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SBN 134850

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re GREG F., A Minor.	
THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent, v. GREG F., Defendant and Appellant.	Case No. S191868

APPELLANT'S MOTION FOR JUDICIAL NOTICE, MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION IN SUPPORT, AND [PROPOSED] ORDER

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Appellant hereby requests, pursuant to sections 459 and 452 of the California Evidence Code, this Court to take judicial notice of the documents attached to, and referenced by, this motion. Exhibits A-D are legislative history for Senate Bill 1221, a predecessor to that which

ultimately became Welfare and Institutions Code section 782. Exhibit E is a recent order issued by the superior court in *Farrell v. Cate*, a lawsuit challenging unsafe conditions and illegal practices in the Division of Juvenile Justice (DJJ). This motion is based upon this notice, the attached memorandum of points and authorities and declaration of counsel, and the Court's files and records in this case.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Evidence Code section 459, a reviewing court may take judicial notice of any matter specified in section 452. (Evid. Code, § 459, subd. (a).) Under California Rules of Court, rule 8.252, a party requesting judicial notice must file a motion which states why the matter to be noticed is relevant to the appeal, whether the matter was presented to the trial court, and whether it relates to proceedings occurring after the judgment being appealed. (Rule 8.252(a)(2).) The matter to be noticed, if not in the record, must be served and filed with the motion. (Rule 8.252(a)(3).)

Judicial notice may be taken of documents that constitute cognizable legislative history. (Evid. Code, § 452, subd. (c); *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26; see also, *Elsner v. Uveges* (2004) 34 Cal.4th 915, 921, fn. 10.) The history of predecessor bills may be relevant when a legislative effort spans multiple sessions. (See *Kaufman & Broad, supra*, 133 Cal.App.4th at p. 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].) Exhibits A-D constitute legislative history for Senate Bill 1221, which was introduced by Senator Kennick in 1970. This bill is identical to Senate Bill 461, which was enacted into law the following legislative session and became Welfare and Institutions Code section 782, the juvenile

dismissal statute at issue herein. Thus, the legislative history for Senate Bill 1221, the predecessor to Senate Bill 461, is relevant to this appeal. As appellant sets forth below, each exhibit is cognizable legislative history for Senate Bill 1221.

Exhibit A is a copy of Senate Bill 1221 with Legislative Counsel's Digest. Both bill versions and the digests of Legislative Counsel are cognizable legislative history. (*Kaufman Broad*, *supra*, 133 Cal.App.4th at pp. 31, 35.)

Exhibit B is the Senate Final History of Senate Bill 1221. Final histories are cognizable legislative history. (*Kaufman Broad*, *supra*, 133 Cal.App.4th at p. 32.)

Exhibit C is part of the transcript of the Interim Hearing held in the Senate Committee on General Research, Subcommittee on Judiciary on November 20, 1970. 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.)

Exhibit D is written testimony submitted on behalf of the Barrister's Club of San Francisco to the Senate Committee on the Judiciary and referred to in the 1970 Interim Hearing. Such materials are cognizable legislative history. (See, e.g., *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 376 [survey appended to committee hearing transcript].)

Exhibit E is the Order Granting Motion to Enforce Court-Ordered Remedial Plans and to Show Cause Why Defendant Should Not Be Held in Contempt of Court, filed in *Farrell v. Cate* (Alameda Co. Sup. Ct. no. RG03079344) on August 4, 2011. It is subject to judicial notice as a court record. (Evid. Code, § 452, subd. (d); see, e.g., *People v. Hardy* (1992) 2

Cal.4th 86, 134-145 [taking judicial notice of court records].) It is relevant to this appeal because it is responsive to respondent's claim that it is undisputed that DJJ has many rehabilitative programs of probable benefit to minors. (Respondent's Opening Merits Brief 23.)

The documents appellant asks this Court to judicially notice were not presented to the juvenile court below, or to the Court of Appeal. (Cal. Rules of Court, rule 8.252(a)(2)(B).) However, the "Evidence Code clearly contemplates that, at least in some situations, a reviewing court will grant judicial notice even when the information was not presented to the trial court." (*People v. Hardy*, *supra*, 2 Cal.4th at p. 134.) Judicial notice is appropriate in the instant situation because this Court reviews de novo the issues of statutory construction presented. (See *Los Angeles County Department of Children and Family Services v. Superior Court* (2008) 162 Cal.App.4th 1408, 1414.)

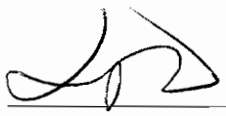
Exhibits A-D were not produced after the date of the juvenile court's dispositional order. (Cal. Rules of Court, rule 8.252(a)(2)(C).) Exhibit E was, however, judicial notice of it is appropriate because respondent's broad claim regarding the benefits of DJJ's programs is not limited to those in place at the time of appellant's dispositional order.

CONCLUSION

For the reasons set forth above, appellant respectfully requests this Court to grant judicial notice of the attached documents attached.

DATED: October 5, 2011

Respectfully submitted,



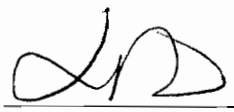
Lisa M. Romo
Attorney for Appellant

DECLARATION OF COUNSEL

1. I, Lisa Romo, am an attorney in good standing licensed to practice before the courts of this state.
2. On June 8, 2011, this Court granted respondent's petition for review of the Court of Appeal's decision filed February 23, 2011. I was appointed by this Court on July 7, 2011, to represent appellant GREG F. in these proceedings.
3. Exhibit A is a true and correct copy of Senate Bill 1221 with Legislative Counsel's Digest, which I obtained from the main stacks of the library of the University of California, Berkeley.
4. Exhibit B is a true and correct copy of the Senate Final History of Senate Bill 1221, which I obtained online from the California Assembly's website at www.assembly.ca.gov.
5. Exhibit C is a true and correct copy of excerpts from the transcript of the Senate Committee on General Research, Subcommittee on Judiciary, Interim Hearing held November 20, 1970, which I obtained from the main stacks of the library of the University of California, Berkeley.
6. Exhibit D is a true and correct copy of an excerpt from the 17-page statement by Ralph Boches, Esq., on behalf of the Barrister's Club of San Francisco, submitted to the Committee on the Judiciary, which I obtained from a microfiche copy of the Senate Judiciary Committee file for Senate Bills 1216-1223 at the California State Archives.
7. Exhibit E is a true and correct copy of the Order Granting Motion to Enforce Court-Ordered Remedial Plans and to Show Cause Why Defendant Should Not Be Held in Contempt of Court, filed in *Farrell v. Cate* (Alameda Co. Sup. Ct. no. RG03079344) on August

4, 2011, which is available the Alameda County Superior Court's website at www.alameda/courts.ca.gov.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 5th day of October in Berkeley, California.



Lisa M. Romo
Attorney for Appellant

INDEX OF EXHIBITS

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THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent, v. GREG F., Defendant and Appellant.	)	Case No. S191868

[PROPOSED] ORDER

Appellant's Motion for Judicial Notice is hereby GRANTED.

Honorable Tani Cantil-Sakauye
Chief Justice of the California
Supreme Court

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 MOTION FOR JUDICIAL NOTICE

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

Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

FDAP
730 Harrison Street, Suite 201
San Francisco, CA 94107
Attn: Richard Braucher

Sonoma County Superior Court
7425 Rancho Los Guilicos Rd., Dept. C
Santa Rosa, CA 94509
Attn: Hon. Raima Ballinger

G.F.
(Appellant)

Sonoma County District Attorney
Juvenile Division
7425 Rancho Los Guilicos Rd., Dept. D
Santa Rosa, CA 94509

Court of Appeal
First Appellate District, Div. Five
350 McAllister Street
San Francisco, CA 94102

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

EXHIBIT A

SENATE BILL No. 1221

Introduced by Senator Kennick

April 3, 1970

REFERRED TO COMMITTEE ON JUDICIARY

An act to add Section 782 to the Welfare and Institutions Code, relating to minors.

The people of the State of California do enact as follows:

SECTION 1. Section 782 is added to the Welfare and Institutions Code, to read:

782. 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.

LEGISLATIVE COUNSEL'S DIGEST

SB 1221, as introduced, Kennick (Jud.). Juvenile court case dismissals.

Adds Sec. 782, W. & I.C.

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

Vote—Majority; Appropriation—No; Fiscal Committee—No.

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EXHIBIT B

1221—Kennick

An act to add Section 782 to the Welfare and Institutions Code, relating to minors

April 3—Read first time To Com on JUD.
May 13—From committee Be re-referred to Com on RLS to be assigned to proper committee for interim study Re-referred to Com. on RLS.
Sept 23—From committee without further action

1222—Kennick

An act to amend Section 27706 of the Government Code, and to amend Section 634 of the Welfare and Institutions Code, relating to counsel in juvenile court

April 3—Read first time To Com on JUD
May 13—From committee Be re-referred to Com on RLS to be assigned to proper committee for interim study Re-referred to Com on RLS.
Sept 23—From committee without further action

1223—Kennick.

An act to amend Section 8305 of the Penal Code, and to amend Sections 509, 514, 584, 729, 777, and 871 of the Welfare and Institutions Code, relating to minors

April 3—Read first time To Com on JUD
May 13—From committee Be re-referred to Com on RLS to be assigned to proper committee for interim study Re-referred to Com on RLS
Sept. 23—From committee without further action

1224—Kennick

An act to amend Section 4160 of the Business and Professions Code, relating to poisons

April 3—Read first time To Com on JUD
May 13—From committee Be re-referred to Com on RLS to be assigned to proper committee for interim study Re-referred to Com on RLS
Sept 23—From committee without further action

1225—Kennick.

