

HEARINGS AND PLEA BARGAINING

MATERIALS

- 1) Enough lesson handouts for each student (attached at the end of the lesson and provided in the PICC).
 - These are the filled in “Timeline” handouts.
- 2) Re-useable white board, markers, eraser (provided in the PICC).
 - This is probably going to be useful during this lesson, so if your room doesn’t already have one, you’re encouraged to bring one.
- 3) 5 copies of the “Timeline” handout (attached at the end of the lesson and provided in the PICC).
 - These are the blank “Timeline” handouts.
- 4) Paper for note-taking during the debate (provided in the PICC).

TAKEAWAYS

- Students will be able to understand and articulate what happens during the juvenile court process. (Purpose 1, 2, 3)
- Students will be able to discuss the pros and cons of taking a plea bargain. (Purpose 2, 3, 4)

Note to teachers: Please make sure to read through and be familiar with the material in the appendix as questions are likely to come up about some topics addressed there.

WELCOME

(Time Check: 2 minutes)

Welcome the students to StreetLaw and remind them of its purpose and your names. Tell them that during this lesson they will learn about how the juvenile justice process works, how it differs from the adult system, and how plea bargaining works.

Remind the students that they should not tell you about their individual cases, and should speak in terms of hypotheticals when they are asking questions – we are not lawyers yet and so cannot provide them with legal advice.

INTRO
(Time Check: 8 minutes)

Ask the students whether they think juveniles often get the same sentences for the same exact crime? Do a quick “whip” around the room, asking each student to share their thoughts about the different sentences kids get and why they think that happens.

- They might say/talk about:
 - o That many of the kids were convicted of the same crimes but some were sentenced to a lot more time in prison;
 - o That accessory to murder can be punished as harshly as murder;
 - o The difference between murder and manslaughter.
- Reasons for different punishment can include:
 - o Plea bargaining;
 - o Perceived potential for rehabilitation;
 - o Different lawyers (both defenders and prosecutors);
 - o Prosecutorial discretion;
 - o Prior arrests.

There will probably be some complaining about the system – *don't dismiss it.*

Acknowledge that the system isn't perfect, but point out that there are things that these kids did or could have done to affect their sentences. **This means that a person should be informed and become involved in the process—rather than just sitting back and letting things happen—in order to make the results more fair.**

ACTIVITY 1: JUVENILE COURT SYSTEM (Time Check: 15 minutes)

NOTE TO TEACHERS: In the “Additional Information” section at the end of this lesson, we have attached a brief chart showing a few additional differences between the juvenile and adult systems, beyond those linguistic and substantive differences mentioned in the body of this activity. See: Endnote ‘i.’

Summary for Teachers: The goal here is for the students to understand the basic process of the juvenile justice system and what is happening at each stage.

Intro for Students: In order to get the best possible outcome in their case, a person needs to be informed about her/his own case and needs to know what’s going on each time s/he is brought into court. Sometimes court can be a very confusing place, especially because judges and lawyers sometimes seem to be making up their own language. Right now, we’re going to talk about the juvenile court process and try to figure out what happens when.

Split the class into groups of about 4 (one teacher per group).

→ Each group should get 1 timeline handout.

In small groups:

- Have the students collectively fill in the timeline from “Gets Arrested” through to “Goes Home.” Tell them to try to think of everything that they think can happen to a juvenile charged with murder between these and try to fill them in, in order, on the timeline.
- Emphasize that it’s okay if they don’t know what the steps are called and that they should just describe them as best they can.
- NOTE: Some groups will take this opportunity to fill in all sorts of things that might happen to someone when they’re locked up. Some of this is ok – but if it gets out of hand, put a stop to it and tell them to focus just on what happens in court.
- *Teaching Tip* – If they’re having trouble, you can prompt them a bit: i.e. when’s the first time a kid sees a judge after s/he gets arrested? Is that when the trial happens? Does that have a special name? What happens in between those?

Come back together as a class, and review what the groups came up with:

- As you collect their ideas, fill in the steps *in the correct order* on the whiteboard.
 - Include both the students’ terms for the stages and the formal terms (e.g. “trial” and “jurisdictional hearing”).
 - ***Make sure you have read through the Discussion section so you know the correct order!***
 - *Teaching Tip* – If they don’t get the right order, tell them this stuff is tricky and that’s why we’re taking the time to go over it today.

After the steps of the juvenile justice system are written on the board, talk about each stage.

→ *Teaching Tip* – Keep this interactive! Many of them will know a lot of information, and this is a long discussion so they'll get bored otherwise.

