051 youthful offender parole hearing after 25 years.
- **People v Cervantes (2017) 9 Cal. App. 5th 569**
- **HEARING GRANTED BY THE SUPREME COURT**

DEPENDENCY

- JURISDICTION (1) – **In re R.T. (2017) 3 Cal. 5th 622**
- WIC § 300(b)(1) authorizes dependency if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, *as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child…*" (italics added).

Does this section require a finding a parent was neglectful or in some way to blame for the "failure or inability" to adequately supervise or protect the child?

DEPENDENCY

- The facts of this case are very similar to ***In re Precious D***. (2010) 189 Cal.App.4th 1251. Uncontrollable child, a parent trying everything (and failing). ***Precious*** held that jurisdiction can only be authorized because of parental unfitness or neglectful conduct.
- SUPREME COURT disapproves of ***Precious*** and affirms the appellate court in this case – jurisdiction can be authorized without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child.

DEPENDENCY

- Parental culpability is not necessary under 300(b)(1).
- The court agrees that mother did everything possible to correct RT's behavior. But that does not mean that the court cannot take jurisdiction of RT under the dependency law. Whether it was RT's behavior or mother's inability to supervise her does not matter.
- What about WIC §601? Is it now a nullity? No – all three sections (300, 601, & 602) overlap. § 241 demonstrates this overlap – what matters is what jurisdiction will serve "the best interests of the minor." **In Re R.T. (2017) 3 Cal. 5th 622**

DEPENDENCY

- JURISDICTION (2) – Minor moved into father's home when she was 11. Could not settle in. Conflicts with stepmother and multiple hospitalizations for threats to harm herself. Petition filed and removed from father's care pursuant to WIC § 300(b)(1).
- Appeal: Reversed. The child was not abused or at risk of abuse and father was not unfit to parent or neglectful with respect to caring for the child. The father worked to help his daughter, but she often refused his help.

DEPENDENCY

- The minor's dangerous circumstances were not the result of the father's parental unfitness or neglect.
- The analysis in this case is similar to ***In re Precious D.*** **(2010) 189 Cal.App.4th 1251** which held that the minor there was not abused at risk of abuse and those are the children that the dependency system intended to protect. Also similar to
- ***In re Priscilla A.*** **(2017) 219 Cal. Rptr. 3d 764 - SUPREME COURT ACCEPTED FOR REVIEW PENDING THE DECISION IN In re R.T.**

DEPENDENCY

- JURISDICTION (3)
- In a juvenile dependency case, a finding that children were at risk per WIC § 300(b) was supported by evidence that the father stored a loaded gun in a location accessible to the children and possessed three pounds of methamphetamine found in his car and that his conduct was likely to recur and did not represent a momentary lapse in judgment.

DEPENDENCY

- Removing the children only from the father and placing them with the mother was proper under WIC § 361(c)(1)(A) because there was substantial evidence that mother had been unaware of father's negligent conduct and once made aware of it, was committed to doing what was necessary to protect the children from such conduct in the future.
- ***In re Yolanda L.*** **(2017) 7 Cal.App.5th 987**

DEPENDENCY

- JURISDICTION (4)
- Child removed from parents. Appeal: Affirmed.
- The evidence was sufficient to support juvenile dependency jurisdiction under WIC § 300(b) because it showed that the father's mental illness was not being properly managed, resulting in lethargy, disorientation and paranoia, thereby placing the minor at risk. The mother's conduct also supported jurisdiction because she was using alcohol while taking methadone, even though she knew the combination could affect her judgment, and she displayed poor judgment, placing the minor at risk, by becoming extremely intoxicated while he was in her care and storing methadone in a place accessible to him;

DEPENDENCY

- That evidence, together with the mother's denial of a risk from using alcohol with methadone, was also sufficient to support a removal finding that the minor would be at substantial risk of detriment if returned to the mother's care.
  ***In re A.F.*, (2016) 3 Cal.App.5th 283**

DEPENDENCY

- JURISDICTION (5)
- Mother was arrested for DUI with children in the car, unrestrained. Petition sustained. Disposition – 6 months of services without dependency.
- Appeal. **AFFIRMED.**
- Mother and father argued this was a one-time incident with no indication of substantial risk of harm.
- Appellate court noted parents failed to take responsibility for the incident and had not engaged in any services at the time of the jurisdictional hearing.
- ***In Re M.R.*** **(2017)** 8 Cal. App. 5th 101

DEPENDENCY

- JURISDICTION (6)
- The 300(b) petition stated that mother had a mental illness that renders the child at risk and that the mother was not cooperating with the services provided by the agency. No specific risk was contained in the petition.
- In all visits to the home the child was well cared for by mother and relatives.
- Mother appeals the jurisdictional finding.

