IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re GREG F., A Minor.	)	
THE PEOPLE OF THE STATE OF CALIFORNIA	)	No. S191868
Plaintiff and Respondent,	)	Court of Appeal First District
v.	)	No. A127161
GREG F.,	)	Sonoma County Superior Court
Defendant and Appellant.	)	No. 35283J

APPELLANT'S ANSWER BRIEF ON THE MERITS

Appeal from the Judgment of the Superior Court
of the State of California for the County of Sonoma
Honorable Raima Ballinger, Judge

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ISSUE PRESENTED

May a juvenile court use Welfare and Institutions Code section 782 to dismiss a minor's most recent section 602 petition for the purpose of evading the dictates of section 733, subdivision (c), which was enacted by the Legislature to limit the category of wards who may be committed to the Division of Juvenile Justice to those youth whose most recent offense is one enumerated in section 707, subdivision (b) or a specified sex offense?

INTRODUCTION

Welfare and Institutions Code section 733, subdivision (c) prohibits commitment of a minor to the Division of Juvenile Justice (DJJ) unless the minor's most recent offense is listed in section 707, subdivision (b) or is a specified sexual offense.[1] Section 733(c) was adopted by the Legislature in 2007 to reduce the number of youth eligible for DJJ commitment, as part of a historic realignment shifting the responsibility for rehabilitating young offenders from the state to the counties.[2]

Despite section 733(c)'s clear limitations on DJJ eligibility, some juvenile courts have used the dismissal statute, section 782, to circumvent it. These courts have dismissed a minor's most recent section 602 petition if it does not allege a 707(b) or qualifying sex offense, in order to reach back to a previous petition that does contain a DJJ-eligible offense.

In *V.C. v. Superior Court* (2009) 173 Cal.App.4th 1455, and appellant's case (*In re Greg F.* (2011) 192 Cal.App.4th 1252), the Third and First Appellate Districts of the Court of Appeal respectively concluded that using section 782 to avoid the proscription of section 733, subdivision (c) was an abuse of discretion.[3] By contrast, in *In re J.L.* (2008) 168

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In 2005, the correctional agency called the California Youth Authority became known as the Division of Juvenile Facilities, which is part of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice. (*In re D.J.* (2010) 185 Cal.App.4th 278, 280, fn. 1.) Appellant refers to it as the Division of Juvenile Justice because his commitment order does so. (2 CT 251 [form JV-732].)

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All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

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Appellant cites the published opinion below for ease of reference,

Cal.App.4th 43, the Sixth Appellate District upheld the juvenile court's use of the dismissal statute to reach back to a prior petition in order to commit the minor to DJJ.

Appellant contends that the juvenile court in his case erred in using the dismissal statute to render him statutorily eligible for DJJ commitment, for three separate but related reasons. First, as *V.C.* held, dismissal for the purpose of committing an otherwise-ineligible minor to DJJ is not in the interests of justice, as required by section 782. Second, as the Court of Appeal below held, using section 782 to defeat the limitations of section 733 violates principles of statutory construction. And third, as the *V.C.* concurring opinion held, section 782 may only properly be used to terminate jurisdiction over a minor and not to impose a harsher sanction on him. Appellant further believes that *In re J.L.*, which fails to engage in any analysis of the interplay between sections 733(c) and 782, is not persuasive and should be disapproved by this Court. Finally, appellant asserts that even if he is statutorily eligible for commitment to DJJ, the juvenile court's dismissal of his most recent petition was erroneous because the dismissal was not required by his welfare, as section 782 demands.

Respondent, in large part, disagrees with the Legislature's decision to make DJJ eligibility contingent upon a minor's most recent offense. Respondent would prefer a statutory scheme that gives juvenile courts the broadest possible discretion, and posits a variety of supposedly negative consequences which will result unless this Court rewrites the law. This policy argument, however, should be addressed to the Legislature.

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recognizing it is no longer considered published in light of this Court's grant of review. (Cal. Rules of Court, rule 8.1105(e)(1).)

STATEMENT OF THE CASE

On September 18, 2008, a petition was filed pursuant to Welfare and Institutions Code section 602, alleging that appellant had assaulted Joseph C. with a deadly weapon by means of force likely to produce great bodily injury, in violation of Penal Code section 245, subdivision (a)(1). The petition also alleged that appellant had personally inflicted great bodily injury on Joseph, in violation of Penal Code section 12022.7, subdivision (a). Finally it was alleged, pursuant to Penal Code section 186.22, subdivision (b)(1)(c), that appellant had committed the assault for the benefit of a criminal street gang. (1 CT 1-3.)[4]

On September 23, 2008, appellant admitted each of the allegations. (1 CT 8-12; 09/23/08 RT 3-5.)[5] In January 2009, he was placed at the Wilderness Recovery Center. (1 CT 69.) Appellant was terminated from the program in June and returned to the Sonoma County Juvenile Hall. (1 CT 68-69.) On August 18, a section 602 petition was filed arising from an incident that occurred in the hall on August 16. Count I of the petition alleged that appellant had committed a battery upon three boys, in violation of Penal Code section 242. A felony enhancement was included, alleging that the offense had been committed for the benefit of a criminal street

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Appellant uses "1 CT" (pages 1-172) and "2 CT" (pages 173-256) to refer to the original two volumes of clerk's transcripts. He refers to the first augmented volume of clerk's transcripts (pages 257-264) as "3 CT" and the second augmented volume (pages 265-272) as "4 CT."

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The original reporter's transcript consists of three volumes, only two of which are sequentially paginated. The first augmentation includes volumes 1-3, which are sequentially paginated. The second augmentation includes three individual volumes. Appellant refers to the reporter's transcript by date and the page number in the volume containing the date referred to.

gang, pursuant to Penal Code section 186.22, subdivision (d). Count II alleged that appellant had actively participated in a gang, in violation of Penal Code section 186.22, subdivision (a). (1 CT 104-106, 132) On August 19, appellant admitted count I and the enhancement and count II was dismissed pursuant to an agreement with the prosecutor. (1 CT 111-112, 117-118; 08/19/09 RT 3-6.)

On August 24, 2009, a violation of probation notice was filed pursuant to section 777, arising from the August 16 incident. (1 CT 120-122; 09/02/09 RT 79.) The prosecutor also filed a motion to dismiss the section 602 petition filed August 18, 2009, so that appellant could be committed to DJJ pursuant to the petition filed September 18, 2008. (1 CT 131-134.) On October 23, 2009, the juvenile court granted the prosecutor's motion to dismiss. (1 CT 152-154; 10/23/09 RT 14.) Appellant later admitted the probation violation. (2 CT 173-175, 178-180; 10/27/09 RT 4-6.)

In a dispositional hearing held on February 3, 2010, the juvenile court ordered appellant to be committed to DJJ, for a maximum term of 17 years. (2 CT 186-188.)

STATEMENT OF FACTS

September 18, 2008 Petition.[6]

On September 16, 2008, a car with appellant, aged 15, and two other boys stopped at an intersection in Santa Rosa. Driving the car was a woman variously described as appellant's cousin and aunt. The three boys jumped out of the car, yelling Norteño gang slogans and displaying hand signs.

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6 The facts are taken from probation reports which summarize a police report not part of the record. (1 CT 35-54; 2 CT 190-209.)

Appellant was holding a baseball bat. He ran up to 11-year-old Joseph C., who was riding his bike with a friend, and hit him with the bat. Joseph underwent surgery for a hematoma and was in the hospital for seven days. (1 CT 36-39.)

According to appellant, he and the other boys were out of the car trying to repair it when a man holding a large board approached them. The man whistled, which appellant believed was a call to Sureño gang members in the area. Appellant hit Joseph with the bat because he believed that the boy was with the Sureños. (1 CT 37-38.)[7]

August 18, 2009 Petition[8]

On August 16, 2009, Sonoma County Juvenile Hall staff were serving dinner when resident Ryan G. suddenly got up from his table. Appellant and another boy then did the same. The three boys attacked three Sureño residents. (2 CT 190; see also, 1 CT 106.)

Ryan later told staff that he initiated the attack because one of victims had been disrespecting his mother. (2 CT 191.) Appellant said that the incident was not planned; he decided to join in after seeing Ryan initiate it. (2 CT 191, 195.)

Appellant's Social History.

Appellant was born on July 8, 1993, and his childhood was turbulent. (1 CT 35, 44.) His parents were heroin addicts with long criminal histories.

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The probation officer indicated that he had "previous probation contact" with Joseph, but the report does not indicate what this contact was for or whether the youth was involved in a gang. (1 CT 40.)

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The facts are taken from a probation report which in turn are taken from a Sonoma County Juvenile Hall incident report. (2 CT 190-192.)

(1 CT 44, 46.) When appellant was three years old, his mother was referred for caretaker abuse, but the allegation was deemed inconclusive. (1 CT 48.) Appellant shuttled among various family members while his mother was in and out of substance abuse treatment programs. (1 CT 44, 156.) When appellant was about seven, it was alleged that his aunt had sexually abused him, but this allegation too was found to be inconclusive. (1 CT 48, 156.) Appellant's father Greg Sr. was only intermittently involved in his life. When appellant was about 12, his father reestablished contact with him. After a few visits, however, Greg Sr. died, which appellant described as one of the biggest losses of his life. (1 CT 46, 157.)

