In the Supreme Court of the State of California

In re GREG F., a Person Coming Under the Juvenile Court,

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

GREG F.,

Defendant and Appellant.

S191868

First Appellate District No. A127161
Sonoma County Superior Court No. 35283-J
Honorable Raima H. Ballinger, Judge

RESPONDENT'S OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

Whether Welfare and Institutions Code section 733, which prohibits a commitment of a ward to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ), unless "the most recent offense alleged in any petition and admitted or found true by the court" is an offense specified by subdivision (c), impliedly repeals the juvenile court's authority under section 782 of the code to dismiss the latest petition, and to proceed instead on a section 777 probation violation notice where a previously declared ward is a serious or violent recidivist and would benefit from a DJJ commitment?

INTRODUCTION

Appellant admitted a gang-related felony that came within Welfare and Institutions Code section 707, subdivision (b) (707(b)).[1] Rejecting the probation officer's recommendation that appellant be committed to the DJJ, the juvenile court ordered out-of-home placement. Appellant failed at the placement and while detained in juvenile hall pending the identification of a suitable placement, committed a gang-related battery that the prosecutor charged in a subsequent petition (§ 602). At his detention hearing on the petition the next morning, appellant admitted the battery and gang enhancement, which were not subject to a DJJ commitment pursuant to section 733, subdivision (c) (hereafter 733(c)), and the prosecutor dismissed a second count of knowing participation in a criminal street gang, which was also not a DJJ-eligible offense, with the disposition to be decided by the court.[2] Before disposition, the probation officer filed a

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[1] Further unspecified statutory references are to the Welfare and Institutions Code. Rule references are to the California Rules of Court.

[2] Section 733(c) provides:

(continued...)

section 777 notice based on the battery, the court granted the prosecutor's motion to dismiss the subsequent petition pursuant to section 782,[3] and appellant admitted the section 777 notice. At disposition, the court committed appellant to DJJ, finding no other placement appropriate.

The Court of Appeal for the First Appellate District, Division Five, reversed the judgment, vacated the DJJ commitment, and remanded for disposition on the non-DJJ-eligible battery. As a matter of statutory interpretation, it held that appellant's admission of the non-DJJ-eligible

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(...continued)

> A ward of the juvenile court who meets any condition described below shall *not* be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities:
>
> [¶] . . . ¶ (c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and *the most recent offense alleged in any petition and admitted or found true* by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code. This subdivision shall be effective on and after September 1, 2007.

(Italics added.).

[3] Section 782 is the "general dismissal statute" in wardship proceedings. (*V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, 1464 (*V.C.*); *Derek L. v. Superior Court* (1982) 137 Cal.App.3d 228, 232 (*Derek L.*).) It provides:

> A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that *the interests of justice and the welfare of the minor* require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation. The court shall have jurisdiction to order dismissal or setting aside findings and dismissal regardless of whether the minor is, at the time of such order, a ward . . . of the court.

(Italics and underlining added.)

offense barred both the section 782 dismissal of the petition and the DJJ commitment issued on the previously-sustained, DJJ-eligible offense.

In this brief, we argue that section 733(c) does not bar a juvenile court's exercise of discretion under section 782 to dismiss a petition, prior to disposition, for an offense appropriately treated as a section 777 probation violation, where the previous placement of an otherwise DJJ-eligible ward has failed, and a DJJ commitment meets the goals of the juvenile court system.

STATEMENT

A. Appellant's Conduct on September 16, 2008

On September 16, 2008, as Joseph C., age 11, approached on his bicycle, a car driven by appellant's cousin, a Norteño affiliate, stopped at a Santa Rosa intersection in Sureño gang territory.[4] (1CT 36-37, 39, 42; 2CT 193-194.)[5] Appellant, age 15, removed a two-to-three-foot-long baseball bat from underneath the car seat and got out with two other Norteño gang members. (1CT 35-37.) Appellant had previously bullied Joseph and taken his bicycle. (1CT 36, 40.) Appellant and his companions yelled gang slogans, displayed gang signs, and threw rocks at Joseph. (1CT 36.) Appellant ran toward Joseph and struck him in the head with the bat. (1CT 36.) Joseph fell off his bicycle, which appellant tried but failed to take, before he and his companions fled. (1CT 36, 39-40.) Joseph later was airlifted to a hospital and underwent surgery for an epidural hematoma.

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[4] Since appellant admitted the petitions and the section 777 notice, the statement of facts is taken from the probation officer's dispositional studies.

[5] The first volume of the clerk's transcript is cited as "1CT," and the second volume as "2CT." "ART" (augmented reporter's transcript) citations are for hearings on September 23, October 7 and 29, November 18, December 5, 15, 16 and 22, 2008, June 11, August 26, and September 2, 2009.

(1CT 39.) As a result of the attack, Joseph takes anticonvulsive medication and has suffered possibly permanent neurological damage. (1CT 39-40, 52.)

A September 18, 2008, subsequent petition (§ 602) alleged that appellant committed assault with a deadly weapon and by means of force likely to produce great bodily injury on Joseph C. (Pen. Code, § 245, subd. (a)(1); see § 707, subd. (b)(14). (1CT 1-3.) The petition alleged that appellant personally inflicted great bodily injury on Joseph and committed the assault for the benefit of a criminal street gang ("gang") (Pen. Code, §§ 186.22, subd. (b)(1)(C), 12022.7, subd. (a), 667.5, subd. (c)(8); see § 707, subd. (b)(21)). (1CT 3.) Appellant admitted the petition on September 23, 2008. (1CT 8-12; ART 3-5.) The court declared wardship on December 22, 2008. Rejecting the probation officer's DJJ recommendation (1CT 51-52), it ordered out-of-home placement (1CT 32-34; ART 41-48). That placement later was terminated due to appellant's willful failure to participate in the treatment program. (1CT 69-70; see 1CT 75-78.) On June 11, 2009, appellant was detained pending identification of a suitable placement. (1CT 66-68; ART 68; see 1CT 74-34.)

B. Appellant's Conduct on August 16, 2009

On August 16, 2009, appellant, age 16, and two other Norteños jumped up from their seats and attacked three Sureños during the evening meal in juvenile hall. (2CT 190-192, 226.) Juvenile hall staff unsuccessfully tried to break it up. (2CT 190-191.) Responding security staff eventually quelled the melee. (2CT 192.)

On August 18, 2009, the district attorney filed a second subsequent petition alleging appellant committed battery for the benefit of a gang (Pen. Code, §§ 186.22, subd. (d), 242; count one) and knowingly participated in a gang (Pen. Code, § 186.22, subd. (a); count two). (1CT 104-106.) At the detention hearing the next morning, appellant admitted the battery, which is

not a DJJ-eligible offense, and the prosecutor dismissed the second count, which is also not a DJJ-eligible offense. The disposition was open to the court. (1CT 111-112, 117-119; RT [Aug. 19 & Oct. 23, 2009] 3-5 (Dism. RT).) Later that day, the prosecutor, with the probation officer's concurrence, sought to calendar a "motion to withdraw" appellant's admission. (1CT 119.) On August 24, the probation officer filed a section 777 probation violation notice based on the August 16 offenses. (1CT 119-122.) At an August 26, 2009, hearing, the prosecutor stated: "I have to take the blame for this. I made an error last week." (ART 72.) The prosecutor sought dismissal of the subsequent petition "as there aren't any placements that are willing to accept [appellant] and we don't have anywhere to put him." (ART 73.) The court characterized the prosecutor's request as one to strike the 2009 petition under *In re J.L.* (2008) 168 Cal.App.4th 43, 47, fn. 1 (*J.L.*) and gave leave for the prosecutor to file a written motion. (ART 72-75.)

On August 28, the prosecutor filed a motion seeking to set aside appellant's admission to the 2009 petition, to dismiss that petition, and to commence proceedings on the section 777 notice of probation violation. (1CT 131-134; see also 1CT 140-145.) On October 23, 2009, the court granted the motion to dismiss the 2009 petition in the interests of justice and appellant's welfare. (1CT 154; Dism.RT 14.) At the next hearing on October 27, appellant admitted the section 777 probation violation. (2CT 173-174, 178-180; RT [Oct. 27, 2009] 5-6.) On February 3, 2010, the court committed appellant to DJJ and set his maximum DJJ confinement time (§ 731, subd. (c)) at 17 years. (2CT 186-188; RT [Feb. 3, 2010] 19-24 ("2RT").