DEPENDENCY

- **REVERSED!** The trial court is ordered to dismiss the petition.
- The evidence shows despite mental health concerns raised by the department, the child was safe and well cared for.
- **In re Joaquin C. (2017) 15 Cal.App.5th 537**

DEPENDENCY

- Jurisdiction (7)
- Petition filed on 3 month-old infant alleging mother failed to protect minor. Rifle and ammunition found with access for the child. Father's rifle. Father was sent to prison for 36 months in criminal court. Petition sustained as court found that mother would permit father to return to the home.

DEPENDENCY

- REVERSED No indication of serious harm or substantial risk of serious harm. The gun was unloaded and was inside a backpack wedged between the bed and the wall difficult to access and no evidence that a 3 month-old could access the gun where it was located. **In re C.V.** (2017) 15 Cal. App. 5th 566.

DEPENDENCY

- GUARDIANSHIP
- The parents established a guardianship through probate court with friends. Dependency proceedings were initiated when friends engaged in domestic violence. Prior to disposition in that case, mother went to probate court and got an order terminating the guardianship. At disposition, mother presented the order and asked for counsel. The court said the order was invalid and denied her request stating mother did not have standing to appear in the case.

DEPENDENCY

- **REVERSED!**
- CRC, Rule 5.530 states parents and legal guardians are entitled to attend dependency proceedings and case law establishes that indigent parents and guardians have the right to appointed counsel where out-of-home placement is contemplated. The parent in this case qualifies as a non-custodial parent.
- Dispositional order reversed and case remanded for new disposition hearing.
- **In re Kayla W. (2017) B277567**

DEPENDENCY

- SECTION 388
- The mother lost custody of her child. She returned to court and filed a WIC §388 petition asking for counsel, family reunification services and unmonitored visits.
- Services were granted, but the court did not appoint counsel. After several hearings the court terminated services per an agency motion.
- APPEAL: **REVERSED**

DEPENDENCY

- Per WIC §317(b) the court is required to appoint counsel for a parent of a child who is in out-of-home placement if the parent is indigent.
- Failure to appoint counsel in this case was a denial of due process.
- Remanded for action consistent with this opinion.

- **In re J.P.** (2017) 15 Cal.App.5th 789

DEPENDENCY

- UCCJEA(1)
- The juvenile court took emergency jurisdiction over two children who had been raised in Mexico for 9 years. The court attempted to contact the Mexican courts, but received no response. The court concluded it had jurisdiction and terminated parental rights. On appeal the mother claimed the court did not know if the Mexican authorities actually received the messages from the California court.

DEPENDENCY

- **AFFIRMED** – Mother did not raise these issues at trial. The trial court presumably sent proper notice to the Mexican courts which is tantamount to a declination to exercise jurisdiction. Moreover, mother had significant ties to California.
- **In re A.C. (2017) 13 Cal. App. 5th 661**

DEPENDENCY

UCCJEA (2)

A baby was born to parents who lived in Mexico. The juvenile court took emergency jurisdiction and later terminated parental rights. Held: The juvenile court erred when it determined that California was a child's home state under Fam. Code § 3421(a). The juvenile court did not have subject matter jurisdiction under the significant connection provision of the UCCJEA; A temporary hospital stay in a state incident to birth, by itself, is insufficient to confer home state jurisdiction under the UCCJEA;

DEPENDENCY

A social services agency does not become "a person acting as a parent" for purposes of home state jurisdiction by detaining a child in protective custody in an emergency. However, the juvenile court's error did not require reversal of its orders terminating parental rights; the juvenile court had emergency jurisdiction under Fam. Code § 3424 because the child was present in California, and it was necessary in an emergency to protect her from mistreatment or abuse. The father could not be located as he was in prison.

Affirmed on appeal. **In re R.L. (2016) 4 Cal. App. 5th 125**

DEPENDENCY

UCCJEA (3)

Mother and father were married in Arizona and all 3 children were born there. The two oldest children were sent to the grandparents, but the youngest, Aiden, remained with them. They moved to California. Three months later Aiden was made a dependent in California. The parents asked that Aiden be placed with grandparents in Arizona. Request denied and Aiden was placed with maternal aunt in California. TPR and aunt declared prospective adoptive parent.