In 2008, appellant's younger half-siblings were removed from their mother's care due to her significant substance abuse. Appellant's mother was convicted of willful cruelty to a child and again entered a residential treatment program. (1 CT 49.) Appellant's mother sent him to live with his uncle Keith. Appellant's uncle began using drugs and alcohol, however, and was arrested for domestic violence. When Keith entered a court-ordered treatment program, 15-year-old appellant was left to fend for himself. (1 CT 45-46.) Just prior to offense, he was living with a 19-year-old relative (who was also involved in the 2008 assault incident) and her grandmother, and was essentially unsupervised. (1 CT 157.)

Other members of appellant's family also suffered from substance abuse and alcoholism. Several of his father's siblings had died from cirrhosis. (1 CT 158.) At the time of appellant's arrest, his older sister was in a residential drug treatment program, having left her young children with relatives and in foster care. (1 CT 156.) Appellant's own substance abuse began at age 12, as did his association with gangs. (1 CT 21.)

Appellant's Mental Health Issues.

The juvenile court appointed psychologist Laura Doty to evaluate appellant. (1 CT 16; 11/18/08 RT 20.) In a November 2008 report, Dr. Doty opined that appellant suffered from Obsessive Compulsive Disorder (OCD), cannabis dependence, alcohol abuse disorder, and a depressive disorder not otherwise specified. She could not rule out Post Traumatic Stress Disorder (PTSD), as well. (1 CT 161.) Dr. Doty emphasized appellant's chaotic upbringing, exposure to adult substance abuse, neglect and abandonment. The psychologist observed that appellant had received few services and had had "virtually no opportunity to engage in any form of rehabilitation." (1 CT 162.) As a result, she recommended that appellant be placed in a residential treatment program, stating: "A highly structured, therapeutic environment providing dual-tracked treatment for his drug dependency, depression, OCD, anger management and family issues is strongly recommended." (1 CT 162.) She also recommended that appellant be evaluated for medication for his depressive disorder and OCD. (1 CT 162.)

On December 17, 2008, Dr. Doty appeared before the juvenile court and reiterated her recommendation for a "dual diagnosis" program, one that could provide treatment for both appellant's mental health issues and his substance abuse problem. (12/17/08 RT 2; see also, 12/22/08 RT 38.) She opined that a behavior modification type of program could not provide the intensive counseling appellant required. (12/17/08 RT 13.) Dr. Doty made it clear that appellant's substance abuse problems were secondary to his need for sophisticated mental health treatment. (12/17/08 RT 4, 5.)

Dr. Doty further explained that appellant was very impulsive, possibly as a result of PTSD. (12/17/08 RT 3.) She indicated that if

appellant could soon receive medication to improve his impulse control, it would aid his transition from juvenile hall into a placement. (12/17/08 RT 4-5.)[9]

Another psychologist appointed by the juvenile court, David Schneider, also recommended against a DJJ commitment. (1 CT 163, 170.) In an October 2008 report, Dr. Schneider observed that no adult had taken responsibility for seeing that appellant received treatment he needed. (1 CT 163, 169.) The doctor opined that it was "in the community's interest as well as the minor's to attempt a different type of intervention before utilizing the DJJ option." (1 CT 170.)

Appellant's Pre-Placement Conduct.

Appellant did well in juvenile hall, reaching level 3, the highest status. (1 CT 50.) Appellant participated in therapy, substance abuse classes, and went to school every day. (10/05/08 RT 26-27.) In October 2008, appellant was attacked from behind by another resident. After this assault, appellant asked the juvenile court to move him to another hall unit, but the court claimed that it had no authority to do so. (10/29/08 RT 14-15.) Despite the assault, appellant continued to do very well. (See 10/29/08 RT 12; 12/05/08 RT 24-25.)

Wilderness Recovery Center Placement

Although the probation department recommended DJJ as the only appropriate option (1 CT 22, 51), the court ordered appellant to be placed in a dual diagnosis program, preferably outside of Sonoma County (12/22/08 RT 48). Despite this order, appellant was placed at the Wilderness Recovery Center (WRC), on January 8, 2009. (See 1 CT 75.) WRC was a

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[9] There is no indication that appellant received any medication at this time.

substance abuse program and not a dual diagnosis program. (12/17/08 RT 16.) Appellant's primary counselor at WRC was not a therapist but a drug and alcohol counselor. (06/11/09 RT 55.) At WRC, appellant progressed in "fits and starts." (1 CT 75; see also, 06/11/09 RT 56.) Staff suspected appellant suffered from a cycling mood disorder, which might be improved by medication. Although appellant agreed to take mood-stabilizing drugs, WRC failed to have him evaluated for medication until late May, 2009. (1 CT 77-78; 06/11/09 RT 56-58.) WRC decided to terminate appellant from the program before there was enough time to see if the medication he was eventually prescribed would impact his behavior, in part because appellant did not feel that the program was a good fit for him. (06/11/09 RT 58; 1 CT 70.) Appellant thought that he was too young for WRC, and that it was too hard for him to meet the high expectations placed on him there. (2 CT 196.)

Further Dispositional Proceedings.

Appellant was returned to juvenile hall in June, 2009. (See 1 CT 104.)[10] Approximately two months later, appellant was involved in the incident which gave rise to the petition filed August 18, 2009. (1 CT 104.)

On September 3, appellant was attacked by another juvenile hall resident. (2 CT 211-212.) On September 14, appellant was again the victim of assault – he was struck in the back of his head several times with a closed fist, but did not retaliate against the youth who hit him. (2 CT 212.)

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The record does not indicate what medication appellant was prescribed at WRC, or whether this medication was continued in juvenile hall. In November 2009, appellant apparently had been prescribed Lexipro, Trazodone and Seroquel. (2 CT 209.) In February 2010, appellant was taking 50 mg. of Seroquel. (2 CT 253; 02/03/10 RT 25.)

Both assaults were by Sureño gang members. (2 CT 211-212.)

On October 23, 2009, the juvenile court dismissed the August 2009 petition so that it would have options. (10/23/09 RT 14.) On October 27, the court ordered probation to provide an updated recommendation and to screen appellant for camp. (10/27/09 RT 6-7; see also, 10/23/09 RT 16.) The probation department again recommended that appellant be committed to DJJ. (2 CT 198-199, 209.) In a dispositional hearing on December 8, the juvenile court acknowledged that it had in the past ordered a dual diagnosis placement, stating "That certainly should be put on the table." (12/08/09 RT 91.)

On January 4, 2010, appellant and another juvenile hall resident attempted to assault a rival and appellant was placed on administrative program status. (2 CT 185.) On February 3, the juvenile court held another dispositional hearing. (02/03/10 RT 11.) Although appellant had not caused any problems since the January 4 incident, his status on the administrative program made some placements unwilling to consider him. (02/03/10 RT 12.) Appellant's attorney emphasized that he had been in juvenile hall for seven or eight months, housed in one of the most troubled units where numerous fights occurred. (02/03/10 RT 14.) Appellant nonetheless had been on the highest level and was making progress. He had earned certificates for interactive journaling, independent living and boy's council. He was due to be returned to general population in a few days. (02/03/10 RT 15-16.) Counsel believed appellant was at a crossroads and that in DJJ he would be forced to become a committed gang member. The probation officer had told her there were other placement options. (02/03/10 RT 15-16.) The juvenile court committed appellant to DJJ. (02/03/10 RT 18-20.)

ARGUMENT

I.

THE JUVENILE COURT ERRED BY DISMISSING APPELLANT'S MOST RECENT SECTION 602 PETITION FOR THE PURPOSE OF RENDERING HIM STATUTORILY ELIGIBLE FOR COMMITMENT TO THE DIVISION OF JUVENILE JUSTICE.

A. Section 733(c) Was Enacted To Restrict The Number Of Minors Eligible For Commitment To DJJ.

Welfare and Institutions Code section 733, subdivision (c) prohibits commitment of a minor to the Division of Juvenile Justice unless the minor's most recent offense is one enumerated in section 707, subdivision (b) or a particular sex offense. (Welf. & Inst. Code, § 733, subd. (c); *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th 1455, 1467.) Enacted in 2007, section 733 states:

> 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:
>
> (a) The ward is under 11 years of age.
>
> (b) The ward is suffering from any contagious, infectious, or other disease that would probably endanger the lives or health of the other inmates of any facility.
>
> (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 to be 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.

(Stats. 2007, ch. 175, § 22, amended by Stats. 2008, ch. 699, § 28.)

Section 733, subdivision (c) was adopted as part of a larger statutory package which brought about a historic realignment of the responsibility of rehabilitating youthful offenders from the state to the counties. This shift was precipitated by a lawsuit filed in 2003 by the Prison Law Office on behalf of plaintiff Margaret Farrell, which alleged that the state's treatment of youth offenders was "illegal and inhumane." (Little Hoover Com., Juvenile Justice Reform: Realigning Responsibilities (July 2008) p. 5.)[11] In response to *Farrell*, the state hired independent experts to investigate the following six areas: education, medical treatment, access for wards with disabilities, sex offender treatment, mental health treatment and overall safety and welfare. The experts "found unprecedented levels of violence, substantial use of force by correctional officers against wards and a lack of education and counseling programs. In some instances, youth offenders were locked up 23 hours a day for months at a time." (Hoover Report p. 5.) In November 2004, the state entered into a consent decree, in which it agreed to "embark on significant reforms." (*Id.* at p. i.)