→ *Teaching Tip* – You might find it useful to distribute the lesson handout here so the kids have something right in front of them that they can follow along with.

STEPS OF THE PROCESS:

• **Detention Hearing:**

- Ask the class if anyone knows what this is.
- What: the judge weighs the circumstances and seriousness of the offense and decides whether to detain the minor before trial.
 - Basically, the judge decides if a juvenile should go home before his trial, or be held in juvenile hall.
- When: must occur within 72 hours (NOT counting non-court days) of when he/she is taken into custody.¹
 - That means if I get arrested on Wednesday, it could be Monday before I have a detention hearing.ⁱⁱ
- Prop 21ⁱⁱⁱ Alert: If I have allegedly committed any serious or violent felony (which I allegedly have), then I must be detained until the hearing.²

• **Fitness Hearing** (if requested by the prosecution)³:

- What: the court determines whether the minor will be tried as a juvenile or an adult.
 - Note that there are some offenses/circumstances where the prosecutor has discretion to file directly in adult court (without a fitness hearing) against minors over 14, and there are some offenses/circumstances for which minors over age 14 must be tried in adult court.
- In making this decision, the court may consider certain factors.
- Ask the class if anyone knows what some of these factors are.
- Factors: degree of criminal sophistication; possibility of rehabilitation; previous delinquent activity; success of previous attempts by the court to rehabilitate the minor; and the seriousness of the alleged offense.⁴
- →**N.B.**: From here down, we are describing the process assuming that the court has decided that the minor will be tried as a juvenile.

• **Adjudication/Jurisdictional Hearing**

¹ §§ 631, 632; <http://www.courts.ca.gov/1216.htm>; *Alfredo A v. Superior Court*, 6 Cal.4th 1212, 1232 (1994).

² http://www.lao.ca.gov/ballot/2000/21_03_2000.html

³ <http://www.courts.ca.gov/1216.htm>; Cal. Welf. & Inst. Code § 707 (“upon motion by the petitioner”). .

⁴ Cal. Welf. & Inst. Code § 707.

- When: must be held within 15 days if the juvenile is in custody or within 30 days otherwise.⁵
- What: the “trial,” presented to a judge without a jury
- End result: the petition (complaint filed against Jimmy saying what he did wrong) is either “sustained” (found true) or “dismissed” (found untrue)⁶
 - The important part is that *juveniles are not “convicted” in juvenile court* – “conviction” is an adult term
 - Ask the class if anyone knows why this is important.
 - This is important because juveniles do not have to write on a job application that they have a criminal conviction! (Note: We will talk about that more in another lesson.)
 - Often the term “found/adjudicated delinquent” is used instead of “petition sustained” – this is like “found guilty” or “convicted,” but only applies to kids under 18.
- **Dispositional Hearing**
 - What: the “sentencing”
 - The Probation Officer will make a recommendation to the judge about what sentence s/he thinks is appropriate.
 - The juvenile’s attorney can challenge this recommendation if there are good reasons why the sentence (or ‘disposition’) should be different (e.g. placement in a drug treatment center for rehab)⁷
 - Possible dispositions (“sentences”)⁸:
 - Informal supervision (rare for a youth who has been detained)
 - Probation – i.e. release with conditions. Ask the class if anyone knows what some of these conditions are.
 - Required to attend school / G.E.D. program / work
 - No alcohol/drugs/arrests
 - Curfew
 - Drug rehab
 - Electronic monitoring
 - Home arrest
 - Commitment
 - Foster Care
 - Group home
 - Juvenile Hall
 - usually only for temporary detention
 - The Ranch
 - common for serious first offenses

⁵ Cal. Welf. & Inst. Code § 657.

⁶ <http://www.courts.ca.gov/1216.htm> (see the section titled Jurisdiction Hearing); <http://www.sfgov3.org/index.aspx?page=558>

⁷ Cal. Welf. & Inst. Code § 706 (juvenile may submit statement)

⁸ <http://www.courts.ca.gov/1216.htm>

- The Division of Juvenile Justice (DJJ) – previously called the California Youth Authority (CYA)
 - prison for kids

ACTIVITY 2: PLEA BARGAINING DEBATE **(Time Check: 15 minutes)**

Summary for Teachers: The goal of this activity is for the students to think about when it is a good idea to plea bargain and when it might not be a good idea to plea bargain. The activity is a debate – small groups brainstorm, then debate with each other, followed by a brief discussion.