DEPENDENCY

On appeal: **REVERSED**. Under the UCCJEA Arizona is Aiden's home state and that state was never notified of the proceedings. California clearly not the home state. Refer to Family Code Section 3421 and then the factors listed in Family Code section 3427(b).

TPR vacated and case remanded to the juvenile court to hold an evidentiary hearing to determine whether California had subject matter jurisdiction.

In re Aiden L., (2017) B277445

DEPENDENCY

VISITATION (1)

Although a father was not entitled to reunification services because his whereabouts were unknown under WIC § 361.5(b)(1), and because his whereabouts did not become known for more than six months after the child's out-of-home placement under § 361.5(d), the juvenile court's broad discretion under WIC § 362(a), included the authority to order visitation without ordering reunification services, upon finding that visitation would serve and protect the child's interests;

DEPENDENCY

The juvenile court erred when it ordered the agency to facilitate monitored visits between the father and the child in a therapeutic setting at the child's discretion, which improperly delegated authority to the child to decide whether visits with the father would occur, contrary to the court's obligation to supervise and control visitation. Affirmed in part & reversed in part.

In re Korbin Z. (2016) 3 Cal.App.5th 511

DEPENDENCY

VISITATION (2)

Visitation suspended between father and son. On appeal: **AFFIRMED!**

If visitation with a parent is not consistent with the well-being of the child, the juvenile dependency court has the discretion under WIC § 362.1 to deny such contact; "well-being" includes the minor's emotional and physical health;

DEPENDENCY

Visitation was properly denied following a minor's removal from the father's custody because there was evidence that the minor had experienced prolonged and violent abuse from the father, was extremely fearful of the father, to the point that his body shook and his voice trembled when talking about his fear of his father finding out he spoke with authorities about the abuse, and pleaded with the social worker to not make him see the father; in addition, the father had not yet addressed his serious anger management issues and did not appear to recognize the harm his behavior was causing the minor. **In re T.M. (2016) 4 Cal.App.5th 1214.**

DEPENDENCY

VISITATION (3)

Child removed because of physical abuse. The court denied visits. HELD: **AFFIRMED!** The juvenile court could properly deny a mother visitation as of the detention hearing because it would be detrimental to her child, as it was unclear whether it was the mother or the father who had intentionally burned and bitten the child, and the mother's behavior was completely out of control and represented a continued threat both to herself and to the child, regardless of the setting.

DEPENDENCY

The court also held that the continued suspension of visitation at the dispositional hearing under WIC § 362.1 was crafted consistent with the child's physical and emotional well-being because there was absolutely no indication the mother had stabilized in any way, and the social worker felt she continued to be a safety risk.

In Re Matthew C. (2017) 9 Cal. App. 5th 1090

DEPENDENCY

- PERMANENT PLAN
- D.R. had lived with her maternal grandmother since birth. In 10/13 a dependency petition was filed. Father was located and wanted reunification, but those efforts failed. At the .26 hearing the court ordered guardianship stating grandmother did not want to adopt.
- **REVERSED** - the court must order adoption since no exception existed. The record did not support the conclusion that grandmother did not want to adopt.

DEPENDENCY

- REASONABLE EFFORTS (1)
- At an 18 month review, the court continued reunification services for 6 months per WIC § 352. On appeal: **Affirmed.**
- HELD: The reunification services provided were not tailored to the family's particular needs; specifically, an ordered psychological evaluation of the minor, who had been contemplating suicide and engaging in dangerous behaviors, had not been conducted.

DEPENDENCY

- Further, the minor was offered only general individual and family therapy, even though molestation of a younger sister was a core issue and the primary barrier to reunification; the court did not exceed its authority by directing the agency to provide sexual offender treatment.
- **In re J.E., (2016) 3 Cal.App.5th 557**

DEPENDENCY

- REASONABLE EFFORTS (2)
- The children were removed because mother physically abused them. At an 18-month review hearing under WIC § 366.26 the juvenile dependency court properly set a WIC § 366.26 hearing and declined to order additional reunification services because it had found that additional services were not in the children's best interests, as they feared their mother and opposed visitation; given that finding, the court was obligated to take the actions that it took.