Prior to the *Farrell* lawsuit, California was spending about half a billion dollars each year to confine approximately 2,000 youthful offenders in what was then called the California Youth Authority (CYA). Despite this enormous outlay of public funds, three of four state wards were committing new a crime within three years of release. (Hoover Report p. i.) In the first few years after the *Farrell* consent decree was signed, the state

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The Little Hoover Commission report (hereafter Hoover Report) may be found at <http://www.lhc.ca.gov/lhcdir/192/report192.pdf>. (See *In re N.D.* (2008) 167 Cal.App.4th 885, 891-892 [citing report]; *V.C. v. Superior Court, supra*, 173 Cal.App.4th 1455, 1469 [same].) The lawsuit is currently titled *Farrell v. Cate* (Alameda County Sup. Court, case no. RG03079344).

spent hundreds of millions of dollars yet still struggled to implement the required reforms. (*Id.* at p. i.) At the time lawmakers were negotiating the 2007-2008 budget, the population of CYA had declined, but the annual cost per ward had soared to $218,000 and was projected to reach over $250,000. (*Id.* at p. 6.)

The escalating costs of confining minors at CYA prompted the Legislature to act. In 2007, it passed the juvenile justice realignment legislation through a budget trailer bill, Senate Bill 81, and a later clean-up bill, Assembly Bill 191. (Hoover Report at pp. 6-7.) The import of this "historic policy reform" was summarized by the Little Hoover Commission:

> [P]olicy-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. As part of the realignment, the state made the historic commitment to provide counties with the money to pay for the programs and services for the shifted population.

(Hoover Report pp. 7, i-ii.)[12]

Prior to the enactment of section 733, subdivision (c), commitment to CYA was not restricted by the type of offense a minor had committed. (See former § 731, subd. (a), as amended by Stats. 2003, ch. 4, § 1.)[13] In

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See also, *In re N.D.*, *supra*, 167 Cal.App.4th at p. 891-892; *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1468-1469 (discussing the Hoover Report).

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Section 733 formerly read: "No ward of the juvenile court who is under the age of 11 years, and no ward of the juvenile court who is suffering from any

fact, juvenile courts sent even low-level young offenders to state custody. (See, e.g., *In re Lorenza M.* (1989) 212 Cal.App.3d 49 [minor sent to CYA after misdemeanor vehicle taking offense sustained].) Under section 733(c), however, a commitment to what is now called the Division of Juvenile Justice is no longer focused "on the overall or entire delinquent history of the minor or on whether the minor may be generally considered a serious, violent offender." (*V.C. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1468.) By adding subdivision (c) to section 733, "[th]e Legislature has specifically determined it is the minor's *most recent offense* that determines the minor's eligibility for [DJJ] commitment." (*V.C.*, *supra*, 173 Cal.App.4th at p. 1468, italics added.)

In appellant's case, his most recent offense was that alleged in the section 602 petition filed on August 18, 2009, which he admitted. (1 CT 104-106, 111-112.) The offense – battery with a gang enhancement – is not listed in subdivision (b) of section 707. (See *In re Greg F.*, *supra*, 192 Cal.App.4th 1252, 1257.) Only by dismissing this petition at the prosecutor's behest could the juvenile court characterize the assault charged in the September 18, 2008 petition, a 707(b) offense, as his most recent. As appellant demonstrates below, the court inappropriately dismissed the 2009 petition in order to reach back to the 2008 petition and commit him to DJJ.

B. Dismissal Of A Minor's Most Recent 602 Petition To Reach Back To An Earlier DJJ-Eligible Petition Is Not In The Interests Of Justice.

In a thorough and persuasive opinion written by then-Court of

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contagious, infectious, or other disease which would probably endanger the lives or health of the other inmates of any state school shall be committed to the Department of the Youth Authority." (Stats. 1961, ch. 1616, § 2, amended by Stats. 1992, ch. 10, § 5.)

Appeal Justice Cantil-Sakauye, the Third Appellate District held in *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th 1455, that the juvenile court's use of section 782 to dismiss the minor's most recent section 602 petition for the purpose of evading the restrictions of section 733, subdivision (c), was not in the interests of justice, as required by the language of the dismissal statute.

The Court of Appeal in appellant's case began with a careful review of the *V.C.* opinion. (See *In re Greg F.*, *supra*, 192 Cal.App.4th at 1257-1259.) Appellant therefore does the same and asserts that the analysis used in *V.C.* is both sound and applicable to his case.

1. *V.C. v. Superior Court.*

In *V.C.*, the minor admitted felony oral copulation of another minor in violation of Penal Code section 288a, subdivision (b)(1), pursuant to a section 602 petition filed in 2005. V.C. was declared a ward of the court and placed in a youth center. He was later granted probation and ordered to participate in a sexual offender treatment program. In November 2007, a new section 602 petition was filed alleging the minor had committed three sexual offenses. As part of a plea bargain, V.C. admitted one of the charges and the other two were dismissed. He was placed in a group home. In February 2008, a section 777 notice was filed, alleging that the minor violated probation by failing to participate in a sexual offender treatment program. Because the offense V.C. admitted pursuant to the 2007 petition was not a section 707(b) offense or a specified sex offense, he could not be committed to DJJ pursuant to section 733, subdivision (c). The juvenile court then utilized section 782 to dismiss the 2007 petition, so that it would have the option of committing the minor to DJJ based on the 2005 petition, which alleged a qualifying sex offense. (*V.C. v. Superior Court*, *supra*, 173

Cal.App.4th at pp. 1459-1461.)

Granting the minor's petition for a writ of mandate, the Third Appellate District held that the lower court's dismissal of the 2007 petition was an abuse of discretion. It emphasized that the language of section 782 permits dismissal only when it is in the interests of justice and required by the welfare of the minor. (Welf. & Inst. Code, § 782; *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th 1455, 1464.)[14] In considering how to apply the "interests of justice" prong of section 782, the court looked to Penal Code section 1385, the dismissal statute applicable to adult criminal proceedings, which it found to provide "an appropriate analytical framework for consideration of dismissals under section 782." (173 Cal.App.4th at p. 1464; see also, *In re Juan C.* (1993) 20 Cal. App.4th 748, 752; *Derek L. v. Superior Court* (1982) 137 Cal.App.3d 228.) Dismissal pursuant to Penal Code section 1385 requires consideration of both the constitutional rights of the defendant and the interests of society. (173 Cal.App.4th at p. 1465, citing *People v. Orin* (1975) 17 Cal.3d 937, 945.) Given the similarities between Penal Code section 1385 and section 782,

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Section 782 states:

> 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 such dismissal or setting aside of the findings and dismissal regardless of whether the minor is, at the time of such order, a ward or dependent child of the court.

the *V.C.* court concluded, the juvenile courts must weigh these same considerations when deciding whether to dismiss a 602 petition. (173 Cal.App.4th at p. 1465; *Derek L., supra*, 137 Cal.App.3d at pp. 232-233.)[15]

Applying this analysis to V.C.'s case, the appellate court determined that the dismissal of the minor's later non-DJJ eligible petition was not in the interests of justice. (173 Cal.App.4th at p. 1469.) First, the court emphasized that the minor had a due process right to the benefit of the plea bargain he had made to resolve the 2007 petition. (173 Cal.App.4th at pp. 1465-1467.) It concluded that dismissal was not in the interests of justice in light of the youth's constitutional rights arising from this bargain. (*Id.* at p. 1467.)

Second, the court in *V.C.* found that the interests of society did not require dismissal under section 782. The court identified the interests of society as those expressed by the Legislature in section 733(c). (173 Cal.App.4th at p. 1467.) The Legislature's intent in adding subdivision (c) was to limit DJJ commitments to only those minors who are currently serious or violent offenders. To reach back to an earlier petition containing a DJJ-eligible offense by dismissing a more recent petition would, the court concluded, violate the letter and spirit of section 733:

Dismissal of the most recent petition to reach back to an

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Respondent argues that the adult dismissal statute is not analogous because it ignores consideration of the "welfare of the minor" as required by section 782. (Respondent's Opening Merits Brief [ROMB] 22-26.) But *V.C.* made clear that it looked to Penal Code section 1385 only to interpret the "interests of justice" prong of section 782. Indeed, after finding that the dismissal therein was not in the interests of justice, the reviewing court found it "unnecessary to consider whether the welfare of V.C. otherwise required dismissal." (173 Cal.App.4th at p. 1469.)

> earlier petition containing a [DJJ] qualifying offense would be contrary to the unmistakable plain language of section 733(c). It would frustrate the legislative policy expressed by the language of section 733(c). Such a dismissal cannot be in the interests of justice.

(173 Cal.App.4th at p. 1468.)

V.C. emphasized that the Legislature could have chosen to make a minor's DJJ eligibility contingent upon something other than his most recent offense, but did not:

> The statute does not focus on the overall or entire delinquent history of the minor or on whether the minor may be generally considered a serious, violent offender. The language looks to the minor's "most recent offense." The Legislature has specifically determined it is the minor's most recent offense that determines a minor's eligibility for [DJJ] commitment. . .