Introduction for Students:

Ask the class: What is a Plea Bargain⁹?

- Define the term:
 - The juvenile admits to some or all of the charges and in exchange the DA drops some of the charges, potential strikes, or agrees to a lighter or different sentence.
 - To agree to a plea bargain, the juvenile has to waive (wave goodbye to) some of her/his rights (right to a hearing, right to confront accusers, etc)
 - NOTE: You don't need to go over the process in depth, but more information, should you need it, is in the additional information section below.^{iv}

Tell the class: For the plea bargaining process to work properly, it is important for the juvenile to have a good working relationship with his lawyer. This is because he will need to communicate with his lawyer and give her all information that may help him or that may be significant to his case. He can ask his lawyer to challenge the PO's suggested sentence. Otherwise, the lawyer might go along with what the PO recommends.

- Ask the class if they know of anyone else who can impact the sentence.
- Some of these people include: the arresting police officer, PO, and judge. Emphasize that it is important to be polite and respectful to all of these people as well. The important difference between the lawyer and these other people is that the lawyer is the only one that has to keep secret what the juvenile tells them.

Tell the students: We are going to do an activity to learn about when it might make sense to plea bargain.

Split the class into three groups (one teacher per group): Group 1 will think of all the reasons why it's a good idea to plea bargain; Group 2 will think of why it might not be a good idea to plea bargain; Group 3 will serve as judges, and should write a list of questions to ask each side.

- NOTE: Students may not personally agree with the side they're assigned to. Explain to them that this is the fun and challenge involved in debate.

Give each group 5-10 minutes to brainstorm their arguments.

- **Hints for Group 1 – Some thoughts on why plea bargaining is good:**

⁹ <http://www.abanet.org/publiced/courts/pleabargaining.html>

- Why it might be good for a defendant:
 - Could get a misdemeanor instead of a felony.
 - Might be able to avoid collateral consequences (i.e. side effects) of certain greater charges – things like sex offender registration, a strike on one’s record, not being able to seal the juvenile record, etc.
 - (For adults especially) Might be able to avoid lengthy pre-trial detention in jail.
 - Most likely will lose at trial and you’ll get a lighter sentence if you plea bargain beforehand.
- Why it might be good for the legal system:
 - If all the cases had to go to trial, the court system would be totally overwhelmed and defendants would wind up spending more time in jail waiting to go to trial.
 - Plea bargaining saves the government and taxpayers time and money.
- **Hints for Group 2 – Some thoughts on why plea bargaining is bad:**
 - Plea bargains allow dangerous criminals to get off with light sentences.
 - The government should be forced to prove that the charges were true.
 - Even if the charges aren’t true, people might feel pressure to plea bargain (which means pleading “guilty”) because they’re scared they’ll lose at trial.
 - Plea bargaining helps the government if it has a weak case because the prosecutor might be able to get a person to plea bargain even if the he/she thinks the he/she would have lost at trial.
 - Even if it is more efficient to plea bargain, that’s a bad reason for giving up so many rights (to trial, confront accusers, etc).
 - Plea bargaining leads to big differences in sentences for the same act.
 - Someone who accepts a plea bargain is necessarily admitting to a delinquent act or crime and will therefore definitely have a juvenile/criminal record (unless it is later sealed, which is not always possible).
 - Unsealed records definitely have a negative effect on future job/career opportunities, college applications, housing options, etc.
 - NOTE TO TEACHERS: Make sure this point gets made in the whole-class debate/discussion. You can also foreshadow the lesson which deals with sealing juvenile records.
- **Group 3 (the judges) should discuss pros and cons and try to come up with questions to ask the other two groups.**

Come back together as a class:

- Have each debating group pick one person to be the speaker, and give him or her 1-2 minutes to offer arguments.
 - *Teaching Tip* – Set ground rules, such as speaking time for each side, response time, procedure for asking the other side questions, etc. Stick to these rules to avoid chaos.
 - If you have a large group and more than one student would like to speak, divide up the arguments and let each participate.

- The group of judges should listen and, at the end of each argument, ask questions of the debating group.
- The full groups, not just the speakers, can help respond to the judges' questions.
- Let the judges deliberate and declare a judgment.