DEPENDENCY

- The mother argued the agency had not provided reasonable efforts for the reunification plan. But the court found that more services could be ordered *only* if it determines by clear and convincing evidence that those actions serve the child's best interests. § 366.22(b). That was not the case here. Thus the juvenile court's authority to set a § 366.26 hearing was not conditioned on a reasonable services finding.
- **N.M. v. Superior Court (2016) 5 Cal.App.5th 796**

DEPENDENCY

- REASONABLE EFFORTS (3)
- Dependency. Reunification services ordered for out-of-state father. At 6 month review, father appealed the court's finding that that the agency had provided reasonable services.
- **REVERSED!** The Court of Appeals held that the initial case plan failed to identify any service providers, there was a lengthy delay in providing a revised case plan with information about services, the belated case plan failed to address the father's need for substance abuse treatment or whether his housing was appropriate, and the services included in the case plan were insufficiently described.

DEPENDENCY

- Moreover, the father was afforded only one telephone visit despite his requests for more visitation and the case plan's provision for weekly calls.

- Although the father's location out of state made the department's provision of services more difficult and the record did not show that the father had actively sought services, the father was nonetheless entitled to reasonable services.
- **In Re T.W. (2017) 9 Cal. App. 5th 339**

DEPENDENCY

- REASONABLE EFFORTS (4)
- Father came from Myanmar (Burma) and could not speak English. His serious alcohol problem led to the removal of his children. At disposition the court ordered services, but there were no Burmese speaking counselors.
  REVERSED on appeal. The court ruled that the juvenile court must be creative and provide access to services. Remanded.
- **In re J.P. (2017)14 Cal. App. 5th 616**

DEPENDENCY

- MENTAL HEALTH ISSUES
- Mother had serious mental health problems. Her doctor said the 2 children would be safe so long as the mother stayed on her meds and the children lived with the grandmother. But mother went off her meds regularly, drove the children and threatened to remove them from grandmother's care.
- Petition alleged that her behavior "such mental and emotional problem on the part of the mother endangers the children's physical health and safety and places the children at risk of harm."

DEPENDENCY

- The petition was sustained as was a 387 and the children were placed with father. Mother appealed. Affirmed.
- Although *Kimberly R. v Superior Court* held "harm to a child cannot be presumed from the mere fact the parent has a mental illness," the agency's inability to precisely predict how mother's illness will harm Travis and Samantha does not defeat jurisdiction.
- Mother's illness and her failure to consistently treat it had already put Travis and Samantha into situations where they were at a substantial risk of serious physical harm.
- **In re Travis C. (2017) 14 Cal. App. 5th 1219**

DEPENDENCY

- DOMESTIC VIOLENCE:
- At a special hearing the juvenile court issued a restraining order prohibiting the step-father from having any contact with the child. The order directed the Agency to remove the child if there is "any evidence that the minor has been exposed to the step-father" or if the mother violates the order. The child's mother appeals.

DEPENDENCY

- **REVERSED**
- This is not just a warning. This is an order requiring removal without any further judicial finding.
- There are specific statutes detailing the duties of a social worker when removal is being considered.
- WIC §§ 305(a), 306(a)(2), 309, 361(c)(1)
- Violations of the restraining order can be punished.
- Automatic removal of a child is not an appropriate punishment.
- **In re C.M. (2017)15 Cal.App.5th 376**

DEPENDENCY

- The proper procedure is to determine "whether there is clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being in parental custody and there are no reasonable means by which the minor's physical health can be protected without removing the child from his home.
- Here there was no notice and no factual findings required to remove a dependent child from a parent.

DEPENDENCY

- RELATIVE PLACEMENT (1)
- Two injuries to an infant and parental domestic violence led to a petition and removal. At the 6 month review paternal grandmother asked for placement, but that did not happen. At the 366.26 hearing father raised the relative placement issue again. Parental rights were terminated. Appeal: **Affirmed.**
- As to the question of relative placement, father forfeited that argument by not properly raising it in the trial court.

DEPENDENCY

- If father believed the social worker had not complied with statutory requirements in pursuing paternal grandmother as a relative placement, he should have timely raised the issue in the juvenile court. He did not do so. He did not present evidence on the issue, request factual findings, or request any rulings regarding whether the paternal grandmother was properly investigated for placement or entitled, at any point, to relative placement preference. The juvenile court does not have a *sua sponte* duty to hold a relative placement hearing.
- **In re A.K. (2017) 12 Cal. App. 5th 492**

DEPENDENCY

- RELATIVE PLACEMENT (2)
- In a juvenile dependency case, the trial court denied the paternal grandparents' WIC § 388 petition to have the child placed with them, finding that the child had bonded with the non-relative extended family member with whom she had been placed. The trial court terminated the father's parental rights.
- The grandparents appealed. **REVERSED.**

DEPENDENCY

- The court held that when a relative requests placement of a child prior to a dispositional hearing, and the agency does not timely complete a relative home assessment as required by law, the relative requesting placement is entitled to a hearing under §361.3 without having to file a WIC § 388 petition.