An act to add Article 4 (commencing with Section 8270) to Chapter 7 of Division 4 of the Public Utilities Code relating to deliveries.

April 3—Read first time To Com on P U C
May 27—From committee with author's amendments Read second time. Amended Re-referred to committee
Aug 21—From committee without further action

1226—Rodda

An act to amend Sections 29001, 29003, 29004, 29005, 29006, 29007, 29007.3, 29007.5, 29007.6, 29008, 29009, 29010, 29011, 29012, 29013, 29015, 29017, 29018, 29018.5, 29021, and 29022 of and to repeal Section 29007.2 of, the Education Code, relating to private education institutions

April 3—Read first time To Com on ED
June 18—From committee Do pass, but first be re-referred to Com on FIN Re-referred to Com on FIN
July 8—From committee with author's amendments Read second time. Amended Re-referred to committee
July 14—From committee Do pass as amended
July 15—Read second time Amended To third reading
July 20—Read third time Passed To Assembly
July 20—In Assembly Read first time Held at desk.
July 21—To Com on ED
Aug 11—From committee Do pass as amended, but first amend, and re-refer to Com on W & M
Aug 12—Read second time Amended Re-referred to Com on W & M
Aug 19—From committee Do pass Read second time To third reading
Aug 20—Read third time Passed To Senate
Aug 20—In Senate To unfinished business
Aug 21—Senate concurs in Assembly amendment To enrollment
Sept 8—Enrolled To Governor at 10 a m
Sept 20—Approved by Governor Chapter 1568.

EXHIBIT C

Interim Hearing
SENATE COMMITTEE ON GENERAL RESEARCH
SUBCOMMITTEE ON JUDICIARY
CALIFORNIA LEGISLATURE

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Held In

Hastings Law School
San Francisco, California

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Friday, November 20, 1970

10:00 O'Clock, A. M.

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Subject: (Review of Juvenile Court Law)

Members Present: Senator Gordon Cologne, Chairman
Senator Robert J. Lagomarsino
Senator George R. Moscone

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FRIDAY, NOVEMBER 20, 1970, 10:00 O'CLOCK, A. M.

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CHAIRMAN COLOGNE: We have a quorum so we will start the meeting. We have with us today Senator Elect Gregorio. If you would like to join us at the table here and watch the legislative process from this angle, why you are welcome to join us.

MR. GREGORIO: I'm going to have to leave in about a half hour.

CHAIRMAN COLOGNE: Senator Moscone was here a minute ago and will be back. To my right is Senator Lagomarsino, who is a member of the Senate Judiciary Committee. Next to him is Senator John Harmer who is interested in the legislation here today. And in the audience we have Senator Joe Kennich. Joe, if you would like to sit up here at the counsel table and make like an attorney, we would be glad to have you. I don't want to do it if you feel like it's going to subject you to any undue adverse publicity down home sitting with a bunch of attorneys.

SENATOR KENNICH: I wouldn't mind sitting there, but I wouldn't like to make out like an attorney.

CHAIRMAN COLOGNE: Joe is one of our favorites on the Rules Committee and certainly a fine Senator. If you haven't met him, we have here Senator Elect Gregorio who will be joining us in the Legislature in January.

We have with our Committee today the Consultant, Mr. John Balluff on my extreme right, and Rosemary Deese, who is

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the Committee Secretary, who will be helping us.

And finally arrived is Senator Moscone from San Francisco.

Because of the long agenda we're going to jump right into the issue, which is the subject of Juvenile Law and I have a Senate Resolution on this broad general subject to study the entire problem of the structure of the Juvenile Court Law, which is about nine years old now and I think that it's about time that we look into the whole subject and see how effective it's working.

A number of witnesses that we had scheduled to go on first primarily to open this subject, Jon Smock of the Judicial Council, Homer Thompson, Harold Bradford, Alfred Bucher, Charles Gross, and Eugene Rock, but in view of the demands of the other Senators, I'm going to, with their indulgence, put over this part of our testimony until at least the other two Senators have had a chance to present their particular legislative program and start off with them.

The first witness will be, unless one of the Senators has a comment here, Senator John Harmer of Glendale. John, you may lead off with your Senate Bill 398.

SENATOR HARMER: Thank you, Mr. Chairman.

Mr. Chairman and members, my comments will be very brief because I simply want to set the stage for two witnesses who have graciously joined us today from the Los Angeles Courts.

It has long been my feeling in the area of dealing

than a judge. It could be a probation officer, it could be a law enforcement agency. It could be the County Medical people. Whoever first encounters the problem could be the one that would have some sort of authority to require proper treatment of the individual.

CHAIRMAN COLOGNE: Very good. I appreciate your testimony, Mr. Bradford. Did you have anything else?

SENATOR HARMER: No. Thank you, Mr. Chairman,and members.

CHAIRMAN COLOGNE: We appreciate your bringing the subject before the Committee and I'm sure you will enter this legislation and there will be other legislation on this subject because it is one of deep concern I'm sure, to all of us.

Thank you, Senator Harmer.

Now Senator Kennich, we'll let you start off your testimony on Senate Bills 1216 to 1224.

SENATOR KENNICH: Thank you, Mr. Chairman and members of the Committee.

I have with me, gentlemen of the Committee, Judge Berenson, Judge of the Juvenile Court of Ventura County. You will recall that when I presented these bills before this Committee in Sacramento late in the Legislative Session, I was accompanied by Judge Bruce Sumner of Orange County, at which time the Committee determined that it would be wise to send the bills to interim study.

The bills were given to me by Judge Robert Wenkè, Judge

of the Juvenile Court of Los Angeles County, who at that time was Chairman of the Legislative Committee of the Juvenile Court Judges of California.

Judge Wenke in the meantime, as you will recall, became a candidate for Lieutenant Governor of California, and had to give up the bench during the time that he was running for that distinctive office, so he ran a little foul up, because when Judge Wenke returned to the bench after having unsuccessfully run for the office, he found that his seat had been taken by someone else and he was assigned to another bench.

In the meantime, Judge Berenson from Ventura County had been appointed Chairman of the Legislative Committee of the Juvenile Court Judges Association and hence he is here with me this morning to present these bills. I think we have a number of other people here that are interested in these bills. I don't know whether they are interested pro or con, however. So there's a little question in my mind whether they should be up here with me or not.

Do we have the probation officer in the audience this morning?

Are you a probation officer?

MR. LEVINE: Yes, I am.

SENATOR KENNICH: And who do you represent?

MR. LEVINE: Well I'm from San Mateo County, but I'm not representing anyone officially.

SENATOR KENNICH: Are you planning to testify for or

against?

MR. LEVINE: I'm not planning on testifying, just observing.

SENATOR KENNICH: We have Captain Eugene Rock, Commander of the Juvenile Division of the Los Angeles Police Department here. Commander Rock is seated in the rear of the chamber, I presume to answer questions having to do with law enforcement in this field.

We also have Inspector Gross representing the Southern California Juvenile Officers Association. We also have Bill Daugherty, Assistant to the Chief of the California Youth Authority.

Mr. Chairman, when these bills were given to me, I think there were 39 of them. So we condensed them into the series of bills that you have before you and it was my intention to have not only Judge Berenson here as a Judge of the Juvenile Court, but to have a probation officer here, to have a law enforcement officer here, to have the Youth Authority here to answer questions in this particular field having to do with these bills. And with your permission, while the Legislative Counsel has made a very fine digest on each of these matters, you will find that each of the bills covers several areas in the Juvenile Court law, and I, too, have made a rather brief synopsis of each of them that with your permission I would like to read.

First off, may I ask you to put Senate Bill 1224 in the bottom of the barrel. Even though I have profound

admiration for the Judges of the Juvenile Court, I would prefer to go on living for a little while, and I can't quite see myself taking the purchase of gasoline or hair spray away from youngsters at this stage of the game.

SENATOR MOSCONE: Take away the gas, they couldn't drive --

SENATOR KENNICH: That's right. It might be admirable for some parents, but I wouldn't want to get myself confronted with any problems with young girls and hair spray or many young boys and hair spray.

LAGOMARSINO: It's a good anti-smog bill.

SENATOR KENNICH: It's rather inconsistent to have driver education on one hand and refuse to purchase gas on the other, so I think the bill can stand some revision before we introduce that.

Senate Bill 1216, Mr. Chairman -- Mr. Chairman, it might be wise, with your permission, if I would go through these bills with the members of the Committee. I think you'll find most of these bills deal with the mechanics of Juvenile Court procedural matters. In some instances you may find that we deal with a little philosophy, but not very often, and it might be wise as I go through these bills and explain precisely what they do to set aside those bills in which there are questions in your minds. In some of them I'm sure there will be no question in your mind, and some there'll be perhaps no need to spend any time.

CHAIRMAN COLOGNE: Fine. For your benefit we will

let you go through and explain each of the total package and then we'll come back and ask you individual questions.

SENATOR KENNICH: Senate Bill 1216 basically proposes four changes in the Juvenile Court Law. First, it proposes a repeal of the exception in the law governing the appointment of Juvenile Court Referees. It requires any Referee appointed after the effective date of the bill to practice law in this State for a period of not less than five years and alternatively it allows a person to be appointed Referee if he has been admitted to practice law in this State or in another State for a combined period of not less than ten years.

Secondly, the Juvenile Court Judge can require the District Attorney to represent the minor in 600(a) and (b) cases, that is neglected and mistreated children.

Thirdly, it provides an additional alternative to present law, that if the minor is 18 years of age or older the court may commit the minor to the County Jail for not more than 90 days.