Appellant appealed. (2CT 255-256; see 1CT 171-172.) On February 23, 2011, the Court of Appeal vacated the DJJ commitment and remanded for disposition on the August 18, 2009, non-DJJ eligible petition. It

concluded that "the juvenile court lacked authority under section 782 to dismiss the 2009 petition for the purpose of reaching back to the 2008 petition containing a DJJ-eligible offense in order to support appellant's DJJ commitment." (Typed opn., p. 9.)

This Court granted respondent's petition for review.

SUMMARY OF ARGUMENT

The juvenile court had authority to dismiss the 2009 subsequent petition under section 782 (1 Stats. 1971, ch. 607 (Sen. Bill No. 461 (1971 Sess.), ch. 607, § 1, p. 1211) and to proceed by the probation violation notice under section 777.

In 2007, the Legislature amended section 733(c) (Stats. 2007, ch. 175 (Sen. Bill 81 (2007-2008 Sess.)), § 22) to limit DJJ commitments to minors whose most recent sustained offense is serious or violent. *V.C., supra*, 173 Cal.App.4th 1455, found that the Legislature did not intend section 782 to circumvent section 733(c). The Court of Appeal below relied upon *V.C.* to conclude that section 733(c) limits DJJ commitments to minors who are "*currently* serious or violent offenders" as measured by the most recent offense alleged and admitted or found true by the court, and that "to reach back to an earlier petition adjudicating a violent or serious offense undermines section 733(c)'s prohibition . . . ." (Typed opn., p. 8.)

That is incorrect. The suitable disposition of a minor ward, particularly one who has committed a serious or violent felony, requires consideration of both the protection of the community, as well as adequate provision for the minor's welfare. These goals were reaffirmed by the voters in enacting the Gang Violence and Juvenile Crime Prevention Act of 1998. (Prop. 21, 1 Stats. 2000, § 1, p. A-263.) Section 782's objectives include the interests of justice and the welfare of the minor. The juvenile court suitably implemented those goals and objectives by modifying the

treatment regime of a recidivist ward with a serious gang-related felony whose placement had failed.

To meet its responsibility under the Juvenile Court law, the court necessarily had to dismiss the non-DJJ eligible offense, in order to impose an appropriate disposition for the most recent sustained offense that authorized a DJJ commitment. That dismissal did not violate section 733(c). Construing section 733(c) harmoniously with section 782 gives effect to each statute and ensures the accountability, public safety, and rehabilitative goals of the Juvenile Court law. This construction of section 733(c) also avoids absurd results, including the removal of judicial authority to dismiss a non-DJJ-eligible offense admitted by a recidivist ward, even where the current petition also contains an admitted or sustained DJJ-eligible offense, merely because the latter offense is more remote in time than the former offense.

Neither section 733(c)'s language nor its legislative history implies an intent to abrogate judicial power to dismiss a petition when necessitated by the juvenile court's obligation to rehabilitate the ward and protect the community. Nor does analogy to the power to dismiss a criminal case under Penal Code section 1385 support reading that intent into section 733(c). Section 1385 nowhere incorporates the special concerns of the Juvenile Court law stated in sections 202 and 782. The juvenile court does, and must, have discretion under section 782 to impose a DJJ commitment when it is the appropriate (and as here the only) placement option that meets the objectives of the Juvenile Court law.

ARGUMENT

THE COURT OF APPEAL ERRED IN INTERPRETING SECTION 782 TO PROHIBIT DISMISSAL OF THE MOST RECENT PETITION IN THIS CASE

This case involves the interplay of two juvenile court statutes, sections 733(c) and 782. Canons of statutory interpretation require examination of the specific language of those statutes, the historical context surrounding them, and the scheme of which they are part. We first examine the relevant provisions of the Juvenile Court law, with particular regard to its objectives, its filing requirements, and its dispositional authority.

A. The Juvenile Court law and Its Objectives

Delinquency proceedings are "quasi-criminal." (*Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 801 (*Joe Z.*); see Seiser & Kumli, Cal. Juvenile Court Practice and Procedure (LexisNexis 2011 ed.) Delinquency, § 3.11, pp. 3-17 to 3-18 (Seiser); 1 Cal. Juvenile Court Practice (Cont. Ed. Bar 1981) Introduction, p. 11; cf. § 203). Such proceedings are brought "on the behalf of the child, not against the child." (2 Special Study Com. On Juvenile Justice (1960), Study of Administration of Juvenile Justice, ch. 1, p. 3; see §§ 202, subds. (b), (d), 656, subd. (d).)

Juvenile proceedings are "fundamentally different" from adult criminal proceedings. The former strikes a "balance" between the "informality" and "flexibility" of approach that inheres in the proceedings and the requirement that the proceedings comport with the juvenile's constitutional rights, and the "'fundamental fairness' demanded by the Due Process Clause." (*Alfredo A. v. Superior Court* (1994) 6 Cal.4th 1212, 1215 (*Alfredo A.*), quoting *Schall v. Martin* (1984) 467 U.S. 253, 263; see *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1542.)

Part of that balance was the Legislature's enactment in 1971 of section 782 to clarify the juvenile court' s general power of dismissal of

petitions alleging criminal offenses. A further part of the balance was its amendment to section 202 in 1975 and 1977 to specifically include public protection as a goal of the Juvenile Court law. (1 Stats. 1975, ch. 819, § 1, p. 1872; 2 Stats. 1977, ch. 910, § 1, p. 2782; see *In re Ismael A.* (1989) 207 Cal.App.3d 911, 917; *In re Gregory S.* (1978) 85 Cal.App.3d 206, 213.) Then, as before, the overarching purpose of the Juvenile Court law was "to 'secure for each minor . . . such care and guidance, preferably in his own home, as will serve the . . . welfare of the minor and the best interests of the State; . . . and when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents.'" (*In re Aline D.* (1975) 14 Cal.3d 557, 562; see *In re Eddie M.* (2003) 31 Cal.4th 480, 507, fn. 16; *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 775 (*T.N.G.*).)

When the public perceived that juvenile crime was increasing, it became necessary to revise the Juvenile Court law to address that increase. (See 1 Stats. 1982, ch. 170, § 1, p. 545.) The Legislature substantially revised section 202 in 1984 and 1989. (2 Stats. 1984, ch. 756, §§ 1-2, pp. 2726-2727; 1 Stats. 1989, ch. 569, § 1, pp. 1874-1875.) At that time, it made clear that community safety was a coequal objective of the Juvenile Court law's provisions regarding delinquent minors.

> "Prior to the amending of section 202, California courts . . . consistently held that '[j]uvenile commitment proceedings are designed for the purposes of rehabilitation and treatment, not punishment.' [Citation.]" [Citation.] "In 1984, the Legislature replaced the provisions of section 202 with new language which emphasized different priorities for the juvenile justice system. [Citation.] . . . Section 202 . . . shifted its emphasis from a primarily less restrictive alternative approach oriented towards the benefit of the minor to the express 'protection and safety of the public' [citations], where care, treatment, and guidance shall conform to the interests of public safety and protection. [Citation.]" [Citation.]

> "Finally, the 1984 amendments to the Juvenile Court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public. [Citation.] . . . [A]s amended once again in 1989 [citation], the Juvenile Court law sets forth in section 202 the goals that "Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the Juvenile Court law shall consider the safety and protection of the public and the best interests of the minor in all deliberations pursuant to this chapter." [Citation.]

(*In re Domanic B.* (1994) 23 Cal.App.4th 366, 371-372.)