Post-Debate Discussion:

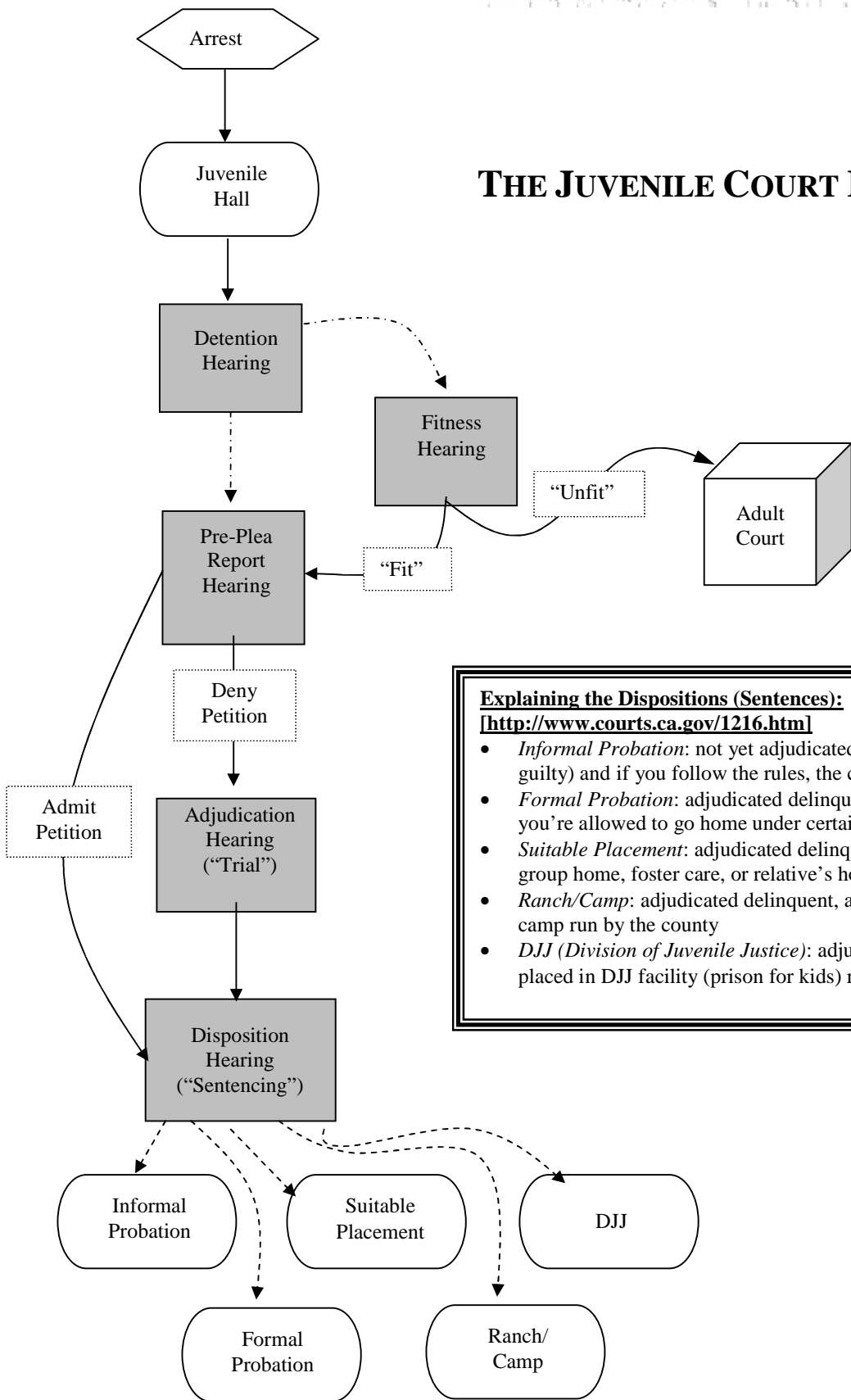
- Go over any unresolved points from the debate.
- Make sure to point out that it is ultimately up to each person if s/he wants to plea bargain, but also that their attorney probably has a good sense of their chances at a hearing.^v
- Congratulate all sides for making such good arguments and tell them they just did exactly what lawyers do – take sides and argue the best arguments for that side.

CONCLUSION
(Time Check: 2-5 minutes)

Summarize the Activities:

Ask the students what they learned today.
(We learned about hearings and plea bargaining. We looked at how the juvenile justice system operates and what the stages of the process are. We also learned, through the debate, that plea bargaining has both positive and negative aspects).