Fourth, it provides that the mother of a minor may authorize medical care for her child notwithstanding the fact that she is unmarried and is under the age of 21 years. That is SB 1216.

SB 1217 first provides that an application for a rehearing by Juvenile Court, a hearing conducted by a Referee contain a statement of the reasons such a hearing is requested. This merely authorizes the court for good cause to extend the

20-day period up to 45 days following the date of the application, and requires the judge to exercise this authority within 20 judicial days of the Referee's hearing.

Secondly it provides upon request of minor's counsel, a Juvenile Court to continue any hearing required by the Juvenile Court Law beyond the time when the hearing is otherwise required to be held. If the Court orders a continuance on its own motion, this provision states that counsel is deemed to have consented to the continuance unless he makes an objection.

Thirdly it authorizes the Juvenile Court to continue any hearing on petition for not more than 10 days in addition to any other continuance authorized by the law whenever the court is satisfied that unavailable and necessary witnesses will be available within such time. The continuance authorized by this provision applies to proceedings in the Juvenile Court after the probation officer has filed a petition, but does not apply to temporary custody and detention matters. That is SB 1217.

SB 1218 deletes the present law requirement that the Court examine such minor, his parent, guardian or other person having relevant knowledge, but leaves unaffected the further requirement that the Court hear such relevant evidence as the minor, his parent or guardian or their counsel desires to present within or without the presence of the minor, and allows the Court to use hearsay evidence and the Court may informally discuss any matter it deems relevant concerning the

detention or release of the minor.

Secondly, it authorizes the Court at the detention hearing to require counsel to make offers of proof in connection with any evidence to be presented on behalf of the minor and thereafter to limit presentation of such evidence in such a manner as it deems proper.

Thirdly, it provides that the rules of discovery in criminal cases shall apply to all proceedings in the Juvenile Court.

Fourth, it makes admissible in evidence the investigation report prepared by the probation officers or social workers in a Juvenile Court Hearing on a petition to make a minor dependent child a ward of the Juvenile Court.

This change applies to only minors described in Section 600 which describes minors who are neglected or mistreated.

Fifth, it provides that the Court may consider the report of the law enforcement agency relating to the matter for which the person was taken into custody as well as provides that consideration of such report shall not preclude the presentation of other evidence concerning matters stated in the report. That is SB 1218.

SB 1219 eliminates two provisions in the law that are inadequately coordinated because of ambiguity of the words "filing" and "acceptance", by changing "filing" to "receipt and filing" and "acceptance" to "receipt and filing", thereby making the two provisions identical in their language.

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It requires the county treasury of the Court ordering transfer to pay designated expenses until receipt and filing rather than until acceptance of the transfer in the Juvenile Court of the transferee county.

Second, it adds the requirement that the order of transfer must include the name and address of the legal residence of the parents and guardian of the minor. That's SB 1219.

SB 1220 authorizes the reduction from five years to one year for time that must elapse between the closing of the Juvenile Court proceedings and the petition for sealing of the records.

It prohibits an employer from asking an employee or a job applicant whether a Juvenile Court record concerning him has ever been sealed.

You will recall some of you, I think it was in 1959, I introduced the original bill sealing the records of juveniles after five years of good behavior on the basis that at that time the youngster who had stubbed his moral toe would have to carry that cross to his grave. It not only seemed reasonable to me that there should come a time when society would say to him that "You have paid your debt," so we set the time at five years and it was rather a bloody battle on the floor of the Assembly where I was located at that time to allow that situation to come about, but I think it's had a modest degree of success, that there should come a time in the life of a young person when he has paid the debt;

and incidentally, this does not say that after five years all is forgiven. It only says after five years he will reappear in the Court and the Court having satisfied itself that the process of rehabilitation has been attained, then the Court may order the record sealed, the philosophy being that we certainly rehabilitate children, at least that's the purpose of all this business, and if it isn't the purpose, then we are all hypocritical, that's a cinch, but the Court having determined that the process of rehabilitation has been attained, then the Court may, if the Court sees fit, conceal the record, so I presume the Juvenile Court Judges Association would use the same logic in asking that this measure be passed, only it adds to it there is no sense in sealing the record of a juvenile offender if he is going to be asked the question, "Do you have a record that has been sealed?"

You might just as well never have the thing sealed if he is going to be asked that question, so in my opinion this is a socially sound concept of the thing that we have been talking about for a good number of years. That is SB 1220.

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 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.

SB 1222, the Juvenile Court Law authorizes a Juvenile

Court Judge to appoint counsel for a minor and his parents if they cannot afford to employ counsel. Secondly, the bill also in any case in which there is such a conflict of interest between the child and his parents or guardian that one attorney cannot properly represent both, the law authorizes the Court to make certain that each is represented by a separate attorney.

SB 1223 authorizes any Judge of the Juvenile Court in counties having more than one Juvenile Court Judge to make specified annual inspection of designated facilities.

Secondly it makes a social worker in any county welfare department when supervising dependent children of the Juvenile Court a peace officer. However, the social worker's authority as a peace officer is limited to whatever is necessary to supervise, to transport, or to take temporary custody of such children, only at that time and in that area.

Thirdly, it provides as an alternative to notice by mail that the probation officer may give notice by personal service.

Fourthly, by adding the words "or protection" following "rehabilitation" it provides an alternative ground for modifying a Juvenile Court order. This change would permit the probation officer to request a change in the court's previous order if the probation officer can show that the child is not being protected.

Fifth, when the probation officer files a petition to change the Court's previous order, SB 1223 authorizes the

court to order the minor to be detained pending an adjudication of the matter.

And sixth, it deletes the list of county facilities and substitutes the phrase "county institution" in lieu of "county juvenile hall, home, ranch, camp, or forestry camp" and that, Mr. Chairman and members of the Committee is the extent of the bills.

Now any of those bills to which you care to direct questions I would appreciate it if you would direct them to Judge Berenson, and Mr. Daugherty, if you would care to come up, and then the gentleman representing the Juvenile Officers Association, Los Angeles Police Department, and Mr. Kirkpatrick of the Los Angeles County Probation Department -- these gentlemen should be the authority.

Here we have the Youth Authority, law enforcement and probation very adequately represented plus the Juvenile Court. So the questions should be pretty well covered by these gentlemen.

CHAIRMAN COLOGNE: Judge Berenson, before we start the questioning, did you have any statement you wanted to make?

JUDGE BERENSON: I thought it might be helpful, Mr. Chairman, if I made a brief statement setting the scene and the motivation for Senator Kennich's sponsorship of this particular legislation.

The Juvenile Court Law has not been extensively amended since 1968 and you may recall that in that year in

order to provide certain basic compliance with the changing standards that had been announced in a number of federal and state appellate court decisions, principally the Galt Case, and that was the case, as the Committee will recall, that ruled juveniles charged with being delinquent would as a result of committing a criminal act be guaranteed certain constitutional safeguards. As a result of that there were certain amendments made to the Act, and within the last two or three years it has been the experience of Juvenile Court Judges dealing in this particular area up and down the State that there were certain sections of the Juvenile Court Law that certainly would prompt some re-evaluation for the purpose at least of being more specific as to procedural aspects.

In other words, a number of judges have interpreted the Juvenile Court Act somewhat differently with respect to certain of the procedures that the Senator has mentioned as being set forth in these various bills. The Juvenile Court Committee of the Conference of California Judges, and I'm here acting this morning as the Chairman designated of that Committee for next year, met last year and considered some sixty areas of suggestions made by Juvenile Court Judges for changes or amendments or deletions to the Act, approved of some 38 of them and the executive committee of the conference reviewed those resolutions and approved some 37, and as a result thereof, Senator Kennich very graciously agreed to sponsor this legislation which in fact incorporated 35 of the Juvenile Court Committee's recommendations and these are set

forth in these various bills.

CHAIRMAN COLOGNE: This package of bills?

JUDGE BERENSON: This package of bills. It is basically to establish a uniformity of a procedure as much as any substantive change that really motivates the request for this legislation at this time.

CHAIRMAN COLOGNE: Very good. Let me ask you, would you give me an example, either you, Senator Kennich, or maybe you, Judge, an example of a case where the parents' interests might be in conflict with those of the minor where you would have separate counsel appointed?

JUDGE BERENSON: Yes. If we are talking about a type of situation, for example, let's say a 600 proceeding, a dependency proceeding, which doesn't stem from some physical abuse or something of that sort, suppose a parent takes a position that a child should be placed in some other area than the family home, for example. There may be a conflict as to whether the child wants to remain in the home or the converse situation. There could be a conflict there, or there could be conflict in 601 proceedings, the so-called pre-delinquency type of situation where a parent might insist upon a child engaging in certain procedures or behavioral patterns as a result of which the child may be running away from home. There could be this basic kind of concept. So in those kinds of situations it is deemed the interests of the parents are in conflict with the interests of the minor, and it's deemed that perhaps both should be represented by

counsel.

CHAIRMAN COLOGNE: It would seem like an anomaly to me that in a juvenile proceeding, which is looking out for the best interests of the child, that we have to provide counsel for the parents whose interests theoretically anyway we're not concerning ourselves with. I realize that if they don't have money for an attorney I suppose that we have an obligation.

JUDGE BERENSON: I would say these are minimal situations, but strangely enough they do arise and it rather frustrating to sit in a juvenile case where there is substantial conflict between the parent and the child, which of itself may be the reason the child is there in the first place. I think that Judge Thompson would probably agree with that from his experience.

CHAIRMAN COLOGNE: Well then I take it the Conference of California Judges supports Senator Kennich's package totally?

JUDGE BERENSON: Judge Berenson, oh, yes.