Still later, a rise in violent juvenile crime impelled the voters to pass Proposition 21 at the March 7, 2000, primary election. "The general object of the initiative [was] to address the problem of violent crime committed by juveniles and gangs." (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 575-576 (*Manduley*).) The electorate perceived an "inability of the juvenile justice system to protect the public adequately from violent juvenile offenders." (*Id.* at p. 574; accord, *John L. v. Superior Court* (2004) 33 Cal.4th 158, 170 (*John L.*); see Prop. 21, § 2, subd. (k), 1 Stats 2000, p. A-264.) The voters altered "aspects of the juvenile system in order to render certain minors more accountable for serious crimes . . . ." (*Manduley, supra*, 27 Cal.4th at p. 576.) The voters also "explicitly reaffirmed" the goals of section 202 to specify that in delinquency proceedings the juvenile court is to "promote[] rehabilitation, public safety, and accountability . . . ." (*John L., supra*, 33 Cal.4th at p. 184.)

Proposition 21 substantially revised section 777. Previously, that statute had required a "supplemental petition" for the juvenile court to exercise the option of a more restrictive placement and only after proof beyond a reasonable doubt that the last dispositional order had been ineffective in rehabilitating the minor. (*In re Eddie M., supra*, 31 Cal.4th at p. 485; see *John L., supra*, 33 Cal.4th at pp. 165-166.) Revised section 777 provides for procedures akin to those used in adult probation revocation

proceedings, where the basis for the violation may or may not be new delinquent conduct. (See *John L., supra*, 33 Cal.4th at p. 165.) However, section 777 proceedings continued to "'differ from criminal prosecutions in purpose, operation, and effect.'" (*Id.* at p. 166.)

In 2003, the Legislature amended section 731, former subdivision (b) (now subdivision (c)), "to expand the Juvenile Court's discretion in CYA commitments." (*In re Sean W.* (2005) 127 Cal.App.4th 1177, 1184; see *id.* at p. 1186; *In re A.P.G.* (2011) 193 Cal.App.4th 791, 800-801.)

In 2007, the Legislature amended section 733(c) to limit DJJ commitments to the most recent sustained offense that is violent or serious under section 707(b) or that is a registerable sex offense. The legislative purpose was to "reduc[e] the number of juveniles committed to DJJ for nonviolent, nonserious offenses." (*In re D.J.* (2010) 185 Cal.App.4th 278, 284, fn. 1.)

B. Speedy Resolution of Delinquency Proceedings

The situation that arose in the juvenile court below is partially due to the statutory mandate for speedy resolution of in-custody delinquency matters. The Juvenile Court law requires a bifurcated, "sophisticated, specialized procedure . . . ." (*In re J.L.P.* (1972) 25 Cal.App.3d 86, 88; see *In re Julian R.* (2009) 47 Cal.4th 487, 495; *In re Eddie M., supra*, 31 Cal.4th at p. 487.)

The law mandates a particularly speedy resolution of delinquency allegations if the minor is detained. (See *Alfredo A., supra*, 6 Cal.4th at p. 1216 [minor to be released at "the earliest possible time following [being taken into custody], preferably to the custody of a parent or legal guardian"]; §§ 630, subd. (a), 659, subd. (c), 680; rule 5.534(a).) In those instances, the reports submitted by the officer who has taken the minor into custody first go to the probation officer who screens the matter and, in most instances, determines if continued detention is required. (See §§ 626, subd.

(d), 626.5, subd. (b), 628, 628.1.) If the officer determines it is, and if the minor is presently a ward of that county's juvenile court, the officer may file a section 777 notice. If a delinquency petition should be filed, the officer transmits the arrest report to the prosecutor within 48 hours, who files a section 602 petition. (§§ 630, 650, subd. (c); cf. § 653.5 [probation officer transmits "affidavit" to prosecutor].) Once the petition is filed, "the juvenile court has the sole power to determine whether or not to dismiss the petition . . . ." (*In re Kenneth H.* (2000) 80 Cal.App.4th 143, 149.)

A minor must be released unless the prosecutor files a petition within 48 hours after the minor was taken into custody, excluding nonjudicial days. (§ 631, subds. (a), (b); rule 5.752(b).) The same time constraints govern a section 777 probation violation notice filed by the prosecutor or the probation officer. (See *In re Daniel M.* (1996) 47 Cal.App.4th 1151, 1154-1155; rule 5.752, subd. (b).) A minor named in a petition or section 777 notice must be afforded a detention hearing by the next judicial day following the filing of the petition or notice. (§§ 632, subd. (a), 635, 636; rule 5.752(f).) If a detention hearing is not timely held, the minor must be released. (§ 632, subd. (c); rule 5.752(i).)

If the probation officer has detained the minor, at the minor's detention hearing the court determines if continued detention is required. (Seiser, *supra*, Delinquency, § 3.12, p. 3-18; § 636, subd. (a).) At the hearing, the court reviews a probtion officer's detention report to assist in its determination whether continued detention is necessary. (See rules 5.756(c), 5.758, 5.760; Cal. Judges Benchguides, Benchguide 116 (Juvenile Delinquency Initial or Detention Hearing) (CJER 2011) § 116.2, p. 116-5 (Judicial Benchguides) [review of police reports].) At this point, factors relating to the allegations of the minor's present delinquent conduct and the minor's social history are relevant only to the court's detention determination or, if the court orders release, the conditions of that release.

(§§ 635, 636, subds. (a), (d); see §§ 636.2 (criteria for non-secure detention), 701; rule 5.760(b) (contents of detention report).) The detention hearing report does not contain a dispositional recommendation. (Rule 5.760(b).) In light of the above time constraints, the probation officer has limited time to investigate the case before preparing the detention hearing report. (Cf. *Los Angeles County Department of Children & Family Services v. Superior Court* (2008) 162 Cal.App.4th 1408, 1416 (dependency) (*Dept. of Children & Family Services*).) Since the affidavit and/or police reports are transmitted to the prosecutor by probation, the prosecutor's charging decision also is time constrained.

The next phase for both detained and non-detained minors is a jurisdictional hearing where the court determines if a crime has been committed. (§ 701; rules 5.778(c), (e), 5.780; *In re Julian R., supra*, 47 Cal.4th at p. 495; Seiser, *supra*, Delinquency, § 3.12, pp. 3-18 to 3-19.) If the court has detained the minor, the jurisdictional hearing is to be held within 15 days of the detention order. (§ 657, subd. (a)(1); rule 5.774(b), (d).) A jurisdictional finding is the required antecedent for any exercise of the juvenile court's dispositional powers. (See *In re Julian R., supra*, 47 Cal.4th at p. 495; *In re Robin M.* (1978) 21 Cal.3d 337, 340.) The minor may, as here, admit the petition at the detention hearing and waive further jurisdictional proceedings. (§ 657, subd. (b); rule 5.754(b).) If a contested jurisdictional hearing is required, "the court shall first consider only the question whether the minor is a person described by . . . section 602." (§ 701; see rule 5.778(c); *In re Julian R., supra*, 47 Cal.4th at p. 495; *In re James B.* (2003) 109 Cal.App.4th 862, 873-874.)

C. The Juvenile Court's Dispositional Obligations

Once jurisdiction has been established, the court proceeds to disposition. (Seiser, *supra*, Delinquency, § 3.12, p. 3-19 ["bifurcation recognizes that, once the minor has been declared a fit subject for juvenile treatment, the court's task is not punishment but assistance for the youth"]; Judicial Benchguides, *supra*, Benchguide 116, § 116.4, p. 116-9.) The delinquency law is designed to give the juvenile court "maximum flexibility to craft suitable orders aimed at rehabilitating the particular ward before it." (*In re James R.* (2007) 153 Cal.App.4th 413, 432.) A court may proceed immediately to disposition following admission. (*In re William B.* (1982) 131 Cal.App.3d 426, 427-428; see 1 Cal. Juvenile Court Practice, Cont. Ed. Bar, *supra*, § 1.15, p. 26 [in "many counties" the disposition is conducted at the same hearing].) "[C]onsiderations relative to a proper disposition . . . differ[] from those that bear upon a determination that a crime has been committed." (*In re J.L.P., supra*, 25 Cal.App.3d at p. 89.) "Prior to every dispositional hearing, the probation officer must prepare a [current] social study, which must contain those matters relevant to disposition . . . and a recommendation for disposition." (Seiser, *supra*, Delinquency, § 3.90[4], p. 3-133; see *In re Julian R., supra*, 47 Cal.4th at p. 495; *In re L.S.* (1990) 220 Cal.App.3d 1100, 1104-1107; rule 5.785(a).)