(173 Cal.App.4th at p. 1468.)

Although believing that the plain meaning of section 733(c) fully supported its finding that the dismissal was not in the interests of justice, the court in *V.C.* also considered the statute's legislative history. A review of the Senate and Assembly floor analyses for Senate Bill 81 led the court to the same conclusion: "The import of these analyses seems clear; the Legislature intended only currently violent or serious juvenile offenders to be sent to [DJJ] starting September 1, 2007." (173 Cal.App.4th at p. 1468.) The court also referred to the Little Hoover Commission's report indicating that the Legislature's restriction of DJJ commitments was motivated by the high costs of complying with the *Farrell* consent decree. (*Id.*, at pp. 1468-1469.) In sum, the court in *V.C.* stated:

> In light of the legislative history and budgetary context for section 733(c), it would obstruct the Legislature's purpose for us to construe section 782 as allowing a juvenile court to dismiss a minor's most recently sustained petition for a

> noneligible offense so that it could have the option of committing the minor to [DJJ] for an eligible offence [*sic*] in an earlier petition. This would not restrict the intake of juvenile offenders. The use of section 782 to reach such a result cannot be "in the interests of justice."

(173 Cal.App.4th at p. 1469.)

2. The Dismissal Of Appellant's 2009 Petition Was Not In The Interests Of Justice.

The Court of Appeal in appellant's case agreed with *V.C.* that the Legislature adopted section 733, subdivision (c) with intent to "limit DJJ commitments to minors who are *currently* serious or violent offenders, and to disallow a DJJ commitment for minors based on their overall juvenile history." (*In re Greg F., supra*, 192 Cal.App.4th at p. 1260.) The First Appellate District concurred with the Third Appellate District's determination that using section 782 to reach back to an earlier DJJ-eligible petition undermines both the language and budgetary purpose of section 733(c). (192 Cal.App.4th at p. 1260.)

The reasoning employed in *V.C. v. Superior Court* is fully applicable to appellant's case. First, the interests of society are the same in appellant's case as they were in *V.C.* The plain language of section 733(c), the legislative history of the statute and the budgetary context surrounding its enactment all support a finding that the purpose of section 733(c) is to reduce the number of minors sent to DJJ, limiting commitment to only those youth currently adjudicated for serious or violent offenses. Thus, the interests of society did not require the juvenile court's dismissal of appellant's 2009 petition.

Second, as in *V.C.*, appellant had a due process right to the benefit of the plea bargain he made in admitting the 2009 petition later dismissed by

the juvenile court. (See *In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1259, fn. 4.) As more fully discussed in subsection E. of this argument, *post*, appellant admitted one count of the petition pursuant to an agreement with the prosecutor that the second count would be dismissed. Because the offense he admitted was not within section 707(b), he had an expectation that he would not be sent to DJJ and had a due process right to the fulfillment of this deal.

In sum, it was not in the interests of justice for the Sonoma County Juvenile Court to dismiss the August 2009 petition so that it could reach back to the September 2008 petition in order to commit appellant to DJJ.

C. Section 782 Cannot Be Used To Circumvent Section 733(c), Which Controls As A Later-Enacted, More Specific Statute.

Although appellant contends that he is entitled to relief pursuant to the analysis employed in *V.C.*, the Court of Appeal's decision below provides a further basis for finding that the juvenile court abused its discretion in dismissing his most recent section 602 petition in order to commit him to DJJ. Therein, the appellate court found that the juvenile court lacked authority to dismiss the 2009 petition for the purpose of reaching back to the 2008 petition based on principles of statutory construction. (*In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1261.)

First, the Court of Appeal recognized that a later enacted statute normally prevails over one enacted previously. (*In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1261, citing *In re Michael G.* (1988) 44 Cal.3d 283, 293.) Presuming that the Legislature was aware of the dismissal statute when it enacted section 733(c), the court found significant the Legislature's failure to indicate that section 782 could be used to avoid section 733(c)'s limitations on DJJ commitments. (192 Cal.App.4th at pp. 1260-1261.)

Second, the Court of Appeal stated that a more specific statutory provision normally controls over a more general provision regarding the same subject. (*In re Greg F., supra*, 192 Cal.App.4th at p. 1261, citing *In re Michael G., supra*, 44 Cal.3d at p. 293; see also, *In re Brent F.* (2005) 130 Cal.App.4th 1124, 1129.) Although both sections 733(c) and 782 relate to juvenile dispositions, the reviewing court observed that section 733(c) "is more narrowly concerned with commitments to DJJ." (192 Cal.App.4th at p. 1261.)

Respondent appears to disagree with the Court of Appeal's application of statutory construction principles. (ROMB 20-22, 28-30.) Respondent relies upon cases involving the doctrine of repeal by implication. (ROMB 21-22, citing *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1038; pp. 28-29, citing *In re Gladys R.* (1970) 1 Cal.3d 855, 863.) These cases are inapposite, however, as appellant's case does not involve a repeal by implication. *Kempton, supra*, explained when such repeal has occurred: "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." (40 Cal.4th at p. 1038 [citations and internal quotation marks omitted].) The Court of Appeal did not hold below that the enactment of section 733(c) repealed or superseded section 782. It only found that to the extent the two statutes conflicted in one very particular and limited circumstance, section 733(c) controlled as the more specific and recently enacted provision. The vitality of the dismissal statute continues unabated.

Respondent also appears to assert that the Legislature's failure to amend section 782 at the time it enacted section 733(c) evinces an intent to

allow a juvenile court to use the dismissal statute to circumvent the plain language of section 733. (ROMB 21-22, and cases cited therein; see also, pp. 28-39.) This argument makes no sense.

"If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what is said, and the plain meaning of the language governs.' [Citation.]." (*Lennane v. Franchise Tax Board* (1994) 9 Cal.4th 263, 268.) If the Legislature had wanted a juvenile court to have the authority to commit a minor to DJJ if the youth had *ever* committed a 707(b) or specified sexual offense, it simply would have said so. It stretches credulity to suggest that the Legislature would have enacted a scheme requiring the most recent offense alleged in a petition to be one listed in section 707(b), knowing that a juvenile court could dismiss all more recent petitions that did not include such offenses in order to send the ward to the DJJ. The Legislature could have easily written section 733(c) to make any youth with a 707(b) or specified sex offense in his history eligible for DJJ, but it chose not to do so. A court may not rewrite a statute to conform to an intent that is not expressed. (*People v. Statum* (2002) 28 Cal.4th 682, 692.)

Moreover, respondent's argument presumes that in 2007 when creating clear limitations on DJJ eligibility, the Legislature was prescient enough to know that section 782 would be used in such a convoluted manner. In fact, as more fully discussed below in subsection D. of this argument, *post*, it has been questioned whether section 782 can be used to increase sanctions against a minor or for any purpose other than to terminate jurisdiction. In fact, to appellant's knowledge, in no case reported prior to 2007 has the dismissal statute been invoked to *continue* jurisdiction over a minor or to impose a more severe punishment on him. Because

section 782 had not previously been so employed, the Legislature would have had no cause in 2007 to amend the dismissal statute or to specify that it could *not* be used to avoid the plain language of section 733(c).

Finally, respondent ignores an important principle of statutory construction – every part of a statute is presumed to have some effect, and constructions that render some words to be "surplusage" are to be avoided. (See *People v. Arias* (2008) 45 Cal.4th 169, 180; *People v. Woodhead* (1987) 43 Cal.3d 1002, 1010.) The use of section 782 to reach back to an earlier petition would render the words "the most recent offense alleged in any petition" of section 733(c) mere surplusage. (See, e.g., *In re Brent F.*, *supra*, 130 Cal.App.4th at p. 1127 [court refuses to rewrite the statutory scheme in a way that would make provision of a statute superfluous].)

In sum, the Court of Appeal's analysis in this case, utilizing principles of statutory construction, provides another basis for finding that the juvenile court erred in dismissing appellant's most recent 602 petition in order to commit him to DJJ.

D. Section 782 May Properly Be Used Only To Terminate Jurisdiction.

In *V.C. v. Superior Court*, *supra*, the majority questioned whether the Welfare and Institutions Code dismissal statute could properly be used to a minor's detriment. Then-Appellate Justice Cantil-Sakauye noted that dismissal in adult criminal cases pursuant to Penal Code section 1385 should operate only to the benefit of the defendant. (173 Cal.App.4th at p. 1464, n. 9.) She continued: "Given this understanding of the court's power of dismissal under section 1385, and by parity of reasoning [to] section 782, it is troubling at the outset that the juvenile court here used its authority under section 782 for the purpose of increasing the range of potential

sanctions . . . ." (173 Cal.App.4th at p. 1464, n. 9; see also, *In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1258.)

In a concurring opinion in *V.C.*, Presiding Justice Scotland further explored this issue, and concluded that section 782 was intended for use by a juvenile court only to end jurisdiction over a minor. For the reasons set forth below, appellant believes this analysis is compelling and provides yet another basis for finding that the juvenile court erred in dismissing his 2009 petition for the purpose of sending him to DJJ.