CHAIRMAN COLOGNE: I might in order to bring this --

JUDGE BERENSON: May I add two further things, if the Senator doesn't mind. I spoke to him about this. In going over the package with respect to the recommendations made for implementing the section on the sealing of records, there is one situation which the bill inadvertently covers and that's not the Senator's fault. It is our fault in not having called it to his attention. There are circumstances

where minors may be arrested but no further action is taken, but that record of arrest remains in a police department or someplace else, and we would recommend that also be a circumstance to be added to the bill now as an area that may be subject to the Court's power of sealing so that a youngster later on can honestly say in response to a question that an employer in the future might ask him as to whether he has been arrested, which would be a further, we feel, logical extension of the whole policy of the sealing.

And the second matter which was not covered because In Re Winship didn't come down until the Senator had authored these bills and had filed them. As the Committee may now know, in view of the mandate of the U. S. Supreme Court, the reasonable doubt standard is to be applied in cases of delinquency, that is 602 hearings.

The present Juvenile Court Act does not of course use that language and it uses preponderance of evidence standards.

In order to bring us within the framework of the mandate of the U.S. Supreme Court now, that should be a matter of change also if the Committee sees fit to approve the requested legislation.

SENATOR LAGOMARSINO: What is the language used?

JUDGE BERENSON: The language used now, and that is Section 701 of the Welfare and Institutions Code, that present language, if I may just read it for the record provides that:

"A preponderance of evidence legally

admissible in the trial of criminal cases must be adduced to support a finding that a minor is a person described by Section 602."

That is no longer the standard. The standard now is that the evidence must satisfy the Juvenile Court Judge beyond a reasonable doubt, which is the same standard as used in adult criminal matters, and so if the Senator has no objection, I think we might amend the Act to provide for that now because that is the standard.

CHAIRMAN COLOGNE: I think that may be the thinking of the Committee on this and you may want to poll the Committee after it is reorganized, Senator. Sometimes you have found a Committee, particularly on the Senate side, has not been too agreeable with the decisions of the Supreme Court and have not always gone along with amending the law simply because the Supreme Court said to, on the theory that maybe the Supreme Court might change some day and reverse itself. But certainly we must abide by the Supreme Court's decision.

JUDGE BERENSON: I only wanted to point that out for the benefit of the Committee, that the present position is in conflict with the Supreme Court decision.

SENATOR LAGOMARSINO: This is a slightly different thing than the regular criminal law because in effect the judge is instructing himself. He can apply that standard now if he wants to and I suppose many do.

JUDGE BERENSON: Most of them have for some time, but some have not, but in any event the Act as it is

presently set forth by virtue of the language is in conflict.

CHAIRMAN COLOGNE: I think from a practical point of view it doesn't make a great deal of difference.

SENATOR LAGOMARSINO: I don't have any particular questions on any of these provisions, but I would like to point out that this Committee is undertaking a study right now on the entire subject of sealing of records. Much of the testimony that we have heard during the last session and again during the interim has been to the effect that sealing of records is not a very satisfactory solution to the problem. We don't know what is, but we are trying to find something that is.

One of the problems is, and of course this would not apply so much perhaps to the type of things we are talking about here, but in general adult categories it would, that even though you have a provision saying that an employer cannot ask whether you have been convicted or whether you have had a record sealed, he can certainly ask for and get a background check that will reveal that, and then you have the minor or the adult in the position not only of explaining, "How come you didn't tell me about this offense?" Or, "Why did you lie about it?" And the only thing that the fellow can say is, "Because the law says I can lie about it." So I mean it's a real problem. We are working on that.

SENATOR KENNICH: How does he get the background check?

SENATOR LAGOMARSINO: There are a lot of ways,

depending upon what the offense was. You can read newspapers, private detectives can find these things out. You can talk to neighbors, you can talk to the friends and relatives and check the police record. There are a lot of ways you can do it. It's being done right now.

JUDGE BERENSON: It's not perfect, but we feel from our experience it has a certain built-in protection. There are some areas, of course, that don't comply with the order. I think the Federal Bureau of Investigation has in the past refused to abide by an order of sealing. But by and large I think it does represent a substantial advantage or benefit, but as Senator Lagomarsino pointed out, it is still not perfect. We are aware of that.

CHAIRMAN COLOGNE: In order that we might bring this issue into proper focus and as quickly as possible, I might ask if any of these gentlemen who have been introduced have any comments that might be termed adverse to any particular provision in the bills? Is there any part of these bills or any particular clause or section or concept that you would oppose?

All right, let's hear from you and will you come forward? We are not asking that you oppose the bill necessarily, but if you have any comments which you think might focus an issue, I would appreciate it.

MR. GROSS: My name is Charles R. Gross. I am representing the Southern California Juvenile Officers Association, and as I just recently found out, the State Association,

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and in addition to that, the Juvenile Delinquency Committee of the California Peace Officers Association.

As Senator Lagomarsino and Senator Kennich know, we have been discussing these things now for eight or nine years. I would like to make just a quick opening statement that these organizations that I'm representing today have had a continuing interest in these particular problems, particularly those with youth, and it is evidenced I think particularly now in my reason for speaking, which is not in opposition to your bills, Senator Kennich, but more specifically to something that you mentioned, Senator Cologne, that not only is the entire area of sealing being examined now, but since the change of the law in 1961 and the subsequent U.S. and State Supreme Court and Appellate decisions, the whole concept of the Juvenile Court is under question.

My primary remark I would like to make later in relation to the Senate Resolution, but with this in mind, the Associations would like to urge you to think in terms of establishing another Juvenile Justice Commission, and in relation to Senator Kennich's bills and the other bills, to make these a part of that and to delay action on those.

Also as I indicated, Senator Kennich's bills reflect not only his knowledge in the area but his interest in the area and he has been extremely helpful to our Associations. The one we are particularly concerned about is of course the sealing of records, which is his Senate Bill 1220, and also we are concerned about the fact that SB 1218, the matter of

the detention hearings, has been dealt with by our State Appellate Court and the bill raises some serious questions as to the admissibility of certain types of evidence.

There are some serious questions now as to whether hearsay evidence can be admitted at that time and as to whether there might be a confrontation with witnesses at that particular time at the detention hearing.

But again just let me say that on the sealing of records, the problem that's involved is that the length of time involved isn't that significant. What is significant though is that there is a possibility and a probability that this information is gained not by the police record being sealed per se, but by this information coming to light by other background investigations as Senator Lagomarsino indicated.

In addition to that, law enforcement in terms of making an intelligent decision as to whether they, the first determiner, as to whether an individual will be introduced into the justice system, has to be based on the best possible and the broadest area of information. Now with the sealing of records we find that the law enforcement agency is prohibited from saying even to another agency or people within its own agency that there has been a prior contact. You can't say that he has a record and that record has been sealed.

The response is that he has no record with this department. It places us in a difficult position in making an intelligent disposition of that case.

So I would speak specifically again in terms of 1220 and 1218 and again request that this Committee seriously examine the necessity for, and seak your support in the establishment of a Juvenile Justice Commission to look at the total concept of the Juvenile Court Law.

CHAIRMAN COLOGNE: Very good. Let me ask, do any of you gentlemen have anything you would like to add specifically at this time?

MR. KIRKPATRICK: Thank you for the opportunity of attending the hearing here. My name is Kenneth Kirkpatrick. I am Chief Probation Officer of Los Angeles County. I represent only the Probation Department in Los Angeles County at this time.

Unfortunately our Chief Probation Officers Association did not receive notice in time to appear and to be able to convene and take a position on this. I'm particularly concerned in terms of several of the bills, particularly Senate Bill 1216, in which there is some provision for the commitment of minors over the age of 18 to the County Jail. Our concern, of course, is one of the Juvenile Court making such commitments.

At the present time the criminal courts do so and we feel that it may set a dangerous precedent in terms of the Juvenile Court involved in such commitments. It may lead to the commitment of minors under the age of 18 and this we feel would be an unfortunate precedent for the Juvenile Court.

Again we are concerned about Senate Bill 1218 and the hearsay provisions of the evidence in that particular case. Recently the Supreme Court in the case of William N. had some real question about this as I believe you Senators know. We feel very strongly that we should consider very seriously the provisions of that particular bill in terms of sealing of records.

The Probation Department has taken the postiion that it is almost impossible to seal records. State laws do not apply to Federal records. In those sensitive positions involving national security they are not sealed. We feel that it is worse frankly to have a record sealed and have it known that it is sealed, rather than providing the information of rehabilitation and so forth.

An employer becomes suspicious if he finds out that there is a sealed record and he cannot have the information contained therein.

We feel that perhaps laws should be suggested which would provide (1) information regarding programs of rehabilitation, (2) which might deal with some type of fair employment practices approach which would preclude holding various kinds of past offenses as conditions of employment; and (3) I am concerned about the the series, and I just haven't had time yet to get to the bills, but some of them deal with the whole area of making social workers probation officers as they pertain to the Section 600 dependent children. We are concerned about this. The thrust toward moving dependent

children into the welfare field to be handled by social workers was in the interest of moving those children out of the juvenile delinquency-prone field and into some kind of case work, welfare protective services field. If we are to make social workers probation officers, then it's my feeling that we move them back into the realm of the stigma of delinquency.

I think this concludes my remarks. Thank you very much.

CHAIRMAN COLOGNE: I would like to make one comment with regard to county jails for limited periods of time. I realize that Los Angeles County may be different from some of these other counties, but in our area I have heard -- Riverside is a long county, 200 miles long -- and I have heard some very uncomplimentary things about our Juvenile Hall in Riverside, and some of these young people out in the boondocks area as we call it, can sometimes get less of a stigma by being in the county jail than by being sent 60 or 80 miles away from home and being put in a juvenile home where maybe the supervision isn't any better, and being so far away the end results may be worse.