DEPENDENCY

- In the current case, the grandparents' petition for placement should have been considered under § 361.3, even though reunification services had been terminated, and the grandparents should not have been burdened with showing that a new placement was necessary and in the child's best interest, because the agency did not complete a relative home assessment as required by law.
- **In re Isabella G., (2016) 246 Cal.App.4th 708**

DEPENDENCY

- NON-MINOR DEPENDENTS
- D, a non-minor dependent, argued she was eligible for extended foster care pursuant to WIC § 11403(b), while the county social services agency recommended that the non-minor dependent's dependency be dismissed. The agency sought to have the non-minor dependent's psychotherapist testify as to confidential communications in response to questions relating to whether the non-minor dependent had a mental condition.

DEPENDENCY

- The trial court overruled the dependent's objection to the psychotherapist's testimony, ruling the dependent had waived the psychotherapist-patient privilege by putting her mental state at issue.
- PETITION for Writ of Mandate: **GRANTED!**

DEPENDENCY

- The non-minor dependent did not tender the issue of her mental condition and therefore did not waive the psychotherapist-patient privilege under Evidence Code § 1014, as to her confidential communications with her psychotherapist, including the psychotherapist's diagnosis. Nor did she waive the privilege by seeking to admit her therapist's letter.
- **N.S. v Superior Court (2016) 7 Cal.App.5th 713**

DEPENDENCY

366.26 HEARINGS (1)

At a 366.26 hearing the juvenile court order guardianship as the permanent plan. Held: The court erred in determining that an exception to adoption applied under WIC § 366.26(c)(1)(B)(iv) in a dependency proceeding because no evidence supported the conclusion that the child's grandmother was unwilling to adopt the child, in light of an approved home study and the grandmother's repeated statements affirming her desire to adopt the child.

DEPENDENCY

Because adoption was the preferred permanent plan absent an exception, the juvenile court was required to order adoption as the child's permanent plan.

In re D.R. (2016) 6 Cal. App. 5th 885

DEPENDENCY

366.26 HEARINGS (2)

At a 366.26 hearing the father requested a hearing to prove that the beneficial parental relationship exception applies. The trial court denied this request for a hearing and terminated parental rights.

On appeal: **REVERSED**!

DEPENDENCY

This issue could not be heard without evidence. Without such evidence, the court could not conclude that the father was incapable of proving the beneficial parent-child relationship exception to termination. The offer of proof indicated that the father and the daughter would expound on the details of the relationship that had been positively (though concisely) documented by the county department of children and family services.

In re Grace P. (2017) 8 Cal. App. 5th 605

DEPENDENCY

- AMENDING TO PROOF
- After holding an adjudication hearing under WIC § 300, the juvenile court entered an order dismissing the juvenile dependency action and releasing the dependent child to the custody of his parents. Both the department and the child challenged the order on appeal.
- **REVERSED!**
  The issue is whether the proposed amendment would mislead a party to his or her prejudice. This would not be the case in these facts.

DEPENDENCY

- The juvenile court failed to acknowledge that the record was replete with facts well known to the parents, and that recognizing this circumstance by granting leave to amend to conform to proof would not have misled the parents to their prejudice. Instead, granting the motion would have given proper weight to the strong policy of favoring such amendments when the adverse party would not be prejudiced. Moreover, the record contained additional facts which supported the court's conclusion that leave to amend was required.
- **In re Marcus C. (2017) 8 Cal. App. 5th 1036**

DEPENDENCY

- FAMILY COURT ORDERS
- At a WIC § 364 hearing the mother and child asked to present evidence. Denied. Appeal. **REVERSED!** Held: A dependent minor's mother had a right to present evidence at the WIC § 364 hearing to challenge dismissal of the dependency action and to present any evidence relevant to the juvenile court's exit orders, and it was error for the juvenile court to effectively punt and delegate to family court the issues concerning the minor's custody and his need for additional services, services he might be entitled to even after the juvenile court terminated its dependency jurisdiction.

DEPENDENCY

- Because the juvenile court's denial of an evidentiary hearing on the issues the mother sought to raise at the § 364 hearing deprived her of her due process right to present evidence, the error was not harmless.

- **In Re ARMANDO L., (2016) 1 Cal. App. 5th 606,**

CONCLUSION

- If you have follow-up questions or need an extra copy of these slides, contact me by email.

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