In his *V.C.* concurrence, Presiding Justice Scotland declared that the plain language of section 782 could be read either to allow the dismissal of a current petition to reach back to one with a DJJ-eligible offense, or only to terminate jurisdiction over a minor, prior to the age of 21, if termination is in the best interests of that minor. The justice turned to the legislative history of section, which "quickly reveals that the statute was intended only as a vehicle for a juvenile court to terminate jurisdiction over a minor" and therefore should not have been used in *V.C.* to circumvent section 733. (173 Cal.App.4th at p. 1472 (conc. opn. of Scotland, P.J.).)

The history of the dismissal statute supports this conclusion. The original dismissal provision was enacted in 1915 and gave the juvenile court authority to admonish a minor who came within its jurisdiction and dismiss the petition. (Stats. 1915, ch. 631, § 8; see also, *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1463.) Minor changes were made to the dismissal statute over the years and in 1961 it was repealed when the Juvenile Court Law was recodified in its entirety. (See Stats. 1921, ch. 512, § 2; Stats. 1929, ch. 645, § 2; Stats. 1933, ch. 842, § 1; Stats. 1937, ch. 369, § 737; Stats. 1961, ch. 1616, § 1; see also, *In re W.R.W.* (1971) 17 Cal.App.3d 1029, 1035-1036, fns. 14 & 15.)

Although a general dismissal provision was not included in the recodified law, juvenile courts continued the practice of exercising the discretion to dismiss petitions at disposition. (*In re W.R.W.*, *supra*, 17 Cal.App.3d at p. 1036, fn. 17.) In approving this practice, the court in *In re W.R.W.* stated:

> It would be inconsistent with the liberal termination provisions and the general thrust of the juvenile court law to hold that the referee, at the time of original disposition, could not dismiss the case if he felt that court supervision would be unnecessary and perhaps harmful.

(17 Cal.App.3d at p. 1037, fns. omitted; see also, *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1463.)

Section 782, the current dismissal statute, was enacted in 1971 as Senate Bill 461. (*V.C. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1472 (conc. opn. of Scotland, P.J.).) The enrolled bill report for Senate Bill 461 indicated that the legislation would codify then-prevailing practice: "Under present law, the court may do what this bill prescribes when the minor is under the jurisdiction of the court." (Cal. Youth Authority, Enrolled Bill Rep. on Sen. Bill No. 461 (1971 Reg. Sess.) Aug. 10, 1970, p. 1; see also, Assem. Com. on Criminal Justice, Juvenile Courts – Dismissal of Petitions, Sen. Bill No. 461 (1971 Reg. Sess.), p. 1. [the bill "simply codifies present practice in many counties."] [RMJN].)[16] The bill report explained, however, that the legislation would go beyond then-current practice and expand the juvenile courts' authority to dismiss petitions, thereby giving a court flexibility to terminate jurisdiction earlier than it otherwise might:

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A citation of "RMJN" indicates that a document is part of Respondent's Motion for Judicial Notice. "AMJN" refers to documents within Appellant's Motion for Judicial Notice.

> This bill would extend the court's authority to dismiss the petition and set aside the findings so long as the person is under 21 years of age. It allows the courts some latitude and would provide the court with the alternative to terminate jurisdiction at an earlier date if the court felt that this was in the best interest of the minor. Some judges have felt that minors have been continued under the jurisdiction of the juvenile court so that the court could take this option of setting aside wardship.

(Enrolled Bill Rep., *supra*, p. 1; see also, *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1472 (conc. opn. of Scotland, P.J.).)[17]

The legislative history of Senate Bill 1221, the predecessor to Senate Bill 461, further supports the conclusion that the dismissal statute was intended only to end jurisdiction over a minor. Senate Bill 1221 was introduced by Senator Joseph Kennick in 1970 and contains exactly the same language as Senate Bill 461, and ultimately, section 782.[18] Senate Bill 1221 was referred to interim study and a hearing was held on November 20, 1970. (Assem. Com. on Criminal Justice, Juvenile Courts – Dismissal of Petitions, Sen. Bill No. 461 (1971 Reg. Sess.), p. 1 [RMJN]; Sen. Bill 1221 [AMJN, p. 1].)

The transcript of the hearing demonstrates that Senator Kennick introduced Senate Bill 1221 as part of a package of bills recommended by

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Enrolled bill reports are instructive on matters of legislative intent. *(Elsner v. Uveges* (2004) 34 Cal.4th 915, 934, fn.19; see also, *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1272 (conc. opn. of Scotland, P.J.).)

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The history of predecessor bills may be relevant when a legislative effort spans multiple sessions. (See *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 36; see also, *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199 [relying on history of nearly identical predecessor bill].)

the Legislative Committee of the Juvenile Court Judges of California. (Sen. Com. on General Research, Subcom. on Judiciary, Interim Hearing (Nov. 20, 1970), pp. 36-37 [AMJN pp. 8-9].) He stated that the dismissal bill would permit a juvenile court to end jurisdiction over a minor in appropriate cases:

> SB 1221 authorizes the Judge of a Juvenile Court to *terminate its jurisdiction* of a case if the Court finds that the interest of justice and the welfare of the minor requires [sic] dismissal of the case, or the minor is not in need of treatment or rehabilitation, whether or not the minor involved in the case is a ward or a dependent child of the Court.

(*Id.* at p. 44, italics added [AMJN p. 16].)[19] The senator repeated this characterization of the dismissal provision when Senate Bill 461 was enacted. (Sen. Kennick, sponsor of Sen. Bill No. 461 (1971 Reg. Sess.), letter to Governor, Aug. 12, 1971, italics added [RMJN].)[20]

Other testimony from the Interim Hearing supports a finding that the dismissal statute was enacted to benefit minors, not to subject them to harsher sanctions. Alfred Bucher of the Alameda County District Attorney's Office observed that Senate Bill 1221 was very similar to another bill in the package creating a mechanism for minors to seal their

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A statement by a bill's sponsor is cognizable legislative history where it is communicated in hearing testimony. (See *Kaufman Broad, supra*, 133 Cal.App.4th at p. 36; *People v. Patterson* (1999) 72 Cal.App.4th 438, 443.)

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Generally a letter from the sponsor of legislation may not be relied upon as evidence of legislative intent, unless it is established that the views in the letter were communicated to the Legislature as a whole. (See, e.g., *Kaufman & Broad, supra*, 133 Cal.App.4th at p. 37.) However, such documents are entitled to consideration to the extent they constitute a reiteration of legislative discussion and events leading to enactment of a statute. (*Martin v. Szeto* (2004) 32 Cal.4th 445, 450-451.)

juvenile records. Bucher stated that Senate Bill 1221 "wants to say to a young man who has completed his term of probation satisfactorily, 'We will set aside the previous finding against you and now you can consider that you have completely paid your debt.'" (Int. Hrg. p. 70 [AMJN p. 42].) He characterized Senate Bill 1221 as "a great tool of rehabilitation" and emphasized that the adult system had a similar provision. (*Ibid.*)[21]

In written testimony submitted to the committee, the Barristers Club of San Francisco supported Senate Bill 1221, observing that dismissal might be appropriate to bring an end to less serious cases: "Particularly in the case of minor offenses, the court may find upon presentation of all the evidence, that the minor is not in need of the care and treatment available through the facilities of the juvenile court. No useful purpose can be served by placing such a minor on probation." (Sen. Com. on Judiciary, Statement of Ralph Boches (May 12, 1970) pp. 13-14 [AMJN pp. 60-61].)[22]

In sum, the histories of Senate Bills 461 and 1221 fully support the *V.C.* concurrence's finding that section 782 was intended only as a vehicle for terminating juvenile court jurisdiction. (173 Cal.App.4th at p. 1472.) There is nothing in this history which supports the juvenile court's

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Testimony at a public legislative hearing which precedes enactment of a statute may be relevant legislative history. (*Pacific Bell v. California State Consumer Services Agency* (1990) 225 Cal.App.3d 107, 115; see also, *Kaufman Broad, supra*, 133 Cal.App.4th at p. 36.)

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Written materials submitted to a committee may also be cognizable. (See, e.g., *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 376 [survey appended to committee hearing transcript].) Although Boches' statement was not actually appended to the Interim Hearing transcript, it was referenced in the Interim Hearing Summary of Testimony. (Int. Hrg. Summary of Testimony p. 13 [AMJN p. 56].)

byzantine use of section 782 in this case, which not only continued jurisdiction over appellant but subjected him to a far less favorable disposition. Accordingly, the disposition order in appellant's case should be reversed.

E. *In Re J.L.*, Which Provides No Meaningful Analysis Of The Issue Before This Court, Should Be Disapproved.

In this case, the prosecutor relied upon *In re J.L., supra,* 168 Cal.App.4th 43, in moving the juvenile court to dismiss the 2009 petition so that appellant could be committed to DJJ based on the earlier 2008 petition. (1 CT 131-134.) The juvenile court granted the motion and dismissed the 2009 petition. (10/23/09 RT 14; 1 CT 154.) The Court of Appeal, when it agreed with *V.C. v. Superior Court*, implicitly disagreed with *In re J.L.* (See *In re Greg F., supra*, 192 Cal.App.4th at p. 1260.) For the reasons that follow, appellant contends the Court of Appeal below was correct in its sub silentio rejection of *J.L.*

In *In re J.L.*, a section 602 petition was filed in March 2006, alleging that the minor had committed felony assault. The minor admitted the allegation and was placed at an adolescent center. In August 2006, a section 777 notice was filed, alleging a probation violation. In December 2006, a new section 602 petition was filed, alleging attempted second degree robbery with an enhancement of personal use of a knife. The minor admitted the attempted robbery and weapon enhancement, and an additional charge was dismissed. (168 Cal.App.4th at pp. 49-50.) After the enactment of section 733(c), the juvenile court permitted J.L. to withdraw his admission to the weapon enhancement, which made his offense DJJ-eligible. Before a contested hearing on the enhancement allegation was held, the juvenile court dismissed the December 2006 petition at the

prosecutor's request. The court then committed J.L. to DJJ based on the section 777 notice and the March 2006 section 602 petition. (168 Cal.App.4th at pp. 50-54.)