THE JUVENILE COURT PROCESS

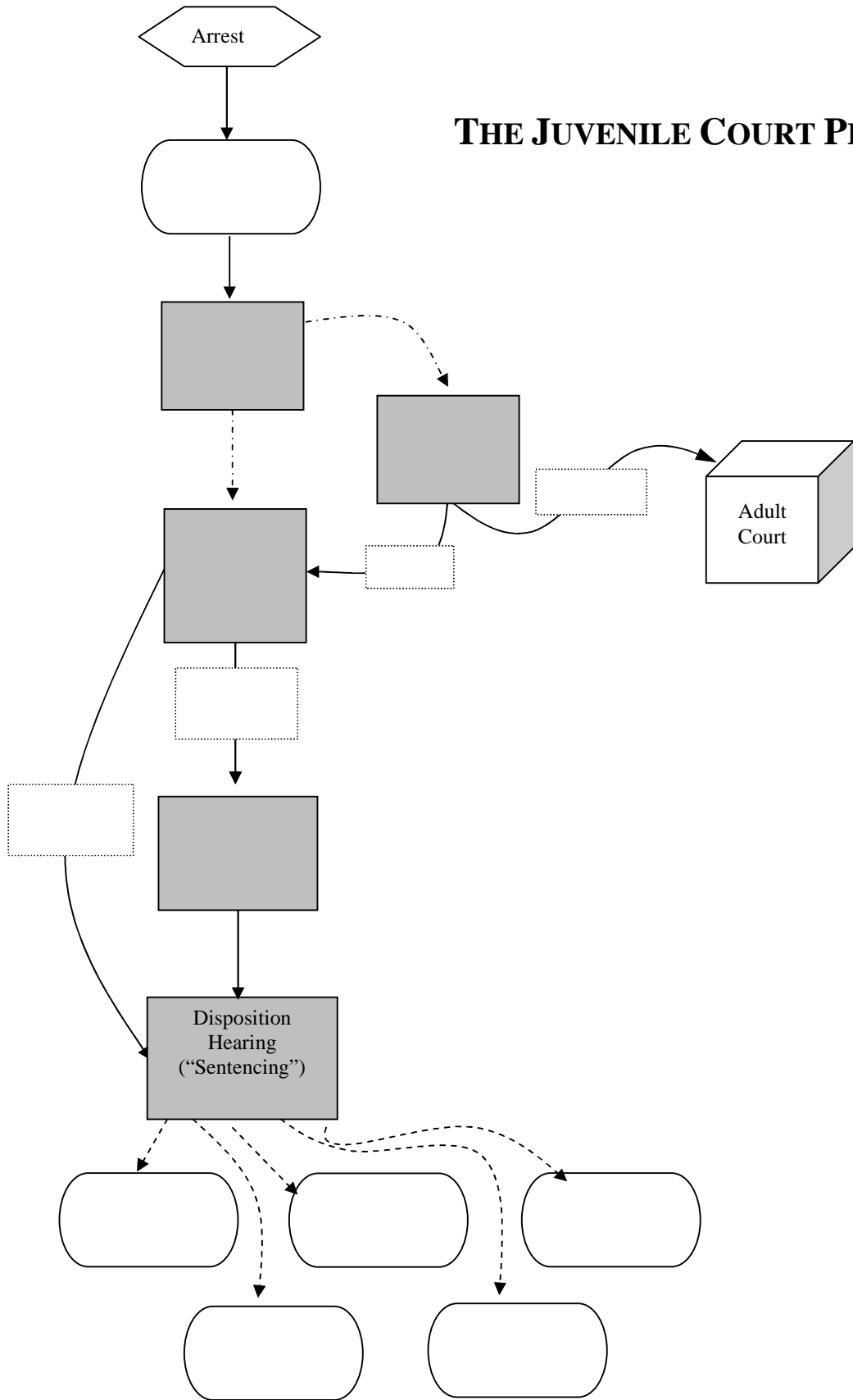


Explaining the Dispositions (Sentences):
<http://www.courts.ca.gov/1216.htm>

- *Informal Probation*: not yet adjudicated delinquent (not found guilty) and if you follow the rules, the charges are dismissed
- *Formal Probation*: adjudicated delinquent (found guilty), but you're allowed to go home under certain rules/conditions
- *Suitable Placement*: adjudicated delinquent, and placed in a group home, foster care, or relative's home
- *Ranch/Camp*: adjudicated delinquent, and placed in a juvenile camp run by the county
- *DJJ (Division of Juvenile Justice)*: adjudicated delinquent, and placed in DJJ facility (prison for kids) run by the state