Now this is a different kind of situation where they are on a trustee basis and they can maybe work out in the yard and they are not going to be hurt the same way as they may be in a big metropolitan area in a juvenile hall. But I can see some advantages in some of these rural areas keeping them in a county jail in the outlying areas.

SENATOR LAGOMARSINO: It seems to me, too, and Senator Kennich didn't discuss the reason for the bill, nor did Judge Berenson, but actually it would seem to me that here you are faced maybe with a very tough kid that you haven't been able to do anything with and the alternative then is to send him to the youth authority which is going to be for a lot longer than 90 days.

JUDGE BERENSON: The reason we recommend this is because it provides a different forum, a different tool, than either the youth authority on the one hand or going home on probation on the other, and it may be a tenuous situation where something is required more than probation, and there may be a salutary effect on those over 18, between 18 to 21, to expose them to a county jail term.

SENATOR LAGOMARSINO: I assume the county jail would include the county honor farm.

JUDGE BERENSON: Obviously.

SENATOR KENNICH: The probation officer's fear seemingly wasn't about the 18-year old in the county jail. His fear was ultimately it would reduce to 16. But that's a rather unwholesome fear. We are talking about people over 18 years of age.

SENATOR LAGOMARSINO: Well, of course, in answer to that, too, if this alternative is available, I think there would be a greater disposition towards treating minors in the Juvenile Court, too.

JUDGE BERENSON: There would be more reason to hold

them rather than sending them back to the adult --

MR. KIRKPATRICK: Senator, there's no reason why an 18-year old cannot be brought before the criminal court and those kind of sanctions taken. I think our concern frankly is the Juvenile Court getting involved in the jail commitments.

CHAIRMAN COLOGNE: If they're already certified to the Juvenile Court, if the Judge wanted to do something in between, would he have to then certify them back to the adult court and go through the whole proceeding all over again?

MR. KIRKPATRICK: It could well be.

CHAIRMAN COLOGNE: It would require different rules of procedure.

SENATOR KENNICH: There again you are trying to save the 18-year old from San Quentin by taking him into the Juvenile Court, so why are you quarreling with it?

CHAIRMAN COLOGNE: Is there anybody else who would like to testify on any of these Senate Bills?

Yes.

MR. BUCHER: My name is Alfred Bucher, from the District Attorney's Office. I want to thank the Senator for letting me speak now because I do have to get back to work this afternoon.

CHAIRMAN COLOGNE: Let me ask you, are you going to be able to make it back this afternoon?

MR. BUCHER: No, I won't be able to make it back.

CHAIRMAN COLOGNE: I am forced to leave just a couple of minutes early so you may make your statement on Senator Kennich's bills, and then I wish you would take a minute or two to put into the record any other testimony you would like on Senate Resolution 210, which is my resolution, because that's a subject we will be covering right after lunch, and we'll let you introduce your comments on the whole subject of juvenile law and for the benefit of the audience as soon as Mr. Bucher gets through, we are going to adjourn until 1:45 and come back at that time and complete the subject of juvenile law. I assume that you have nothing more, Senator Kennich?

SENATOR KENNICH: No, that's all unless there are other witnesses that want to testify on these bills.

CHAIRMAN COLOGNE: If there are, they may come back this afternoon.

SENATOR KENNICH: Would you ask, Mr. Chairman?

CHAIRMAN COLOGNE: Is there anyone else who would like to testify specifically on Senator Kennich's bills? I assume that no one else here does, Senator.

SENATOR KENNICH: Splendid.

CHAIRMAN COLOGNE: So far you are in good shape. I don't know what Mr. Bucher is going to say.

MR. BUCHER: First of all, I would like to say that I agree in general with the bills introduced by Senator Kennich.

CHAIRMAN COLOGNE: He'll feel much better about the

whole thing.

MR. BUCHER: As to Senate Bill 1216, one of the things it would do is require the District Attorney's office to represent the minor in 600 cases. One of my objections is frankly, is to the present language which requires the District Attorney's office to represent the interests of the minor which creates a little bit of an anomaly. We are not representing the public as we normally do or even the probation department as we do in the 602 or 601 cases. We had a case in our county awhile back where a 16-year old was being molested by her stepfather, sexual intercourse, and the father was charged with statutory rape and incest. I think it was statutory rape, and the child was brought before the court under a 600. She was released at a detention hearing and returned back home with her mother and stepfather; and perhaps the defense attorney in the adult case got to her. At any rate by the time she came up for her 600 proceeding, she said she had lied to the police and her stepdaddy had not done these things.

So the judge came to us and appointed us, and I might say this is the first time we have been requested in a 600 proceeding in Alameda County since we have been involved in juvenile cases since 1967, although other District Attorneys' offices, especially in Los Angeles County I know have a great number of 600 cases.

But when we got there, the District Attorney, or the Deputy who handled the case was faced with the position of

talking to this girl who said she had lied previously and he had to say to her, "Well I have to advise you not to take the stand now. You are either going to subject yourself to perjury proceedings here in court or subject yourself to a 601 petition being filed against you, or 602, for making a false police report." So in effect he was not helping the juvenile court in the 600 proceeding. He was taking the position that really he had no business doing and yet he felt he was her attorney.

So I think the law should be changed, not only not to require the District Attorney to come in, but I don't think he should be put in at any time to represent the minor; to represent the probation department, fine. But if the juvenile needs a special attorney, that should be done by either private counsel or the public defender, perhaps.

As to the county jail section, I would think that having discussed this matter with the probation department or one of the heads of the probation department in Alameda County, I think this would be a good and beneficial thing, but I would rather see the age limitation cut back from 21 to 18 to start with so we won't have this opportunity coming up.

SENATOR LAGOMARSINO: Say that again? You would rather have what?

MR. BUCHER: Well I would rather see the age limitation cut back in juvenile court matters from 21 to 18. If that were the case, it would be a rare day that we had a

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juvenile who was over 18. It would only be in those cases where they were 17 at the time of the commission of the alleged offense.

SENATOR LAGOMARSINO: You are saying you would rather see the Juvenile Court not have jurisdiction over 18 years old?

MR. BUCHER: Yes, which was one of the questions asked in Senator Cologne's resolution. But if we are going to keep 21, if Juvenile Court is going to deal with what I might call some sophisticated 20-year olds who may be there for any reason, sometime the only realistic action that the Juvenile Court Judge can take in those cases would be a county jail commitment.

As to SB 1217, I have no real substantial objections, although it would seem to me that extending the time limit to 45 days is really not necessary. I know it is within the discretion of the court, but we have a situation here where we are talking about a second hearing. We may have a lady whose purse was snatched. The case goes before a referee. She comes down and very reluctantly and very unhappily to testify about this very unhealthy incident. She testifies, she's cross-examined, a finding is made, and then this would allow you up to 25 days. She goes home and thinks it's all over with. Forty-five days later she has to come down again and go through the whole proceeding again. I think basically my objection goes more to the whole trial de novo business than the 45 days. But if we are going to keep the

trial de novo, it would seem to me 20 days is more than adequate time for the minor to raise any kind of objections he might have to the hearing before the Referee.

As to SB 1218, I approve this bill very heartily. Some of the speakers have stated that the case of William N. in the Supreme Court indicates that taking of hearsay evidence in detention hearings may be unconstitutional. Although there may be some dicta in a couple of the footnotes In Re William N. that may lead you to believe that, I certainly don't think the case holds that, holds that a Judge or a Referee at a detention hearing can't use an absolute standard of saying all people who sell heroin, for example, will be detained; that he must consider each minor individually, and I think that's really what the case stands for; and in order to consider each minor individually, hearsay evidence is absolutely necessary. You must realize there is no limitation on relevance when we come to the question of, is the child a threat to the safety of the public or others. We are asking for opinions and conclusions. We could bring in school teachers, we could bring in his parents, relatives, neighbors, police officials, people whom he had been involved with in prior incidents, and unless the probation officer has the power to summarize this and testify to it under oath that it is his honest belief that this hearsay is correct, then it makes the detention hearing impossible it seems to me.

In fact, hearsay evidence now is used in detention

hearings. It's used both for the benefit of the minor as well as to his detriment. His friends and parents and so forth get up and give hearsay evidence as to why he should be released. Whatever the case, I think we ought to codify the practice that exists.

Certainly there are many defense attorneys for petitioners who continue to raise this objection and some of the legislation that was passed, I believe it was in 1967 when the District Attorney was authorized to come into court, some of that legislation led to the belief or the suspicion that we were going to have preliminary hearings, that the detention hearing would require the probation department to bring forth a sufficient amount of evidence to hold the boy and perhaps there is a desire upon the part of some people that there be a preliminary hearing.

However, I think this is completely unnecessary since there's a time limitation already of 15 days which time limit isn't exceeded even in an adult court for a preliminary hearing. So that the danger of holding the petitioner wrongfully for a long period of time doesn't exist.

If you were going to have a preliminary hearing you might just as well go ahead and have the actual hearing. The same evidence would be presented. This bill would also authorize the criminal rules of discovery.

Now in our county, the practice is that the petitioner and his attorney have complete access to all records of the

probation department. If this legislation went in in our county, it would be a limitation upon the petitioner and upon the youth, the minor and his attorney, not upon the District Attorney's office in any way, so I sort of should be in favor of it in that it is going to limit to some extent whatever rules of discovery are limited. It would limit the defense counsel. At the same time it seems to me it's just going to raise another thing to argue about in Juvenile Court that really has no bearing there.