The Sixth District Court of Appeal upheld J.L.'s commitment to DJJ. In addressing the juvenile court's dismissal of the December 2006 petition, the reviewing court simply stated:

> As the minor points out, section 733 does not specifically authorize the dismissal of a petition containing the most recent offense admitted or found to be true. However, section 782 does authorize the juvenile court to set aside findings and to dismiss a petition "if the court finds that the interests of justice and the welfare of the minor require such dismissal," and it was pursuant to *this* section that the court dismissed the December 15, 2006 petition. Because the December 15, 2006 petition was dismissed, and the minor's admission to the allegations in that petition was set aside, the offense alleged in the December 15, 2006 petition could not be considered the "most recent" offense "admitted or found to be true by the court" under section 733, subdivision (c). Therefore, the court was not precluded by the December 15, 2006 petition from committing the minor to the DJJ under section 733, subdivision (c).

(168 Cal.App.4th at p. 57.)

In *J.L.*, the Sixth Appellate District seems to assume that it was appropriate for the juvenile court to dismiss the December 2006 petition pursuant to section 782. The opinion includes no analysis of either the plain language or legislative history of section 782 and sheds no light on how a juvenile court is to determine whether dismissal of a 602 petition is in the interests of justice. It includes no discussion about the interplay between sections 782 and 733(c), or the context in which the latter statute was passed. As a result, it is not persuasive on the issue of whether a juvenile court may properly invoke section 782 to dismiss a minor's most recent

petition to reach back to an earlier DJJ-eligible petition.[23] In fact, respondent does not argue that any analysis in the *J.L.* opinion supports its position. (See generally, ROMB.) Appellant therefore respectfully urges this Court to disapprove of *In re J.L.*.

F. Respondent's Arguments Are Not Persuasive.

Appellant has addressed some of respondent's arguments *ante*, and responds to other points in Argument II, *post*. Appellant addresses a few additional arguments herein. Respondent asks this Court to ignore the plain language of section 733(c) because it believes that the statute as written will bring about undesirable and unintended consequences. Respondent further implies that appellant's case is distinguishable from *V.C. v. Superior Court*. Finally, respondent claims that the legislative histories of sections 733 and 782 warrant using the latter statute to circumvent the former. These arguments should be rejected, for the reasons which follow.

1. Respondent's Belief That Undesirable Consequences Will Result Does Not Permit This Court To Misapply Sections 733(c) and 782.

Respondent sets forth a general discussion of the Juvenile Court Law and then argues that in light of this law, section 782 may be used to evade the restrictions of section 733(c). (ROMB 8-15.) It is clear, however, that the Legislature adopted section 733, subdivision (c) expressly to limit the number of youthful offenders committed to DJJ. The Legislature acted to

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Interestingly, *V.C.* says that "The question of whether a juvenile court may use its dismissal authority under section 782 to dismiss a sustained petition of a [DJJ] ineligible offense to make an earlier sustained petition of a [DJJ] eligible offense the 'most recent offense' for purposes of section 733(c) is one of first impression." (173 Cal.App.4th at pp. 1462-1463.) Apparently it did not find *In re J.L.* to be dispositive of this issue.

shift the responsibility for rehabilitating these youth to the counties from the state, which was spending enormous sums of money each year with little result. (See subsection A., *ante*.) The Juvenile Court Law provisions respondent discusses do not change the plain meaning and legislative intent of this eligibility restriction. Nor is there any need to consult juvenile law generally to interpret section 782, which appellant has shown was adopted to give juvenile courts more flexibility to terminate jurisdiction when warranted by the circumstances. (See subsection D., *ante*.)

Respondent asserts that "The situation that arose in the juvenile court below is partially due to the statutory mandate for speedy resolution of in-custody delinquency matters." (ROMB 11.) Appellant strongly disagrees. Respondent states "A minor must be released unless the prosecutor files a petition within 48 hours after a minor was taken into custody . . . ." (ROMB 12; see also, 30-32.) Respondent fails to point out that since appellant was in custody on the 2008 petition, there was no question of him being released as a result of the prosecutor's failure to file a section 602 petition within two days. In fact, the prosecutor in appellant's case had ample time to decide how to proceed and chose to file a section 602 petition alleging offenses which did not make appellant eligible for DJJ commitment.

Respondent claims that 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." (ROMB 30.) But the procedural history of appellant's case was not complicated. When the August 2009 petition was filed, appellant's delinquency history was very short – the September 2008 petition was the only one that had ever been filed against him and it alleged the offense for which he was in custody when the August 16, 2009

incident occurred. (See 2 CT 201.) The August 2009 petition recognized that a previous petition had been sustained, as it set forth an aggregated confinement time of over 17 years. (See 1 CT 206.) Thus, the prosecutor who filed it knew of appellant's delinquency history. Moreover, the deputy district attorney who accepted appellant's negotiated admission to the August 2009 petition was the same attorney who prosecuted appellant on the 2008 petition. (09/23/08 RT 2-3; 08/19/09 RT 2-3 [deputy district attorney Alexander McMahon].) This deputy may have regretted his decision to enter into a bargain with appellant to resolve the August 2009 petition (see 08/26/09 RT 72), but it would be unfair to penalize appellant for the prosecution's unwillingness to bear the consequences of its own decision-making. A prosecutor's failure to recognize the potential effects of a negotiated admission does not permit a court to misapply a statute. (*V.C. v. Superior Court*, *supra*, 173 Cal.App.4th at p. 1472 (conc. opn. of Scotland, P.J.).)

In fact, respondent acknowledges that in most situations "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." (ROMB 30.) But respondent goes on to set forth a complicated scenario in which an out-of-county probation officer acts without full information. (ROMB 30-32.) That, of course, is not appellant's case. Moreover, the specter of this hypothetical quagmire does not trump a clear legislative enactment which limits DJJ eligibility to only those wards whose most recent offense was a 707(b) or qualified sex offense.

Respondent further claims that 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." (ROMB 29.) However, as the Court of Appeal below pointed out, the prosecutor could have averted the situation by filing a section 777 probation violation notice instead of a section 602 petition. (*In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1261.)[24]

Respondent further claims that it is "illogical" to permit DJJ commitment based on a probation violation while precluding dismissal of the most recent section 602 petition. (ROMB 29-30; see also, ROMB 32.) Respondent is making a policy argument that should be directed towards the Legislature. (See, e.g., *In re Brent F.*, *supra*, 130 Cal.App.4th at p. 1127 [courts may not revise statutory scheme where respondent contends it may have adverse consequences in certain circumstances].) Moreover, respondent's assertion is unfounded. *In re J.L.*, *supra*, was the first published case to address whether section 733(c) applied to section 777 notices. (*In re D.J.*, *supra*, 185 Cal.App.4th 278, 285.) *J.L.* explained that Proposition 21, approved in 2000, had transformed section 777 into a probation violation procedure which is initiated by a notice, rather than a petition. A probation violation proceeding involves, inter alia, a different standard of proof from a section 602 hearing, and does not result in the adjudication of a criminal offense, even if the conduct at issue is in fact criminal. (168 Cal.App.4th at pp. 58-61, citing *In re Eddie M.* (2003) 31

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Several cases have held that the filing of a section 777 probation violation notice does not supersede the minor's most recent section 602 petition for purposes of section 733(c). (See, e.g., *In re J.L.*, *supra*, 168 Cal.App.4th at p. 60; *In re D.J.*, *supra*, 185 Cal.App.4th at pp. 286-288.) This issue was not raised below. Accordingly, appellant assumes for the sake of argument that he would have been eligible for DJJ commitment if the prosecutor had filed a section 777 notice instead of a section 602 petition.

Cal.4th 480.) In light of the different procedures utilized in the two proceedings, *J.L.* concluded that the reference to a "petition" in section 733(c) refers to a petition filed pursuant to section 602 but not a section 777 notice. (168 Cal.App.4th at p. 60; but see, *In re Carl N.* (2008) 160 Cal.App.4th 423, 437-438 [court assumes section 733(c) could apply to a section 777 notice].)

While the correctness of this part of *In re J.L.*, and the cases following it is beyond the purview of this appeal, they do not support respondent's position. The Legislature obviously understood when it enacted the "*most recent offense*" language of section 733(c) that some minors who have committed 707(b) or specified sex offenses would be eligible for DJJ commitment while others would not. Thus, it does not contravene the language of section 733 or the legislative intent behind it to find that juvenile courts may not use the dismissal statute for the purpose of making *any* minor who has *ever* committed a 707(b) offense eligible for commitment. If there is any contradiction between permitting the prosecutor to maintain a minor's DJJ eligibility by proceeding via section 777 instead of section 602, but not permitting the juvenile court to dismiss a section 602 petition to reach back to a previous one – as respondent contends – one has to question whether the Courts of Appeal have correctly decided that a section 777 notice does not affect what is the most recent offense alleged in a petition under section 733(c).