The Legislature requires the juvenile court to consider, among other things, the minor's age, the gravity of the offense, and the minor's previous delinquent history. (§ 725.5) "The basic predicate of the Juvenile Court law is that each juvenile be treated as an individual. The whole concept of our procedure is that special diagnosis and treatment be accorded the psychological and emotional problems of each offender so that he achieves a satisfactory adjustment." (*In re William M.* (1970) 3 Cal.3d 16, 31; see *In re Janice D.* (1980) 28 Cal.3d 210, 221; *In re R.V.* (2009) 171 Cal.App.4th 239, 249.) The court is required to "consider 'the broadest range of

information' in determining how best to rehabilitate the minor and afford him [or her] adequate care." (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329; accord, *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.)

The Youth Authority Act establishing DJJ was enacted "to benefit the public by providing youth offenders with rehabilitative programs such as education, vocational training, work furloughs, and supervised parole." (*People v. Pride* (1992) 3 Cal.4th 195, 256; see § 1700.) DJJ provides a multitude of programs specifically addressed to benefit wards with psychological, emotional, or educational needs. (See *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 153.) DJJ provides those programs in a "secure setting." "[I]t is not merely the programs at DJJ which provide a benefit to minor, but the secure setting as well." (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486; see *In re Ismael A.*, *supra*, 207 Cal.App.3d at p. 920.)

D. Sections 733(c) and 782 Should Be Interpreted to Further the Objectives of the Juvenile Court law

This court reviews de novo whether the juvenile court had the authority under section 782 to dismiss the petition. (See *Dept. of Children & Family Services, supra*, 162 Cal.App.4th at p. 1415.) Considered in light of the objectives of the Juvenile Court law and its implementing procedures, sections 733(c) does not abrogate section 782 dismissal power over new non-DJJ eligible offenses committed by a serious or violent offender whom the juvenile court finds requires DJJ treatment as the appropriate rehabilitative option.

1. The *J.L.* and *V.C.* Decisions and the Decision Below

In *J.L.*, the juvenile court sustained a March 2006, DJJ-eligible petition for assault and continued out-of-home placement. (168 Cal.App.4th at p. 49.) The minor absconded, and in August 2006 a section

777 probation violation notice was filed. (*Id.* at pp. 49-50.) The minor admitted the notice and also separately admitted a petition charging a December 2006 offense, which was DJJ-eligible due to an admitted enhancement. (*Id.* at p. 50.) After the enactment of section 733(c), the court allowed the minor to withdraw his admission to the enhancement, so he could contest it. (*Id.* at pp. 50-51.) The court granted the prosecutor's motion to dismiss the December 2006 offense pursuant to section 782, after the prosecutor was unable to prove the enhancement. (*Id.* at pp. 51-52.) The court committed the minor to DJJ under the August 2006 section 777 notice based on the disposition that followed admission to the March 2006 DJJ-eligible petition. (*Id.* at pp. 52-54.)

On appeal, the minor contended that his most recent offenses were the December 2006 offense and the August 2006 probation violation—neither of which was a section 707(b) offense. (*Id.* at p. 55.) The Court of Appeal concluded that the DJJ-eligible sustained assault from the March 2006 petition was "the most recent offense alleged in any petition and admitted or found true by the court" in light of the juvenile court's section 782 dismissal of the December 2006 offense. (*Id.* at p. 57.)

In *V.C., supra*, 173 Cal.App.4th 1455, the minor had admitted a DJJ-eligible offense in 2005. (*V.C., supra,* 173 Cal.App.4th at p. 1459). The court placed V.C. at two programs, the last of which was a specialized sex offender treatment program. (*Id.* at p. 1459.) Section 733(c) became effective September 1, 2007. In November 2007, the prosecutor filed a delinquency petition, which included a DJJ-eligible offense. Pursuant to a negotiated disposition, however, the minor only admitted a misdemeanor. (*Id.* at p. 1460.) The court again ordered residential treatment. (*Id.* at pp. 1460, 1465-1466.) The minor "was apparently placed in accord with this order of disposition. His plea bargain was thus a fully executed agreement." (*Id.* at p. 1466, fn. omitted). In 2008, the prosecutor filed a

section 777 notice of violation based on the 2007 dispositional order. (*Id.* at pp. 1460-1461.) The court dismissed the 2007 petition pursuant to section 782. (*Id.* at p. 1461.) Two days later, the prosecutor filed a section 777 notice, premised on a violation of the 2005 dispositional order, seeking a DJJ commitment. (*Ibid.*) The minor filed a writ of mandate. (*Ibid.*)

Signaling a limited holding "[b]ased on the facts of this case," the court in *V.C.* found an abuse of the juvenile court's discretion under section 782 to dismiss the last petition, for which there had already been a consummated disposition. (*V.C., supra*, 173 Cal.App.4th at p. 1459.) The *V.C.* court pointed out that in contrast to those facts, "[t]he juvenile court [in *J.L.*] set aside the minor's admissions and dismissed the section 602 petition at the dispositional hearing, not after it. [Citation.]" (*Id.* at p. 1466, fn. 11; see also *In re D.J., supra*, 185 Cal.App.4th at p. 287 ["As the court held in *In re J.L.* . . . if a subsequent petition charging a non-DJJ-eligible offense is still pending at the time of disposition, that petition may be dismissed in the interests of justice in order to permit the court to commit the minor to DJJ based on an earlier sustained petition charging a DJJ-eligible offense"].)

Relying on *Derek L., supra*, 137 Cal.App.3d 228, the Court of Appeal in *V.C.* found that despite substantial differences between the adult criminal law and the Juvenile Court law, section 782 should be construed in accord with decisions interpreting Penal Code section 1385. Penal Code section 1385, it said, may not be used contrary to """"the immediate favor of a defendant, i.e., by cutting off an action or part of an action against the defendant."""" (*V.C., supra*, 173 Cal.App.4th at p. 1465, fn. 9.)[6] *V.C.*

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[6] In *Derek L.*, after the court dismissed a petition as a sanction against the prosecutor, the prosecutor filed a second petition, and the minor sought writ review. The court first rejected the minor's claim that court

(continued...)

concluded that the juvenile court abused its discretion by using section 782 to allow a DJJ commitment, given the 2007 consummated disposition of the non-DJJ-eligible offense. *V.C.* rests on the minor's "due process right to the benefit of his plea bargain in the 2007 [misdemeanor] petition." (*Id.* at p. 1465; see *id.* at p. 1467.) That is, the rationale for the *V.C.* court's analogy to Penal Code section 1385 dismissal power was the particular negotiation in the underlying case and the timing of the dismissal of the petition after the minor had received a placement based on a fully-executed bargain. *V.C.* reasoned that "[a]llowing a trial court to rescind a plea bargain that has been accepted and fully executed . . . would clearly introduce unacceptable instability in the practice of plea bargaining." (*Id.* at p. 1467.) *J.L.* involved no rescission of an executed plea bargain. Neither does this case: there was no agreement as to disposition on the 2009 petition or a promise that a section 777 notice would not be filed.

The court in *V.C.* found problematic a use of section 782 to avoid the proscription in section 733(c). It viewed section 733(c)'s language and history as a legislative determination that the "interests of society" required a placement other than DJJ where the more recent non-DJJ-eligible offense was admitted. (*V.C.*, *supra*, 173 Cal.App.4th at pp. 1467-1469.) *V.C.*

(...continued)
rules allowed the court to dismiss a petition with prejudice as a sanction against the prosecutor even where there was no violation of the minor's speedy contest rights. (137 Cal.App.3d at pp. 231-232.) The court then rejected the minor's alternative claim that section 782 allowed the court to dismiss the petition, holding by analogy to Penal Code section 1385, that such a dismissal was not in the interests of justice. (137 Cal.App.3d at pp. 232-236.) Noting that section 782 required the court to consider both the protection of society and "the protection and benefit" of the minor, the court concluded the minor was not "protected or benefitted by the issuance of a dismissal of prejudice in lieu of an adjudicatory hearing." (*Id.* at p. 236.)

deemed the 1984 and 1989 changes to section 202 stressing public safety irrelevant to the considerations necessary for a dismissal under section 782. (*Id.* at p. 1464, fn. 9.)