I believe that at least in our county we are not having any adverse effect by making the file completely available to the petitioner and therefore I would think that such a practice should be continued.

As to SB 1219, I would completely approve or concur with that bill.

As to SB 1220, which has to do with the sealing of records, first of all, as to the change from five years to one year, as I would read this bill, we could have a boy who at the age of 14 was arrested for burglary, had a petition filed on him, was placed on probation under the supervision of the court, and did an admirable job and had his probation terminated at the age of 15, and at the age of 16 he is eligible to come in and have those records sealed. At the age of 16 and six months if he committed another burglary, as I understand, this would prohibit the probation department from having any reference to their prior records on this boy, because all they have is somewhere a sealed record. They

couldn't look in it to help make an evaluation, and I think that is completely unrealistic, that if we are going to have the sealing of records which is allegedly to help the boy in his future life, but which has the byproduct of making secret to the police and the probation department what his prior life was, if we're going to have this, we should keep it at five years. However, as some other speakers have said and as you said yourself, Senator, I believe the whole concept of sealing has been a waste. I know in this area the District Attorney's office is required to be notified on every petition that is filed and so every week into our office, a stream of notices that we may come in and sit in at this hearing as to whether the petitioner's record should be sealed.

In Alameda County, we do not make any investigation of the youth to find out whether in the last five years he has behaved himself and is rehabilitated.

It seems to me we are going through a lot of motion for a really unsuccessful thing.

If the Committee isn't aware of it, I would like to call their attention to an article that appeared in the "Journal of Criminal Law, Criminology and Police Science," published by the Northwest University School of Law, which was written by Bernard Kogon and Donald L. Loughery, Jr., on the whole subject of the hearing and expungement of criminal records, "The big lie." And their conclusion is although there's no question they are oriented towards the

offender and towards his rehabilitation, their whole conclusion is that this has failed in any way to help in that area. It has just caused people to think that they are able to hide something when they aren't able to do it.

SENATOR LAGOMARSINO: Could you give us a copy of that?

MR. BUCHER: Yes, I can.

SENATOR LAGOMARSINO: Okay, I appreciate that.

MR. BUCHER: Likewise making it a misdemeanor for an employer to ask this question gets into a little bit of philosophy, and although I don't presume to have any complete competence in that field, I would like to make a comment on it.

It seems to me we should all work towards the day when employers hire people on their present state and present capacity and not on what may have happened to them in the past. Yet at the same time it seems to me there were certain types of employment that the employer ought to know if he is hiring a person who in the past has had certain misadventures. I think hiring counselors for the YWCA Camp, it would not be good to hire somebody who has a rape record in Juvenile Court; nor do I think it would be a good idea for a forestry service to hire people who had arson convictions in Juvenile Court.

And if this be bigotry, then this may be, but it seems to me this would be absurd to expect people to take and hire people who have had a certain area where they have a great

risk, and I think any kind of legislation that tries to make it a crime for employers to do this is going to be avoided by the employers. They are going to break the law even if you pass it, and District Attorneys are going to be reluctant to prosecute them for breaking the law.

So I would think there should be some other way of approaching this problem.

As to SB 1221, this one is very similar to the last bill, SB 1220 in its ultimate concept. This bill 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."

I would be in favor of this bill. It doesn't make anything secret. It's all up and above board, yet it is a great tool of rehabilitation and it parallels the adult system where we have the same type of thing.

SENATOR LAGOMARSINO: This was one of the kinds of things we came to a tentative conclusion about in our sealing hearings. One thing we definitely ought to do is make the record accurate, show what happened and provide ways to say the fellow has been rehabilitated and the case has been dismissed, that we have done everything we can to do away with what has happened.

MR. BUCHER: The next bill was SB 1223, and I have no comment on that except --

SENATOR LAGOMARSINO: What about 1222?

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MR. BUCHER: Did I miss SB 1222? Yes, I do wonder about one thing in this which would make the public defender's office represent minors and parents in 600 proceedings since neither of them is accused of a crime. It seems to me that perhaps the public defender whose real work is criminal work should not be the attorney assigned here. It seems to me there are Legal Aid Societies available everywhere and perhaps if there is financial inability found by the Court, appointments should be made from the Legal Aid Society or other private counsel in the community rather than having the public defender. It seems to me to have a 7 or 8-year old girl represented by the public defender, although she may not need to go down to the public defender's office to be interviewed, still you are giving her a criminal lawyer and she is not a criminal in any way, and I think she should have a civil lawyer.

SENATOR LAGOMARSINO: Isn't she sort of facing a criminal type penalty in being taken away from her family? I think that's the idea.

MR. BUCHER: Well if she is, then the whole system of the Juvenile Court is wrong because it's supposed to be a proceeding in her best interest. It's not supposed to be a crime. Certainly in the 600 proceeding there should be no taint of it.

SENATOR LAGOMARSINO: There should be no taint --

MR. BUCHER: She's the victim in the case in fact.

SENATOR LAGOMARSINO: Perhaps not so much in her case

as in her parents' case. It's a pretty brutal thing to them if they are not in favor of having the child taken away, to have the child taken away. Many mothers would rather go to jail themselves than have that happen, but that just depends on who we think should be practicing in that court.

MR. BUCHER: SB 1223, the item as to changing the enumerated institutions from juvenile hall, home, ranch, camp or forestry camp to county institution, it seems to me leaves us with a bill which would make a misdemeanor out of an escape by an adult from a county jail since it reads, "Any person under the custody of a probation officer in any county institution." I know that's not the intent, but if it is literally applied it would apply to numerous adults.

I suggest it be amended to add "in the custody of a probation officer by order of a Juvenile Court."

SENATOR LAGOMARSINO: They are nodding, so I guess there's no problem there.

MR. BUCHER: That would conclude my comments on the bills of Senator Kennich. I might say that in the overall view of them, I believe that they would be very beneficial to us in the District Attorney's office in pursuing our cases. I think there's one I missed and that had to do with the 10-day extension by the Court, continuance of a hearing when a witness is unavailable. Perhaps I'm opening a can of worms, but I would like to ask the question, when the Court continues the hearing for 10 days, can he continue it another 10 days if the witness is still unavailable?

SENATOR LAGOMARSINO: A very good question.

JUDGE BERENSON: I think so. Ordinarily it would not be contemplated but I think the other section to continue would probably apply assuming that counsel for the minor agreed --

MR. BUCHER: But you have one section there that even if counsel doesn't agree -- It's a very real problem. If the intent is to limit it to ten days, and I think it is, I think it perhaps ambiguous what the intent is, but a strict meaning of it I guess would allow a second and third continuance, and I'm sure that isn't the intent of the legislation. If that's the case, you could go on forever keeping the boy in custody until you got your witness ready.

SENATOR LAGOMARSINO: It says for not more than ten days.

MR. BUCHER: But if you read the first part of it, it says that anytime he finds a hearing where the witness is unavailable he may continue it for ten days.

SENATOR LAGOMARSINO: Yes, that may be.

MR. BUCHER: And the question is if it is a limitation on the time, must the petition be dismissed, and if the petition must be dismissed, can it be refiled. This is something where present practice probably differs from jurisdiction to jurisdiction. What we do in Alameda County for the most part is when we can't the witness there within the 15 days, the petition is dismissed, the boy is released, and a new petition is filed when the witness is available

so the boy isn't kept in custody. But of course there are going to be many cases where the witness will be unavailable within 25 days of the alleged offense which is now the ultimate time limitation, especially in serious cases such as murder or attempted murder where you have victims are witnesses who are hospitalized and will not be ready.

And I think it is an area for further clarification so we balance both the youth's rights so he isn't held forever and yet given opportunity to the probation department to proceed.

SENATOR KENNICH: We will certainly qualify that language.

SENATOR LAGOMARSINO: That's a good point.

MR. BUCHER: If I could make some remarks towards the other question --

SENATOR LAGOMARSINO: Are you going to be back this afternoon, Senator?

SENATOR KENNICH: It isn't my plan.

JUDGE BERENSON: I hadn't planned to.

SENATOR LAGOMARSINO: I wondered if you wanted to comment on any of the points he raised?

SENATOR KENNICH: I think not.

JUDGE BERENSON: I will say, Senator, just one matter that the witness has testified to, or rather remarked about, the practices in Alameda County, if up and down the State there were practices similar to this, we probably wouldn't need some of these things. I commend the practice there, but

there are numbers of counties where, for example, the District Attorney's office in some instances has refused, or the probation officer has refused to provide the minor or his counsel with copies of police reports and things of that sort, so it is to establish uniformity of practice that most of these things have been suggested.

SENATOR LAGOMARSINO: Do you want to go ahead with your general comments?

MR. BUCHER: I wonder if I could get one of those cover sheets that have the questions on it? I think I may have lost my notes in the shuffle. As to the first question, I feel in two areas the age limitation should be changed. One should be in the area of traffic laws. If a 16-year old is old enough to get a license with his parents' responsibility, it seems to me he should be handled in the same manner as the 25 or 30 or 40-year old. Our traffic courts are not reprehensive, they are not locked up in custody in most cases, and I think that this is an area that really the Juvenile Court should get out of.