Respondent contends that allowing section 782 to be used to circumvent the restrictions of section 733(c) "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." (ROMB 7.) But this temporal distinction is exactly what the Legislature intended – that only minors whose *most recent offenses* are 707(b) or sex offenses should be sent to DJJ. Respondent may find this scheme absurd but the Legislature apparently did not. In fact, it would be absurd for juvenile courts to utilize section 782 to make the "most recent offense" language of section 733(c) superfluous by serially dismissing an unlimited number of section 602 petitions for the purpose of sending a youth to the Division of Juvenile Justice.

In sum, the invocation of unintended and undesirable consequences fails to persuade. (ROMB 28-30, 32.) In essence, respondent believes that the Legislature's decision to prohibit the juvenile courts from sending some minors to DJJ is not good policy and inappropriately restricts the exercise of discretion by such courts. However, it is the Legislature's prerogative to qualify DJJ commitment. It purposely shifted the responsibility for rehabilitating all but currently serious and violent offenders from the state to the counties, believing that counties were better equipped and more effective in treating these youth than DJJ. (See subsection A., *ante*.) As the Court of Appeal below recognized, respondent in effect argues that the law should be different. This argument should be directed toward the Legislature rather than the courts. (See *In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1261.)

2. Appellant's Case Is Distinguishable From *In re J.L.* But Not From *V.C. v. Superior Court*.

Respondent discusses *In the J.L.* at length, but does not expressly argue that the opinion is persuasive on the question of whether section 782 may be used to reach back to a DJJ-eligible petition. (See ROMB 15-16.)

Respondent suggests, however, that appellant's case is like *In re J.L.* and unlike *V.C.* because his plea bargain was not "fully executed." (ROMB 18.) After emphasizing that disposition had already occurred when the juvenile court in *V.C.* dismissed that minor's most recent petition, respondent states: "*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 . . . ." (ROMB 18.)

Because appellant believes this Court should reject the reasoning of *J.L.* (see subsection E, *ante*), it does not matter whether appellant's case is procedurally distinguishable. Moreover, appellant's case is controlled by *V.C.'s* determination that the interests of society do not support the use of section 782 to avoid section 733(c)'s restrictions, even apart from a consideration of his constitutional rights. In any event, to the extent respondent is suggesting that *In re J.L.*, rather than *V.C.*, should dictate the outcome of his case, this claim should be rejected.

Appellant's admission to the 2009 petition was entered pursuant to an agreement reached between his counsel and the prosecutor that if he admitted count I and the enhancement, count II would be dismissed. (08/19/09 RT 3; 1 CT 141 [count II dismissed pursuant to a plea bargain]; see also, *In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1256.) While disposition had not yet occurred on appellant's 2009 petition when the juvenile court dismissed it, as the Court of Appeal below found, "this distinction is not significant." (*In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1259, fn. 4.) The appellate court recognized that a minor may not be committed to DJJ if "'the most recent offense alleged in any petition *and admitted* or found to be true by the court is'" not a 707(b) offense. (192 Cal.App.4th at p. 1259, fn. 4, quoting § 733, subd. (c).) Appellant admitted

battery, which is not listed in section 707(b). Nothing more than appellant's admission was "necessary to trigger the bar of section 733(c)." (*In re Greg F., supra*, 192 Cal.App.4th at p. 1259, fn. 4.)

Moreover, to the extent that an analysis of appellant's constitutional rights is necessary to determine whether dismissal of his 2009 petition was in the interests of justice, as *V.C.* requires, the fact that his case does not involved a negotiated disposition is not dispositive. In *V.C.* the appellate court explained that the violation of minor V.C.'s constitutional rights arose from the failure to give him the benefit of his plea bargain:

> Here, the constitutional rights of V.C. include his due process right to the benefit of his plea bargain in the 2007 petition. (*People v. Mancheno* (1982) 32 Cal.3d 855, 860 [].) Under the *due process clause*, "'when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.'" (*Santobello v. New York* (1971) 404 U.S. 257, 262 [].)

(173 Cal.App.4th 1455, 1465.) In appellant's case, the prosecutor offered an inducement and appellant accepted it in exchange for his admission. Thus, after the court accepted his admission, appellant had a due process right to the benefit of his bargain. Further, although the parties did not explicitly agree to a particular disposition, the offense appellant admitted made him statutorily ineligible for DJJ commitment. He thus had an expectation that his disposition would involve a less severe sanction.

In fact, the violation of appellant's due process rights to the benefit of his plea bargain distinguishes his case from *In re J.L.* When the minor J.L. originally admitted the attempted robbery and weapon enhancement, section 733(c) had not yet been enacted. Thus, J.L. had no expectation at the time he entered into the deal that he would *not* be sent to DJJ. And after

section 733(c) was adopted, the minor was permitted to withdraw his admission to the enhancement which turned his offense into one listed in section 707(b). (*In re J.L.*, *supra*, 168 Cal.App.4th 43, 49-52.) The dismissal of the December 2006 petition thus did not infringe upon J.L.'s due process right to the benefit of his plea bargain, both because it was the minor himself who withdrew from the deal and because he never had an expectation that he would not be committed to DJJ.

In sum, appellant's case cannot be meaningfully distinguished from *V.C.* but is materially different than *J.L.*

3. The Legislative Histories Of Sections 733 and 782 Do Not Support Respondent's Arguments.

By separate motion, respondent submits approximately 200 pages of documents and requests this Court to take judicial notice of them as the legislative histories of Welfare and Institutions Code sections 733 and 782. Although very little is said about this history in the opening merits brief, respondent asserts that it supports overturning the Court of Appeal's decision below. Appellant disagrees.

As to section 733, subdivision (c), the Court of Appeal in *V.C.* reviewed the legislative history, including Senate and Assembly floor analyses, and concluded: "The import of these analyses seems clear; the Legislature intended only currently violent or serious juvenile offenders to be sent to [DJJ] starting September 1, 2007." (173 Cal.App.4th at p. 1468; see also, *In re Greg F.*, *supra*, 192 Cal.App.4th at pp. 1258-1259.) Respondent does not challenge this conclusion. (See generally, ROMB.) Instead, respondent argues that section 733(c)'s legislative history does not suggest that "the Legislature abrogated section 782 dismissal power in circumstances such as this case." (ROMB 22.) But as appellant has already

explained, lawmakers would have had no cause to address the application of section 782, since the dismissal statute had never then been used for the purpose of continuing rather than terminating a juvenile court's jurisdiction over a minor. (See subsection C., *ante*.)

Respondent also cites a Senate Rules Committee Analysis, finding that its use of the word "adjudicated" demonstrates a legislative intent that DJJ eligibility not be restricted to minors whose most recent offenses are 707(b) or specified sex crimes. (ROMB 27-28.) Appellant does not understand this argument. In any event, if the legislative history gives rise to conflicting inferences, "it does not justify departing from the plain language of the statute." (*People v. Boyd* (1979) 24 Cal.3d 285, 295; see also, *California Teachers Association v. Governing Board of Central Union High School District* (1983) 141 Cal.App.3d 606, 612-614 [Legislative Counsel's Digest is not part of the law and does not control over contrary language in the statute].) Here, the "most recent offense" language is quite clear, and one word in the voluminous legislative history respondent offers does not justify departing from it.

Respondent also argues that the legislative history of section 782 "fails to establish that [it] prohibits dismissals that adversely impact the minor['s] immediate penal interests." (ROMB 26.) But as the concurring opinion in *V.C.* determined, the provision was only intended as a mechanism to terminate jurisdiction over a minor. (173 Cal.App.4th at p. 1472; see also, subsection D., *ante*.) It seems clear that if the dismissal statute is only properly invoked to terminate jurisdiction, it necessarily prohibits dismissals that adversely impact a minor's immediate penal interests.

Respondent does not seek to demonstrate that the *V.C.* concurrence

incorrectly read section 782's legislative history. (See generally, ROMB.) Instead, respondent observes that the legislative history fails to refer to Penal Code section 1385, which it argues supports a determination that section 1385 does not provide an appropriate analytical framework for interpreting section 782. (ROMB 22-26.) Respondent does not explain, however, why the legislative history for section 782 would have referred to Penal Code section 1385, or why such lack of reference would invalidate the conclusion by several Courts of Appeal that the adult dismissal statute provides a helpful reference for interpreting the "interests of justice" prong of section 782. (See subsection B., *ante*.) Moreover, the legislative history proffered by appellant on Senate Bill 1221 *does* demonstrate recognition that if enacted, the juvenile dismissal statute would "parallel" the adult criminal law dismissal provision. (AMJN p. 42.)

In sum, the legislative histories of both sections 733, subdivision (c) and 782 fully support the Court of Appeal's determination below that appellant was not statutorily eligible for commitment to the DJJ.

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II.

THE JUVENILE COURT'S DISMISSAL OF APPELLANT'S MOST RECENT PETITION WAS AN ABUSE OF DISCRETION BECAUSE IT WAS NOT REQUIRED BY HIS WELFARE

Even if this Court determines that appellant was statutorily eligible for commitment to the Division of Juvenile Justice, appellant's welfare did not require the dismissal of his 2009 petition. The dismissal was therefore an abuse of discretion.