A concurring justice in *V.C.* found "reasonabl[e]" an interpretation of section 782 that would allow the juvenile court to dismiss the 2007 petition to avoid section 733(c)'s limitations given the need to protect the community and to provide necessary sexual offender treatment to V.C. in DJJ's secure setting. (*V.C., supra*, 174 Cal.App.4th at p. 1471 (conc. opn of Scotland, P.J.).) The concurring justice found section 733(c)'s language also allowed a "reasonabl[e]" interpretation that section 782 may not be used to circumvent section 733(c). Given both "reasonable" interpretations, the concurring justice looked at the scant legislative history surrounding section 782. That history, he concluded, "quickly reveals that the statute was only intended as a vehicle . . . to terminate jurisdiction over a minor." (*Id.* at pp. 1471-1472.) "The fact that this result may not be in the best interests of the minor and public safety is not necessarily the fault of the statutory scheme, but the prosecutor's failure to recognize the potential effects of the plea bargain that was extended to the minor." (*Ibid.*)

The Court of Appeal below recognized an "apparent conflict" between *J.L.* and *V.C.* (Typed opn., p. 4.)[7] The court disagreed with *J.L.* and concluded that the order dismissing the August 16, 2009, non-DJJ-eligible offense in appellant's case was improperly made because "section 733(c) [] limit[s] the court's authority to dismiss a petition under section 782 . . . ." (Typed opn., p. 2.) Purporting to follow the broader language in *V.C.*, the court cited the footnote stating that the dismissal authority of criminal proceedings in Penal Code section 1385 has been judicially

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[7] It concluded the plea bargain factor that *V.C.* found distinguished that case from *J.L.* "is not significant." (Typed opn., p. 6, fn. 4.)

construed as "'run[ning] only in the immediate favor of a defendant.'" (Typed opn., p. 5, quoting *V.C., supra*, 173 Cal.App.4th at p. 1465, fn. 9.) The Court of Appeal declared "the juvenile court's dismissal was not in the interests of society" in light of section 733(c). (Typed opn., p. 5.) The court did not explicitly disapprove of, or attempt to distinguish, *J.L.* Going further than *V.C.*, it held that in light of "any apparent conflict" between sections 733(c) and 782, two principles of statutory interpretation—a later enacted statute controls over an earlier enacted statute and a more specific statute controls over a more general statute—required the conclusion that section 782 cannot be used to avoid section 731(c). (Typed opn., pp. 7-9.) The Court of Appeal observed that the issue could have been avoided had the prosecutor filed a section 777 notice in the first instance. (Typed opn., p. 9.)

2. Applicable Principles of Statutory Construction

Long-standing principles of statutory construction come into play in this case. "In construing a statute, '"we strive to ascertain and effectuate the Legislature's intent." [Citations.] Because statutory language "generally provide[s] the most reliable indicator" of that intent [citations], we turn to the words themselves, giving them their "usual and ordinary meanings" and construing them in context. . . .' [Citation.] 'If the language contains no ambiguity, we presume the Legislature meant what it said, and the plain meaning of the statute governs.' [Citation.] If, however, the statutory language is susceptible of more than one reasonable construction, we can look to legislative history [citation] and to rules . . . of construction [citation]. '. . . [T]he court may [also] consider the impact of an interpretation on public policy, for "[w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation."' [Citation.]" [Citation.] In our effort to divine what the Legislature intended, we may consider not only its internal written

expressions of the bill's meaning and purpose, but also "'the wider historical circumstances of [the bill's] enactment.'" (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1081-1082.) "We 'must harmonize "the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole"' [citation], so that all of the statutes in the scheme will 'have effect.' [Citation.] And '[w]e must also avoid a construction that would produce absurd consequences, which we presume the Legislature did not intend.' [Citations.]" (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614.)

Concluding section 733(c) severely limits a juvenile court's authority to dismiss a petition despite section 782's general dismissal authority, the Court of Appeal below applied the rules that the more recent and specific statute controls. (Typed opn., p. 8.) However, "[i]t is assumed that the Legislature has in mind existing laws when it passes a statute. [Citations.] 'The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended.' [Citations.]" (*Estate of McDill* (1975) 14 Cal.3d 831, 837-838; see *Arthur Anderson v. Superior Court* (1998) 67 Cal.App.4th 1481, 1500.)

> Notwithstanding the "presumption against repeals by implication," repeal may be found where (1) "the two acts are so inconsistent that there is no possibility of concurrent operation," or (2) "the later provision gives undebatable evidence of an intent to supersede the earlier" provision. [Citations.] Because "the doctrine of implied repeal provides that the most recently enacted statute expresses the will of the Legislature" [citation], application of the doctrine is appropriate in those limited situations where it is necessary to effectuate the intent of drafters of the newly enacted statute. "'In order for the second law to repeal or supersede the first, the former must constitute a revision of the entire subject, so that the court may say it was intended to be a substitute for the first.'" [Citations.]

(*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1038.)

Section 733(c) addresses DJJ commitments, not dismissal of petitions. The "amendments to sections 731 and 733 [appear to be] motivated by a desire to reduce cost and increase the effectiveness of juvenile confinement—not to mitigate the punishment." (*In re N.D.* (2006) 167 Cal.App.4th 885, 892.) Neither section 733(c)'s language nor its legislative history suggests the Legislature abrogated section 782 dismissal power in circumstances such as exist in this case.

The Court of Appeal mistakenly concluded that a section 782 dismissal can never result in a more restrictive placement where the record establishes—as it does in this case—that the juvenile court's disposition complied with the express legislative intent of section 733(c) to limit DJJ to current serious or violent offenders. The DJJ commitment here was the only option that provided both for appellant's welfare and protected the community in the present case.

3. Section 782 Requires Consideration of the Minor's Welfare and Public Safety

In the Court of Appeal's view, section 782 cannot result in immediate detriment to the minor involving the exercise of discretionary authority to order DJJ once the minor admits or the court finds true a non-DJJ eligible offense. For this conclusion, the court looked to Penal Code section 1385. The analogy is imperfect. Section 782 gives a juvenile court broad discretion to dismiss or set aside factual findings, and dismiss *delinquency petitions*. (*Derek L., supra*, 137 Cal.App.3d at p. 232.) The plain language of section 782 commands that a juvenile court exercise its dismissal power over such petitions by considering both the welfare of the minor and the interests of justice, which includes protection of the public.

"[G]iven the complexity of the statutory scheme governing [delinquency], a single provision 'cannot properly be understood except in the context of the entire [delinquency] process of which it is part.' [Citation.]" (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1235 [dependency].) Yet, the construction of section 782 advanced by the Court of Appeal simply ignores the welfare of the minor—which in some instances, as here, requires a DJJ commitment. Even advisedly assuming the soundness an analogy to Penal Code section 1385, the fact remains that advancing the minor's welfare can include a DJJ commitment and such a commitment is not to the minor's detriment. It cannot be disputed that DJJ has many rehabilitative programs of probable benefit to wards. (See *People v. Pride, supra*, 3 Cal.4th at p. 256; *In re Jonathan T., supra*, 166 Cal.App.4th at p. 486; *In re Tyrone O., supra*, 209 Cal.App.3d at p. 153.)

Derek L. construed section 782 in that context, concluding that minor's welfare and the interests of justice would not be furthered by the dismissal.

> Our research has disclosed no relevant decisions interpreting [] section 782 in the context of whether a particular dismissal is or is not in the interests of justice. However, decisional authority abounds concerning whether a particular dismissal is "in furtherance of justice" under Penal Code section 1385 . . . . We turn to those decisions for guidance . . . . Although certain distinctions exist between the goals and purposes of the criminal justice system on the one hand and the juvenile justice system on the other, those distinctions are not material *for purposes of the resolution of this issue*. In connection with dismissal of adult criminal proceedings, the Supreme Court has determined that furtherance of justice requires consideration of both the rights of the accused and the interests of society represented by the People. [Citation.] Similarly, [under former section 202] the overall purpose of the Juvenile Court law is, in part: "[T]o secure for each minor under the jurisdiction of the juvenile court such care and guidance, . . . as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to protect the public from criminal

> conduct by minors; to impose on the minor a sense of responsibility for his own acts; . . . [¶] The purpose of this chapter also includes the protection of the public from the consequences of criminal activity, and to such purpose probation officers, peace officers, and juvenile courts shall take into account such protection of the public in their determinations under this chapter." [Citation.] [¶] Thus, the juvenile court is not only authorized, but obligated, in carrying out its duties under the Juvenile Court law, to weigh and consider both the interests of the juvenile and the interests of society. The clear parallel with those joint obligations in criminal court proceedings persuades us that a dismissal which is not "in furtherance of justice" in an adult criminal proceeding *is unlikely* to be "in the interests of justice" in juvenile court.