As to the ultimate age, I believe it should be lowered from 21 to 18. I'm well aware that there are cases of twenty-year olds who are very unsophisticated, very emotionally immature, and in isolated cases can be better treated perhaps in the Juvenile Court. However, there are 21 and 22 and 23 and 24-year olds in that area and having this sliding scale for the 19, 20 and 18-year old I think creates a lot of problems. We get cases that literally are

certified to the Juvenile Court from the adult Municipal Court, and then remanded back three weeks later, and I don't know how this helps to benefit the youth who in many cases doesn't know what he is doing. He is charged with two joints of marijuana. The public defender, if he is under twenty, makes a motion to send him down. Depending on the judge who may be sitting on the bench that day, he may have a concept that all marijuana cases shouldn't be in his court in the first place and he certifies him to the Juvenile Court. Depending on the Superior Court Judge sitting on the bench at that time, he says, "I don't want to deal with this 20-year old married man who has two kids," and remands him back. So the poor offender is like a ping pong ball going back and forth because his attorney is trying to do something for him.

I think we want to treat the 19, 20 and 18-year olds in adult courts, especially on the drug offense fairly. We have had some legislation discussed earlier, and I think there are adequate remedies. They can have their records expunged between those years, and I think there would be no real ill-effect if the age was cut down to 18 for all and no one would go to Juvenile Court over that age, and I'm sure the Juvenile Courts and probation departments would be in favor of that.

As to question C, should the role of the probation officer be re-defined to avoid conflict of being both prosecutor and counselor, and should the District Attorney be

involved at the petition stage, we started approximately three months ago getting into this. We increased our staff from two District Attorneys working two Juvenile Courts to four District Attorneys, so now we have one man in court constantly and one man in an office at each of the two Juvenile Courts that have judges in Alameda County.

I might say also we in the District Attorney's office in Alameda County have not gone into Referee hearings. We have politely refused, on the basis that we feel if a case is so important that it is going to need counsel on both sides, if the case is one as we might say in our favor, we don't want to try it again in front of a Judge when there's a petition to have a hearing de novo.

So we have limited ourselves to judges' hearing and if the probation department wants us in the case then they get it assigned to a judge instead of a Referee.

So now we have one man in the office and his function is to look at the police report and determine whether there is sufficient evidence to prove the petition if filed, and second, what charges should be filed. Should they be kidnapping or false imprisonment. What is the proper legal charge in this instance. Now it hasn't worked out too well yet, but we've only been trying it for two or three months.

I felt that the concept would be that the probation department would evaluate the question of whether or not this youth needed to be taken before a Judge or whether they could handle them adequately through their own service and

that when they came to us we would have to make a legal judgment: Is there evidence and if there is evidence, what can we prove? But the probation department wants to consider that second question when they are considering the first. They say if they have got a young man who is accused of possession of narcotics, let's say, if the odds were nine to one that we wouldn't make a finding, if a search is probably unquestionable, they feel they don't want to file a petition in the first instance. And I can see their point. If ultimately a judge is going to say that that was a bad search, then they don't want to have the rehabilitation effort with this boy hurt by taking him into court, having a big adversary proceeding with counsel fighting and you get to the point where you lose. You are never going to work with that kid.

So this ideal situation we thought of the probation department handling purely the sociological question and then our office the legal one, isn't working too well. They want to come to us and get an opinion. Some probation officers come to us in the hope we will say, "It's a bad search," and then they will not have to file. They come sometimes because they don't want to file a petition, but their superior officers or they think their superior officers want them to file a petition and they try to use us to say it's a lousy case and don't file, which puts us in a difficult position because we have the police department in our other ear saying, why did you say that was a bad case?

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So I think this is going to continue to be a mixed question of sociology and legal as to whether or not a petition should be filed. I do believe the District Attorney should cooperate completely in this.

I don't believe any legislation is necessary for it. The present law allows the District Attorney to advise completely surely the probation department.

As to the role of the parent and should it be re-examined, it seems to me here we get into philosophy again, but certainly there are many many good parents who have done everything in the world and you see this in Juvenile Courts, to raise their child. They do not condone his delinquency. They are no part of it in any way and yet to make them financially responsible or legally responsible for his continued acting out would seem to me to be patently unconstitutional and any legislation in this area would be doomed to be unconstitutional.

At the same time we do have laws regarding contributing to the delinquency of a minor, for example, and others, that make it a crime for parents if they take any kind of an active part in the deliinquency of their children, and perhaps some of those laws might be redefined or relooked at if there's a feeling that they are not being effectively used.

But I would hate to see the responsibility on the parents for the acts of their children that they have no control over.

SENATOR LAGOMARSINO: Adding insult to injury.

MR. BUCHER: Those would be the only comments that I had on the questions posed in the agenda.

SENATOR LAGOMARSINO: Then we will adjourn until 1:45.

(The noon recess was taken.)

REPORTER'S CERTIFICATE

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This is to certify that I, ALICE BOOK, a Certified Shorthand Reporter of the State of California, was present at the time and place the foregoing proceeding was had in San Francisco, California, on November 20, 1970; that I did report the same in Stenograph writing fully and to the best of my ability; that I thereafter caused my Stenograph writing to be transcribed, and the foregoing pages beginning at the top of page 1 to and including page 132 herein constitute a full, and complete transcription of my said Stenograph writing.

Dated this 9th day of December, 1970.

Alice Book, CSR
Shorthand Reporter

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SENATE COMMITTEE ON GENERAL RESEARCH
SUBCOMMITTEE ON JUDICIARY
CALIFORNIA LEGISLATURE

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SUMMARY OF TESTIMONY

ON

SENATE BILLS NO. 1216 THROUGH 1224

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INTERIM HEARING

HELD IN

HASTINGS LAW SCHOOL
SAN FRANCISCO, CALIFORNIA

--o0o--

NOVEMBER 20, 1970

with regard to this matter.

SENATE BILL NO. 1221

Permits a judge of a juvenile court in which a petition was filed to dismiss the petition or set aside the findings and dismiss the petition, at any time before the minor reaches 21 years of age, if it finds that (1) the interests of justice and the welfare of the minor require the dismissal or (2) the minor is not in need of treatment or rehabilitation. Authorizes the court to order the dismissal or setting aside of the findings and dismissal regardless of whether the minor is a ward or independent child of the court at the time of the order.

The San Francisco Barristers Club favored this provision and pointed out that it is a declaration of the practice followed in many counties.

The California State Juvenile Officers Association expressed unspecified misgivings with this provision and asked for further study of the proposal.

Mr. Bucher approved of this provision pointing out that the rehabilitative goal of this provision is similar to the aims of Senate Bill No. 1220, but keeps everything out in the open.

EXHIBIT D

Rifle E SB 1216

STATEMENT OF RALPH E. BOCHES, ESQ.

ON BEHALF OF THE BARRISTERS CLUB OF SAN FRANCISCO

BEFORE THE COMMITTEE ON JUDICIARY

CALIFORNIA SENATE

MAY 12, 1970

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MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

My name is Ralph E. Boches. I reside at 23 Cove Road, Belvedere, California, and am a partner in the San Francisco law firm of Feldman, Waldman & Kline.

I testify before you today on behalf of the 1400 members of the Barristers Club of San Francisco. The Barristers Club consists of all attorneys 36 and under who are members of The Bar Association of San Francisco.

The Barristers Club has long been involved in practice before the juvenile court. The members of our juvenile court panel in the last 10 years have handled, without compensation, scores of indigent cases under appointment from the court. We come here today to offer you the benefit of our collective experience.

Since the views expressed today are my own as well as those of the Barristers' Club, you are entitled to know something of my background. It includes, amongst other things, service as a volunteer streetworker with some of the tougher street clubs in the Mission District of San Francisco, authorship of California Juvenile Court Practice published by Continuing Education of the Bar in 1968, chairing the Juvenile Court Committee of the Bar Association of San Francisco for two years, and membership on the Committee on Juvenile Justice of the State Bar of California.*

We are testifying today in regard to Senate Bills 1216 to 1223 inclusive authored by Senator Kennick, which we understand have been introduced by him at the request of the Juvenile Court Committee of the California Council of Judges. The Council of Judges is to be commended for the thought, the effort, the scholarship, and the genuine compassion for troubled young persons which most of these bills represent. Almost all of these bills

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*The views expressed herein are only those of the Barristers Club of San Francisco, and do not necessarily represent those of any other organization or any committee of any other organization.

we support, either as introduced or with suggestion for minor amendment. Regrettably, there are a few isolated proposals which we must oppose.

Turning to the specific bills:

SENATE BILL NO. 1216

Section One requires that all referees appointed in the future be lawyers and have certain specified experience. Juvenile court proceedings are far too complex to be heard by laymen. We support this section.

Section Two repeals the provision which presently permits the court to appoint assistant probation officers as referees to hold detention hearings. The purpose of the detention hearing is to determine whether or not the minor should be held without bail pending the adjudicatory hearing. At the detention hearing the referee supposedly provides an independent judicial review of the probation officer's recommendation for detention. The present provisions are unfair and patently unconstitutional, and should be repealed. They make no more sense than to give the district attorney final authority to fix bail in the adult courts. We support repeal.

Section Three provides that the district attorney

for sealing the record from five years after the completion of probation or dismissal of the case to one year. We favor this amendment. The five-year provision is much too long. To a young person, five years seems like a lifetime. We believe that the rehabilitation of juveniles will be encouraged by providing a reasonable waiting period for sealing.

We also favor that portion of the amendment which provides that no conviction of a juvenile aged 18-21 which has been set aside under certain provisions of the penal code shall be deemed a conviction of a felony or a misdemeanor involving moral turpitude. The juvenile who has rehabilitated himself should be able to fully avail himself of the record sealing provisions.

SENATE BILL NO. 1221

This bill would permit a judge of the juvenile court at any time before a minor reaches the age of 21 years to dismiss the petition in the interest of justice or if a court finds that the minor is not in need of treatment or rehabilitation. We favor this provision. It is in fact declaratory of existing practice in many counties. 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. The power of the court to dismiss should be made explicit.