Dismissal under section 782 must be *both* in the interests of justice *and* required by the welfare of the minor. (Welf. & Inst. Code, § 782; *V.C. v. Superior Court*, *supra*, 173 Cal.App.4th 1455, 1464.) Neither *V.C.* nor *J.L.* address this second prong of section 782. *(V.C. v. Superior Court*, *supra*, 173 Cal.App.4th 1455, 1469 [because dismissal was not in the interests of justice, court finds it unnecessary to consider whether the welfare of V.C. required dismissal]; see *In re J.L.*, *supra*, 168 Cal.App.4th 43, 57 [no discussion of "welfare of the minor"].)

Every part of a statute is presumed to have some effect, and constructions that render some words to be "surplusage" are to be avoided. (*People v. Arias*, *supra*, 45 Cal.4th 169, 180.) Since section 782 states that dismissal must be required by the welfare of the minor but this requirement does not appear in Penal Code section 1385, the adult dismissal statute, "welfare of the minor" must have some additional meaning beyond "the interests of justice."

Although appellant could not find any case addressing the meaning of this part of section 782, he believes that his welfare did not require the

dismissal of the August 18, 2009 petition.[25] In fact, appellant's welfare required placement in a mental health treatment program that could adequately address his particular issues.

Dr. Doty clearly articulated appellant's need for sophisticated mental health treatment, and explained that the kind of counseling provided by a substance abuse program would be inadequate. (1 CT 161-162; 12/17/08 RT 2-13.) Although the juvenile court ordered appellant to be placed in a dual diagnosis program so that he would receive the appropriate mental health care, he was sent instead to a substance abuse treatment program where he was provided counseling by someone who was not a therapist. (12/22/08 RT 48; 12/17/08 RT 16; 06/11/09 RT 55.) Although WRC staff recognized that appellant needed mood-stabilizing medication, they failed to provide it for almost five months. He was terminated from the program before there was time to see if the medication would improve his condition. (1 CT 77-78; 06/11/09 RT 56-58.) These facts do not demonstrate that appellant's welfare *required* placement in DJJ.

Respondent does not acknowledge the probation department's failure to provide the kind of treatment ordered by the juvenile court. (See generally, ROMB.) Instead, respondent emphasizes that the juvenile court

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Respondent asserts that *Derek L., supra*, applied "both prongs of the required section 782 considerations." (ROMB 24.) That is not correct. In *Derek L.*, the Court of Appeal held that it would not have been in the *interests of justice* for the juvenile court to dismiss with prejudice the minor's section 602 petition for the purpose of sanctioning the prosecutor for delay in the jurisdictional proceedings. The Court of Appeal did not address the separate issue of section 782's mandate that any dismissal must be required by the minor's welfare. (*Derek L. v. Superior Court, supra*, 137 Cal.App.3d 228, 230, 233, 236.)

warned appellant more than once that his conduct would dictate the outcome of his case. (ROMB 35-36.) However, both the juvenile court and respondent neglected to consider the likely reasons behind appellant's behavior. First, he appeared to be suffering from an untreated mood disorder, which explains why after long periods of very good behavior, appellant periodically acted out. Second, appellant spent months in a violent unit of Sonoma's juvenile hall, where he was attacked on three occasions. After the first attack, appellant sought but did not receive the court's assistance in being placed in less violent housing. (10/29/08 RT 14-15.) He later was involved in the August 16 incident, a minor event which caused no injuries. (2 CT 192.) After being himself attacked twice more, he unsuccessfully tried to assault another ward. (2 CT 211-212; 2 CT 185.) It was after this incident that the juvenile court decided to commit him to DJJ. (02/03/10 RT 11, 20.) While appellant's in-custody behavior was certainly not ideal, when put into context it was not so serious that his welfare required a commitment to DJJ.

Respondent asserts that a DJJ commitment may advance the minor's welfare. (ROMB 23.) Respondent states: "It cannot be disputed that DJJ has many rehabilitative programs of probable benefit to wards." (ROMB 23.) This assertion is curious, to put it mildly, in light of the myriad inadequacies in virtually every aspect of DJJ the *Farrell* litigation has exposed, and continues to document.[26] In any event, whether appellant

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For example, on August 4, 2011, the Superior Court of Alameda County held that the director of the California Department of Corrections and Rehabilitation had willfully disobeyed the court's orders and ordered him to provide the services required by DJJ's Education Remedial Plan. (*Farrell v. Cate* (case no. RG03079344), Order Granting Motion To Enforce Court-

would probably benefit from a DJJ commitment, as required by Welfare and Institutions Code section 734, is not the issue here.[27] The question is whether under section 782, appellant's welfare *required* dismissal of the 2009 petition.[28] As appellant has established above, it does not.

Respondent also suggests that DJJ commitment was the juvenile court's only option in light of appellant's history. (ROMB 26, 37.) The record indicates otherwise. When the juvenile court dismissed appellant's 2009 petition, it indicated that it had in mind six dispositional options, including, inter alia, a DJJ 90-day diagnostic, an extended placement in juvenile hall, and a camp commitment. (10/23/09 RT 14-18.) In a later hearing, the juvenile court said that a dual diagnosis placement "certainly should be put on the table." (12/08/09 RT 91.) At the February 3, 2010 disposition hearing, after the probation officer opined that it would be very difficult to place appellant, he acknowledged that he could contact other

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Ordered Remedial Plans And To Show Cause Why Defendant Should Not Be Held In Contempt Of Court [AMJN pp. 63-67].)

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Appellant demonstrated below that there was insufficient evidence to establish that he would probably benefit from a commitment to DJJ. (See Appellant's Opening Brief [AOB] 21-23; Appellant's Reply Brief [ARB] 8-10.) The Court of Appeal did not reach this issue, in light of its finding that the juvenile court's dismissal of the 2009 was an abuse of discretion. (*In re Greg F.*, *supra*, 192 Cal.App.4th at 1261, fn. 7.)

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Respondent asserts: "In certain instances, the minor's welfare is best served only by resort to a DJJ commitment." (ROMB 26, citing *In re Donald S.* (1988) 206 Cal.App.3d 134, 139.) *In re Donald S.* held that it was not in the minor's best interests to have his status as a dependent child continue after he was committed to CYA. The case did not involve section 782 and does not support a conclusion that appellant's welfare required a DJJ commitment.

placements. (02/03/10 RT 12; see also RT 15-16 [probation officer told defense counsel there were other placement options he could contact].)

Respondent further relies upon the juvenile court's remarks about the types of services DJJ could ostensibly offer to appellant. (ROMB 36-37.) The court's belief about what DJJ could provide was not, however, based on evidence in the record but rather on a training program that it had recently attended. (See AOB 22-23.) As appellant has demonstrated in the briefing below, the juvenile court violated appellant's due process rights by relying on such information, as he was not privy to what the court had heard at the presentation and therefore unable to respond to it. (AOB 24-28; ARB 11-3.) Moreover, the court's belief that DJJ had implemented evidenced-based programs and had instituted a good educational system and anti-gang programs that would benefit appellant as a result of the *Farrell* litigation was misguided. (See 02/03/10 RT 18, 20.) At the time of appellant's disposition, DJJ had yet to design an evidence-based treatment and rehabilitative system. Significant deficits in the educational program still existed and DJJ's plans to design and implement an evidence-based gang reduction program were well behind schedule. (AOB 26-28.)[29]

In sum, the juvenile court's dismissal of appellant's 2009 petition was not required by his welfare, as section 782 demands.

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Again, the Court of Appeal below did not reach this issue. (*In re Greg F.*, *supra*, 192 Cal.App.4th at p. 1261, fn. 7.)

CONCLUSION

For the reasons set forth above, appellant respectfully requests this Court to reverse the Sonoma County Juvenile Court's dispositional order.

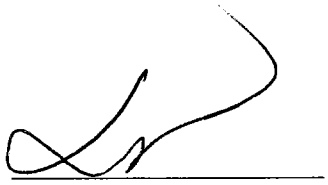
Dated: October 5, 2011

Respectfully submitted,

LISA ROMO
Attorney for Appellant

Certificate of Word Count

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that Appellant's Answer Brief on the Merits in *In re Greg F.* contains 13,879 words, according to the computer program I used to prepare the brief.



LISA ROMO
Attorney for Appellant

DECLARATION OF SERVICE

***In re GREG F.*, No. S191868**

I, LISA M. ROMO, declare that I am over 18 years of age, and not a party to the within cause; my business address is 2342 Shattuck Avenue, PMB 112, Berkeley, California 94704. I served a true copy of the attached:

APPELLANT'S ANSWER BRIEF ON THE MERITS

on each of the following, by placing same in an envelope addressed (respectively) as follows:

Office of the Attorney General
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G.F.
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First Appellate District, Div. Five
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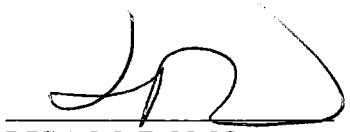
Each said envelope was then, on October 5, 2011, sealed and deposited in the United States Mail at Berkeley, California, Alameda County, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 5, 2011, at Berkeley, California.



LISA M. ROMO