(*Id.* at p. 233, italics added.) *Derek L.* applied both prongs of the required section 782 considerations. "Juvenile proceedings are conducted not only for the protection of society, but for the protection and benefit of the youth involved[,]" when it held that in that case, that minor was neither "protected or benefited by the issuance of a dismissal with prejudice in lieu of an adjudication hearing." (*Id.* at p. 237.)

Mechanical analogies to Penal Code section 1385 to conclude that a juvenile court cannot use section 782 to dismiss a petition prior to disposition, even though the dismissal is necessary to the minor's welfare and the safety of the public, is flawed reasoning. Although the few cases interpreting section 782, including *Derek L.*, have concluded the two statues are "analogous" (*In re Juan C.* (1993) 20 Cal.App.4th 748, 752 ; see *In re Albert M.* (1992) 7 Cal.App.4th 359, 360-361 (conc. opn. of Timlin, J.), Penal Code section 1385 itself is inapplicable to juvenile proceedings (*In re Albert M., supra*, 7 Cal.4th at p. 359 (conc. opn. of Timlin, J.). Unlike Penal Code 1385, which requires the court to determine whether dismissal is in the "interests of justice," section 782 explicitly requires the court to consider both the interests of justice and the welfare of the minor. A simple equation of Penal Code section 1385 and section 782 ignores

fundamental differences between adult criminal proceedings and juvenile delinquency proceedings. The latter are "conducted for the protection and benefit of the youth in question." [Citation.] Juvenile court action thus differs from adult criminal prosecutions where "a major goal is corrective confinement of the defendant for the protection of society." [Citation.] The protective goal of the juvenile proceeding is that "the child [shall] not become a criminal in later years, but a useful member of society. [Citation.]" (*In re Ricardo M.* (1975) 52 Cal.App.3d 744, 749; see § 202, subds. (a), (b); *In re Anton P.* (2001) 87 Cal.App.4th 348, 350-351.)

We do not dispute that statutes outside the Juvenile Court law sometimes afford useful analogies in construing its provisions. (See *In re Joseph B.* (1983) 34 Cal.3d 952, 955, fn. 2 [digesting cases].) Nevertheless, "[n]ot all rules of criminal procedure are applicable to juvenile courts." (*In re Joseph H.* (1979) 98 Cal.App.3d 627, 631; see *In re Joseph B., supra*, 34 Cal.3d at p. 955, fn. 2.) "[B]orrowing" is not "automatically applied." (*Alfredo A., supra*, 6 Cal.4th at p. 1216.) It should not be done where it frustrates either express language or the intent underlying the Juvenile Court law. (See *Joe Z., supra*, 3 Cal.3d at p. 801 [civil discovery provisions do not apply in delinquency proceeds due to requirement of expeditious resolution]; cf. *Alfredo A., supra*, 6 Cal.4th at p. 1212 [juvenile law's preference for release allows differences from Fourth Amendment adult custody determinations]; *In re Jovan B.* (1993) 6 Cal.4th 801, 813 [on-bail enhancement applicable to delinquency proceedings since that enhancement is not "manifestly inconsistent" with purposes of the Juvenile Court law]).

The concept of "immediate detriment," which courts have incorporated into Penal Code section 1385, is misplaced in section 782. A DJJ commitment is not necessarily contrary to the minor's welfare. "The child's best interest analysis must look at the 'totality of the child's

circumstances.'" (*In re Vincent M.* (2008) 161 Cal.App.4th 943, 960 [§ 388].) In certain instances, the minor's welfare is best served only by resort to a DJJ commitment. (*In re Donald S.* (2008) 206 Cal.App.3d 134, 139; see *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1397.) Ignoring the consideration of the "welfare of the minor" to find section 782 disallows the juvenile court from ordering what is—at that junction—the only remaining rehabilitative placement elides both the statute's plain language and the purposes of the Juvenile Court law.

The legislative history for section 782 is not overly extensive.[8] What history exists fails to establish that section 782 prohibits dismissals that adversely impact the minor immediate penal interests. (Cf. *V.C., supra*, 173 Cal.App.4th at p. 1472 (conc. opn. of Scotland, P.J.).) Nowhere in that legislative history is reference made to Penal Code section 1385. The analysis of the Assembly Committee on Criminal Justice notes that "it is contended that this bill simply codifies present practice in many counties." (Assem. Com. on Juvenile Justice, Sen. Bill No. 461 (1971 Sess.), p. 1; see Legis. Counsel, Enrolled Bill Rep. on Sen. Bill No. 461, p. 3 ["Under present law, the court may do what this bill prescribes when the minor is under the jurisdiction of the court"].)

4. Section 733(c) Does Not Prohibit the Section 782 Dismissal Here

"Section 733(c) was enacted in 2007, for the purpose of reducing the number of juveniles committed to DJJ for nonviolent, nonserious offenses. [Citation.]" (*In re D.J., supra*, 185 Cal.App.4th at p. 284; see *id.* at p. 286; *In re M.B.* (2009) 174 Cal.App.4th 1472, 1477.) As explained in *In re N.D.*:

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[8] By separate motion, respondent asks this Court to take judicial notice of the legislative histories of sections 733(c) and 782.

> The amendments were enacted as part of chapter 175 of the Statutes of 2007 in order to make "necessary statutory changes to implement the Budget Act of 2007 . . . ." [Citation.] A report of the California Little Hoover Commission explains the budget impact. To settle a lawsuit brought on behalf of inmates of state juvenile facilities, the state entered into a consent decree in November of 2004. The cost of compliance with the consent decree proved to be high: "Realizing the state could not afford to comply with the . . . consent decree, in 2007, policy-makers acted to reduce the number of youth offenders housed in state facilities by enacting realignment legislation which shifted responsibility to the counties for all *but the most serious youth offenders*. This major step had long been recommended by youth advocates and experts, and by this Commission in 1994 and 2005, as many counties had demonstrated they were more effective and efficient in managing and rehabilitating youth offenders." [Citation.]
>
> [¶] . . . [¶] Amended sections 731 and 733 are the parts of this "realignment legislation" that limit the offenses for which juvenile courts can commit wards to state authorities. The commission's report is not, of course, an expression of intent by the Legislature, but it does provide helpful background tending to support the view that the amendments to sections 731 and 733 were motivated by a desire to reduce the cost and *increase the effectiveness of juvenile confinement* . . . .

(167 Cal.App.4th at pp. 891-892, italics added.)

The Legislative Counsel's Digest for Senate Bill 81 (2007-2008 Sess.), at pages 4-5, reports: "This bill would . . . prohibit the commitment to [DJJ] of a ward who has been or is adjudged a ward of the court, and the most recent offense alleged in any petition and admitted or found true by the court is not any of the specified offenses." Instead of using the admitted or found true language in section 733(c), the Senate Rules Committee Analysis used the term "adjudicated"[9] to describe the DJJ-

[9] Adjudicate has been defined as "**1a** : to settle finally (the rights and duties of party to a court case) on the merits of issues raised : enter on the (continued...)

eligible offense (Office of Sen. Floor Analyses, Rules Com. Analysis for Sen. Bill 81, as amended July 19, 2007, p. 2, at http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_81_0051-0100/sb_81_cfa_20070720_104136 [as of Sept. 3, 2008]; see also 3d Sen. Reading Analysis, Off. of Sen. Floor Analyses, Sen. Bill No. 81 (2007-2008 Sess.), p 1.) The Legislature plainly intended to make juvenile dispositions most conducive to rehabilitation of the most serious offenders. It must have contemplated a DJJ commitment where that is the only rehabilitative option left to the juvenile court to treat a serious offender whose current violent nature requires treatment in a "secure" facility.