We do believe that consideration should be given to further amending this section to expressly provide that the probation officer may at any time prior to the hearing, without the consent of the Court, dismiss the petition. Often the petition is filed by a probation officer on scant information and before counsel has entered the case and all information favorable to the minor has been assembled. In my own experience, a probation officer has often said, "If I knew everything now that I had known when I filed the petition, it would not have been filed; but since it is now on file, it can't be dismissed." The result is to clog the calendar of the court with cases that ought not to be before it, and this in part accounts for the need to amend this section to permit the court itself to dismiss a petition. Since the probation officer is the one who decides in the first instance whether or not a petition should be filed, we believe that he ought to have the power to dismiss that petition until it comes up for hearing.

pending adjudication of the petition, should be strengthened by requiring the standards for detention to be the same as those that would apply if an original petition were being filed.

Finally, Section 7 of the bill makes escape from any county institution, rather than only certain designated county institutions, a misdemeanor. We favor it.

Thank you.

EXHIBIT E

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

MARGARET FARRELL, Plaintiff, v. MATTHEW CATE, Defendant.	Case No. RG03-079344 **ORDER GRANTING MOTION TO ENFORCE COURT-ORDERED REMEDIAL PLANS AND TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT** Date: October 27, 2011 Time: 9:30 a.m. Dept: 15

This matter came before the court on July 7, 2011 in Department 15 for hearing on Plaintiff's Motion to Enforce Court-Ordered Remedial Plans And To Show Cause Why Defendant Should Not Be Held in Contempt of Court. Having considered the parties' pleadings and evidence and the arguments of counsel, and good cause appearing, the court now rules as follows:

Failure to Comply With Education Remedial Plan

1. The Consent Decree grants the court the power "to enforce the terms of this Decree" and "to order compliance with any of the remedial plans or specific performance with the terms of this Decree as permitted by law." (Consent Decree, November 19, 2004, at 19.) The court has broad equitable power to fashion a remedy to address violations. (*Times-Mirror Co. v. Superior Court* (1935) 3 Cal.2d 309, 331; *Hirshfield v. Schwartz* (2001) 91 Cal. App.4th

749, 770-71; 13 Witkin, Summary of California Law (10th ed. 2005) Ch. XIX Equity, § 3, at 284-85.) Specifically, "the jurisdiction of a court of equity to enforce its decrees is coextensive with its jurisdiction to determine the rights of the parties, and it has power to enforce its decrees as a necessary incident to its jurisdiction." (*Ecker Bros. v. Jones* (1960) 186 Cal. App.2d 775, 786 [citations omitted].)

2. In 2005, the court ordered DJJ to comply with its clear legal duty to provide mandated special education services to youth who require them and 240 minutes of school each day to all eligible students. (Education Remedial Plan, attached to Defendants' Notice of Filing of California Youth Authority's Education Remedial Plan, March 1, 2005, at 3, 27, 31; Order, March 17, 2005.) In 2008, the court found DJJ in violation of these orders and warned that further relief might be necessary should defendant fail to cure the violations. (Order, October 27, 2008, at 10-13.)

3. The evidence shows that DJJ remains in violation of its obligations, and DJJ does not seriously contend otherwise. Special education youth in the high schools at three DJJ institutions "do not receive the full continuum of segments and services that are required in their Individual Educational Programs." (Letter from Nancy Campbell to Sara Norman, May 20, 2011, attached as Exhibit A to Declaration of Sara Norman in Support of Plaintiff's Motion to Enforce Court-Ordered Remedial Plans and Order to Show Cause on Contempt [Norman Decl.], at 1.) The reason for this failure is the lack of credentialed teachers. (*Id.* at 1-2.) At Ventura Youth Correctional Facility, special and regular education youth in restricted programs are deprived of 240 minutes per day of school because of deficits in staffing and space. (*Id.* at 2-4; *see also* Office of Audits and Court Compliance, Review of the Office of Special Master's Identified Concerns, March 25, 2011, attached as Exhibit B to Norman Decl., at 7.) Further relief is therefore warranted to enforce the Education Remedial Plan.

Failure to Comply with Safety And Welfare Remedial Plan

4. The court has ordered defendant to end the practice of isolation and provide specific levels of programming for youth by specific dates. The Consent Decree requires defendant to come into compliance with legal mandates by "develop[ing] and implement[ing] detailed remedial plans," each with a "schedule for implementation." (Consent Decree,

November 19, 2004, at 5.) Pursuant to that directive, defendant filed the Safety & Welfare Remedial Plan on July 10, 2005, and a schedule for implementation on October 31, 2006. The court ordered defendant to implement the plan. (Order Directing DJJ to Implement the Safety and Welfare Remedial Plan, July 31, 2006.)

5. The Safety & Welfare Remedial Plan requires the conversion of restricted program units to Behavioral Treatment Programs (BTP) that will "maximize out of room time and . . . ensure structured activity based on evidence-based principles for 40 to 70 percent of waking hours. . . ." (Safety & Welfare Remedial Plan, Exhibit A to Defendant's Notice of Filing DJJ's Safety and Welfare Remedial Plan, July 10, 2006 [Safety & Welfare Plan], at 57.) Youth housed in the general population or "core" units must be "constructively active during most of their waking hours." (Safety & Welfare Plan at 44-45.) Thus, DJJ must ensure that BTP youth have maximum possible out-of-cell time, of which 40 to 70 percent of waking hours must be spent on structured, evidence-based activities, and youth in the core units must be engaged in constructive activities for at least eight hours daily. The deadline for implementation was March 31, 2009. (Order, February 20, 2009, at 2.)

6. Defendant has full knowledge of these orders: both the Safety & Welfare Plan and the reset deadlines were court orders adopting his own filings.

7. Defendant has previously assured the court that he has the ability to comply with the court's orders, and the court finds that he does, in fact, have that ability. In 2008, DJJ argued strenuously that it was capable of instituting the reforms required in the court-ordered remedial plans without the need for the court to appoint a receiver (which the court was then considering) or other intervention. (*See* Defendant's Response to Order to Show Cause Re: Appointment of Receiver and Compliance with Consent Decree and Remedial Plans, March 19, 2008, at 1 ["With the experience DJJ has acquired over the past three years, and the consultants DJJ has retained to assist in planning and project management, DJJ is poised to accomplish the work that remains to be done . . . ."]; *id.* at 36 ["DJJ's accomplishments to date, even if they took longer than originally envisioned, do not show a lack of desire, commitment, and ability"]; *id.* at 40 ["no one knows better than DJJ's management team, its staff, and its consultants, what needs to be done and how to do it"].) Defendant argued at the 2008 hearing that "the principal reason the

State had failed to accomplish more of the reforms required by the Consent Decree was its lack of project management personnel and planning, and that the State had now addressed these deficits by promoting experienced personnel and hiring qualified consultants." (Order, October 27, 2008, at 3.)

8. Although defendant now attempts to blame his current non-compliance on a lack of financial resources – notwithstanding his earlier assurances that he had the ability to comply with the court's orders – this argument is not supported by the evidence. As the court has previously observed, DJJ spends substantially more than $200,000 per youth annually to house its wards (*see, e.g.,* Legislative Analysts' Office, 2009-10 Budget Analysis Series: Criminal Justice Realignment, January 27, 2009[1]), and it has never accounted for that money in a way that shows true inability to comply with the court's orders. The simple fact is that DJJ has not shown that its existing resources, spent appropriately, are inadequate.[2] The Legislature has appropriated sufficient funds to defendant to operate DJJ; it is defendant's responsibility to do so in accordance with the law. (*See, e.g., Board of Supervisors v. Superior Court* (1995) 33 Cal.App.4th 1724, 1744 [given that sheriff was provided with adequate funds to operate detention facility, he must do so in accordance with consent decree setting limits on population].)

9. The court finds that defendant has willfully disobeyed the court's orders. He submitted the Safety & Welfare Plan himself and set the deadlines for implementation; he has now missed those deadlines by more than two years, and remains in violation of the court's original orders.

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[1] See, e.g., Sixteenth Report of the Special Master (Nov. 19, 2010) at 11. In that document, it was reported that the Division of Juvenile Justice ("DJJ") had 1,527 wards as of December 31, 2009 (id. at 6), and that DJJ's 2009-10 operating budget was $435 million. (*Id.* at 11.) This equates to total costs of $284,872 per ward. While more recently published information suggests that the amount spent per ward may have declined (*see, e.g.*, "CDCR's Budget for Fiscal Year 2011-2012," website of the California Department of Corrections and Rehabilitation, http://www.cdcr.ca.gov/Budget/Budget_Overview.html), the fundamental point remains the same.

[2] It is not clear that a claim of inadequate funding could ever justify the conditions of incarceration that led to the filing of this motion, but it is unnecessary for the court to resolve that issue now.

THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT:

a. Defendant shall, within 90 days of the date of this order, hire adequate staff to provide the general and special education services mandated in the Education Remedial Plan for youth in general population and restricted programs in DJJ.

b. Defendant shall, within 150 days of the date of this order, secure and begin to use adequate and appropriate programming space to provide the general and special education services mandated in the Education Remedial Plan for youth in restricted programs in DJJ.

c. Defendant is hereby ordered to show cause, on October 27, 2011 at 9:30 a.m. in Department 15 of the above-entitled court, why the court should not hold him in contempt for failure to comply with the court's orders as set forth above in paragraphs 4-9.

IT IS SO ORDERED.

DATED: August 4, 2011

ALAMEDA COUNTY SUPERIOR COURT

By: _____
JUDGE JON S. TIGAR