5. The Interpretation of Sections 733(c) and 782 by the Court of Appeal Leads to Unintended and Undesirable Results

It should not be presumed that amended section 733(c) impliedly precludes a section 782 dismissal of a non-DJJ-eligible offense prior to disposition. In some instances, that rule would remove the only remaining option available to the juvenile court to address the welfare of the minor and the protection of the community. The Legislature is presumed to be aware of existing law when it amends a statute. (*John L., supra*, 33 Cal.4th at p. 171.) "We have said that 'To overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together.'

(...continued)
records of the court (a final judgment, order or decree of sentencing) **b**: to decide (as an intercessory matter) arising prior to a final decision **c** : to make (a decision) final decision in the course of quasi-judicial proceedings—compare ADJUDGE **2**: to pass judgment on : settle judicially : JUDGE (adjudicating a dispute) – vi : to come to a judicial decision; act as judge (the court adjudicated upon the case)" (Webster's 3d New Intern. Dic. (2002) p. 27.)

[Citations.]" (*In re Gladys R.* (1970) 1 Cal.3d 855, 863; see *In re B.G.* (1974) 11 Cal.3d 679, 698.) "Amendments by implication are disfavored and should 'be employed frugally, and only where the later-enacted statute creates such a conflict with existing law that there is no rational basis for harmonizing the two statutes such as where they are "'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. . . .'" [Citation.]' [Citation.]" (*In re Sean W., supra*, 127 Cal.App.4th at p 1187.)

"When the statutory language is ambiguous, a court may consider the consequences of each possible construction and will reasonably infer that the enacting legislative body intended an interpretation producing practical and workable results rather than one producing mischief or absurdity." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567.) The Court of Appeal's construction of section 733(c) and 782 would immunize from DJJ commitment a minor who quickly admits a new petition after an earlier sustained petition had made him or her DJJ eligible. Such a result would not advance the welfare of the minor, protect the community, or be in the interests of justice. The law disfavors a race to the courthouse. (See *People v. Rosbury* (1997) 15 Cal.4th 206, 211; *Melchor Investment Co. v. Rolm Systems* (1992) 3 Cal.App.4th 587, 592.)

Moreover, courts have approved of the mechanism whereby present conduct—even that not amounting to a law violation, such as simple willful program failure (see In *re Eddie M., supra*, 31 Cal.4th at p. 485)—may be used to commit a ward to DJJ through the use of a section 777 notice (see *In re D.J., supra*, 185 Cal.App.4th at pp. 287-288; *In re M.B., supra*, 174 Cal.App.4th at p. 1477). Given the purposes of the Juvenile Court law, it is illogical to construe legislation intended to allow a DJJ commitment based upon a probation violation—which may be based upon a determination of DJJ-eligible wardship established several years before (see § 607, subd.

(b))—while precluding dismissal of the most recent sustained offense even where DJJ is the only available option that adequately protects the community and that affords one last opportunity to rehabilitate a violent minor in the juvenile court system.

E. The Need to Protect the Community and Act for the Welfare of the Minor Should Not be Circumvented by Either a Probation Officer's or Prosecutor's Lack of Information or Miscalculation

Given the severe time constraints in delinquency matters, the prosecutor and/or probation officer must "quickly decide" whether to file a new delinquency petition or a section 777 notice for a detained minor. (*In re Eddie M., supra*, 31 Cal.4th at pp. 497-498.) In this case, the minor was already detained when he committed the gang-related attack on the evening of August 16, 2009. (1CT 106.) The non-DJJ-eligible petition was filed on August 18, 2009. In most circumstances where the detained youth is already a ward of that county's juvenile court, the prosecutor has access to the prosecutor's file regarding the ward and is able to determine, in a timely manner, if a section 777 probation notice is more appropriate than a subsequent petition.

It is unclear what information the detention calendar prosecutor actually had when he agreed to the minor's admission to the non-DJJ-eligible offense. (1CT 106.) Also, the bench officer was not the judge who previously dealt closely with appellant's case. (1CT 111-115.) While the minute orders indicate that the court "read and considered [the] detention sheet" (1CT 112), a copy of that sheet or some other detention report is not part of the record (see 1CT 104-119). Thus, it may be that the detention court did not realize that the last sustained offense was DJJ-eligible and that probation previously had recommended a DJJ commitment.

In other cases, the problem can arise from the multiple jurisdictions involved in the minor's case. For example, often court-ordered treatment

facilities chosen as an alternative to DJJ in light of the ward's specific needs are not in-county, and it is in the placement county that the ward commits a non-DJJ-eligible offense. Sometimes, the custodial parent determines that the minor's removal from the atmosphere that had led to the violent and/or serious conduct is appropriate and sends the minor to live in another county with a relative or moves with the ward to another county. Other times, the minor finds his or her own way into another county and commits the non-DJJ eligible offense.

The county-of-offense probation officer first receives the arrest report and makes the initial screening assessment as to the appropriateness of continued detention. For out-of-county wards, the probation officer may have difficulty quickly determining whether the minor is already a ward of another county's juvenile court, what his or her most-recent sustained offense is, whether that most-recent sustained offense was disposed of, or whether the county-of-wardship's probation department wants the ward detained while it files a section 777 notice and has the minor transported back to the wardship count, or requests that the county of offense file a petition. (Respondent has found no authority that allows the county of offense to file a section 777 notice where the minor is a ward in another county.) Similarly, the prosecutor may not have immediate access to such information before expeditiously filing a section 602 petition for a detained out-of-county minor.

Here again, the failure to provide a mechanism to remedy a mistakenly-filed non-DJJ-eligible petition would sanction "a race-to-the courthouse." The minor, and presumably his or her counsel, will often be in the best position to know at a detention hearing whether the most recent previous offense is DJJ-eligible. The Court of Appeal's implicit criticism of the prosecutor's miscalculation here in not filing a section 777 notice instead of a wardship petition at the outset ignores these realities. In some

cases, the filing of a new petition represents mere inadvertence or negligence. In others, the filing may be due to incomplete information at the time the charging decision must be made.

But whatever the source for such misfilings, there is no evidence that the Legislature intended section 733(c) as the means to redress such problems, let alone to do so by precluding a DJJ commitment in the case. Unless the court has the option of a section 782 dismissal prior to disposition, the court simply may not be able to consider, let alone achieve, the goals of rehabilitation, accountability, and public protection. The Legislature could not have intended to preclude a dismissal of the last-sustained offense under section 782 but to allow a section 777 notice to go forward on an already sustained offense. Any prejudice suffered by a ward who has admitted a non-DJJ-eligible offense where disposition has not yet occurred, is simply not significant in light of the harm done to the ward's welfare and the protection of the community. (Cf. *In re Dennis B.* (1976) 18 Cal.3d 687, 693-694 [filing of more severe charge permissible where defendant had already pleaded to a misdemeanor where the prosecutor "was or should have been 'aware of more than one offense'"].)

The rule advanced by the Court of Appeal may have additional unintended consequences that the Legislature surely did not contemplate in amending section 733(c). That rule could make the juvenile court understandably much less inclined to order a non-DJJ placement at the initial disposition of a DJJ-eligible offense, since the minor's own recidivism might result in a loss of jurisdiction to commit to DJJ. For the same reason, it also could make prosecutors much more inclined to use the direct-file provisions of section 707, subdivision (d), in lieu of filing a section 707(b) petition.

F. The Circumstances Aptly Demonstrate that Dismissal under Section 782 Is Necessary to Ensure the Welfare and Rehabilitation of the Minor

The juvenile court found dismissal of the current petition required to permit appellant's commitment to DJJ was necessary to ensure his welfare and to protect society. Appellant's criminal history explains its conclusion. The probation department attempted unsuccessfully to informally address appellant's early gang-related, sometimes violent, behavior. (1CT 24, 41-42, 51, 166-167.) On July 23, 2008, the court ordered informal supervision (§ 654.2) based on an April 22, 2008, original delinquency petition. (1CT 24, 41-42, 51; 2CT 193.) Less than two months later, appellant committed the assault on Joseph C. (1CT 1-3.) The probation officer recommended a DJJ commitment: "[D]ue to the minor's callous act of violence upon a young victim, who continues to be emotionally and physically effected by the minor's actions, the minor's lack of remorse for the victim, and the risk he possess the community. This department and Screening Committee [after interviewing the minor] thoroughly considered all dispositional options and it was unanimously agreed commitment to [DJJ] is the only appropriate recommendation . . . ." (1CT 22; see 1CT 51-53].) Instead, the court ordered a psychological evaluation. (ART 9-10; 1CT 14; see ART 10.) The evaluating psychologist, Dr. Schneider, found, "The largest impeding factor regarding amenability or suitability for treatment for Greg is the egosyntonic nature of violence, including gang violence." (CT 170.) Gang activity was an accepted and inevitable part of life for appellant and his family. (CT 170.) Dr. Schneider recommended "a residential treatment alternative [to DJJ] combining drug rehabilitation and behavior modification . . . ." (CT 170.)

The court ordered a second psychological evaluation. (1CT 15-16; ART 13-14, 155.) The second evaluation detailed appellant's delinquent

history, history of substance abuse, history of gang involvement, family dysfunction, and gang involvement, and lack of victim empathy. (1CT 156-158.) That psychologist recommended a residential treatment program that could address appellant's substance abuse, emotional problems, anger management, and family issues. (CT 162.)

In response to Dr. Schneider's evaluation, the probation officer noted that appellant:

> [A]cknowledged a substance abuse history dating back three years to age [12], and association with the Norteño Criminal Street Gang since . . . . "Greg both acknowledged and minimized his own gang involvement. He reported engaging in at least four gang related fights. He was guarded and evasive regarding the gang involvement of his family members." [¶] Diagnosis for Greg includes: Axis I; Conduct Disorder, Cannabis abuse, alcohol abuse, Axis IV; incarceration, family drug abuse, and Axis V: GAF score of 50. When evaluating Greg for his suitability for treatment, Dr. Schneider noted considering numerous factors including . . . the age on onset of difficulties, previous offense history, offense severity, and the number of previous efforts at treatment/rehabilitation. It was ultimately recommended commitment to [DJJ] be suspended while a residential treatment alternative combining drug rehabilitation and behavior modifications be attempted. It was additionally recommended, "his (Greg's) violence risk in the community be re-assessed prior to any conditional release in the community following treatment."

(1CT 21.) The probation officer reiterated the department's DJJ recommendation because "the risk [appellant] pose[s] to the community . . . far outweighs the department[']s ability to facilitate rehabilitation . . . ." (1CT 23.) DJJ will "provide the . . . appropriate and necessary treatment and rehabilitative services, aimed at reducing Greg's criminogenic risks and increasing this young man's protective factors, while providing a secure facility, ensuring public safety, and protecting the victim in this matter." (1CT 22-23.)

In December 2008, the court decided an out-of-home placement away from family was in appellant's best interests. (ART 24; see ART 29, 32.) At the dispositional hearing, the court told appellant, "And I can't tell you, Greg, how important it is that you just grab hold of this program and work it to the best you can. If you run from the program all bets are off. (ART 38-39.) Probation placed appellant at the Wilderness Recovery Center (WRC) in Shasta County in January 2009. (1CT 69.) WRC terminated appellant shortly before a six-month review hearing in June because of "his continued noncompliance and refusal to participate in treatment services" (1CT 69; see ART 53-59), and his report to WRC staff that "he was going to go AWOL" if he remained there (1CT 70). Given his lack of remorse and entrenched gang involvement, WRC believed appellant should be placed in a behavior modification program "to address his antisocial traits in order to abate his defiance and gang association before the minor will be able to in-dept[h] therapeutic introspection and victim empathy." (1CT 70.)

When the court detained appellant at the six month review (CT 168; ART 68; see ART 65-66), it noted that it had acted contrary to the probation officer's DJJ recommendation. (ART 60-61.) The court warned appellant, "[A] lot of what happens is going to depend on your behavior here, and I'm going to be watching you like a hawk." (ART 68.) The minor participated in the in-concert assault on rival gang members on August 16, which led to the August 18, second subsequent petition.

In granting the prosecutor's motion to dismiss the petition, the court stated, "[W]hat the Court is going to do is I'm going to make a ruling that gives me the best options. Because I think that's what this Court needs. . . . And then I'm going to talk to Greg about what my options are." (Dism.RT 14.) The court ordered appellant screened for camp at the hearing where he admitted the section 777 notice. (2CT 174.) At a November 17, hearing, appellant's counsel advised Rights of Passage had declined to accept

appellant because of his history of fire setting. (RT [Nov. 17, 2009] 6 (3RT).) The court told appellant a DJJ-alternative placement was dependent on his good behavior in juvenile hall. (3RT 7.) On December 8, the court reminded appellant that DJJ was an option. (3RT 90.) It found that a camp commitment was inappropriate. (3RT 91; see 2CT 198-199.) The court reminded appellant not to get into a fight in juvenile hall. (3RT 92.) On January 4, 2010, appellant and another Norteño attempted to commit yet another unprovoked assault on a rival gang member. Appellant was placed on administrative program status. (2CT 185; 2RT 11, 16.) The prosecutor did not file a delinquency petition in light of section 733(c). (2RT 16.) On January 26, 2010, probation advised that 12 programs had declined placement because of appellant's gang association, violent behavior, and fire-setting. (2CT 185; see also 2CT 195; 2RT 17.) The probation officer's February 3, 2010, supplemental dispositional study noted appellant had yet to disassociate from his gang, and in juvenile hall he had exhibited negative behavior, yelled gang slogans, engaged in physical altercations, and made rude comments toward staff. (2CT 198.) Probation again recommended a DJJ commitment. (2CT 198, 200.)

At the dispositional hearing, the court stated that appellant "was well aware that this Court was watching him very closely to determine whether or not he would be amenable to another placement or whether or not the most and most appropriate place for him would be DJJ." (2RT 11; see 2RT 18.) The January 4, 2010, attempted assault had made it even more difficult for the probation department to place appellant. (2RT 12.) The court ordered a DJJ commitment based upon the September 18, 2008, DJJ-eligible offense (2RT 19-20), stating:

> I don't think it's appropriate for this Court to just say, okay, we'll give Greg another year in juvenile hall. *Greg needs programs that he can't receive here.* He's not going to get picked up, it sounds like, from any normal program.

> I know they have a good educational system in DJJ. I know they have programs there. I have been to judge's training recently, where they have talked about evidence-based programming. They're changing everything. *I at this point don't see any option.*

(2RT 18, italics added.)

The juvenile court's order was not to appellant's detriment. It was specifically fashioned to provide for his welfare. In cases like this one, a DJJ commitment is the only way to provide a minor with any chance at rehabilitation.[10] Interpreting the statutory framework to deny that option in such circumstances does not benefit the minor. It only increases the chances that his gang-related violent behavior will continue, leading to possibly much harsher dispositions in adult court, as well as to situations where appellant might come to physical harm. Thus, precluding dismissal under section 782 in the instant case is not in the interests of justice, does not advance the minor's welfare, and fails to protect the community.

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[10] The court was required to consider that appellant's recidivism endangered the secure environment of the juvenile hall and that it occurred despite ample warning to appellant such behavior could have severe consequences. (See, e.g., *In re Ricky H.* (1981) 30 Cal.3d 176, 185-190; *In re James H.* (1985) 165 Cal.App.3d 911, 923.)

CONCLUSION

Accordingly, respondent respectfully requests that the judgment of the Court of Appeal be reversed.

Dated: August 5, 2011

Respectfully submitted,

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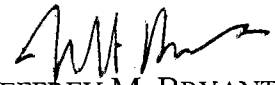

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 11,507 words.

Dated: August 5, 2011

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re Greg R. F. a Minor** No.: **S191868**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. On August 8, 2011, I served the attached:

RESPONDENT'S OPENING BRIEF ON THE MERITS
and RESPONDENT'S MOTION TO TAKE JUDICIAL NOTICE

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 8 2011, at San Francisco, California.

J. Espinosa
Declarant

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Signature

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