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THE JUVENILE COURT PROCESS



ADDITIONAL INFORMATION

i

<u>JUVENILE COURT</u>	<u>ADULT (CRIMINAL) COURT</u>
Juvenile = 17 years old and younger.	Adult = 18 years old and up. But some juveniles can/will be “charged as adults” for certain crimes.*
An illegal act committed by a juvenile is referred to as an offense .	An illegal act committed by an adult is referred to as a crime .
A juvenile can be taken to court for status offenses , e.g.: - skipping school (truancy) - disobeying parents - running away from home.	Adults cannot be taken to court for such status offenses.
Juvenile hearings are private and confidential. The public is not allowed to come watch these hearings.	Adult criminal trials are public and anyone can come watch a trial.
Juveniles do not have a right to a jury trial in most jurisdictions.	Adults often do have a constitutional right to a jury trial.
	* Proposition 21 may come up because the kids may know there was a proposition that allowed for more kids to be tried as adults. Let them know that we will talk a lot about Prop 21 in a future lesson.

ii **Q:** When am I supposed to have a hearing if I’m not in custody?

A: If the juvenile is not in custody, the detention hearing must be held within 15 days of the filing of the petition by the DA (W&I Section 628). *See* http://www.courts.ca.gov/documents/Your_Rights_and_Role_in_the_Juvenile_Court_Process.pdf. The DA is required to file a petition within 48 hours of the law enforcement contact with the juvenile. *See* Cal. Welf. & Inst. Code § 631.

iii **Q:** How has Prop 21 changed when and how kids can be tried as adults?

A: **Before Prop 21** passed, juveniles who committed certain serious or violent felonies *could* be tried as adults. But in order for that to happen, the DA had to file a special transfer motion with the juvenile court and the judge would hold a “fitness hearing” to determine whether the juvenile was fit to be tried as an adult. This is no longer the case. **After Prop 21** passed, the system eliminated fitness hearings for juveniles charged with certain serious or violent offenses. Now the DA has the option to file charges directly in adult court without ever going before a judge in the juvenile system against (1) juveniles

14 or older who have committed murder with a special circumstance or a serious sex offense, like rape, and (2) juveniles 16 and older who have committed a serious or violent felony. We are going to talk more about Prop 21 in a later lesson. *See* <http://primary2000.sos.ca.gov/VoterGuide/Propositions/21text.htm>.

iv Q: How does the plea bargain system work?

A: The plea bargaining process:

- The juvenile must have a trial within three weeks (or, more precisely, 15 court days) from the date of the detention hearing (unless the juvenile waives time – tells his or her attorney to tell the judge that he or she will wait longer than the three weeks). [Cal. Welf. & Inst. Code §§ 657, 682]
- After the detention hearing, the judge sets a date approximately two weeks later for a pre-trial hearing. On the pre-trial date, the defense attorney talks to the juvenile to see if he or she wants to make a deal (if one is offered). The defense attorney negotiates the best settlement for the client.
- The defense attorney will try to get rid of a felony because it may count as a strike.
- After the defense attorney and the DA make a deal the defense attorney will talk to the juvenile to see if she agrees with the deal and to explain the rights she would be waiving.
- If the juvenile agrees to the plea bargain, the juvenile and her attorney will go before the judge.
- The judge will ask if the matter has been resolved. The defense attorney will tell the judge what the agreement is, and the judge will ask the DA if she agrees. Then, the judge will tell the defense attorney to advise his client.
- The judge or defense attorney will ask question by question if the juvenile waives her right to a trial, to cross-examine witnesses against her, to subpoena witnesses on her behalf, to testify on her own behalf, and to remain silent. She will answer yes to each of these questions. Explain to the juveniles what each of these rights means, and if they don't understand they should tell the judge or their defense attorney that they don't understand what it means. This can be a stressful time for the juvenile, as many do not understand what is happening during the plea colloquy. Remind the students that they can stop and ask questions of the judge or attorney at any point if they don't feel comfortable with what is going on. Also remind students that they should answer the judge's questions clearly and respectfully ("Yes, Your Honor" or "No, Your Honor").

v Q: What can be done about a public defender who is too quick to plea when the juvenile wants a hearing? Does the juvenile have any recourse if he or she is really dissatisfied? Can the juvenile get a new public defender?

A: The juvenile client has control of the proceedings. If a juvenile wants to go to trial, they go to trial. If the juvenile does not want to accept the plea, the plea will not be entered. Remind the juveniles that public defenders have seen **tens or hundreds of cases** and they have a good sense of what will fly and what will not. **IF** the juvenile still wants to go to trial, there are four possible options:

- They go to trial. Statistically speaking, it is more likely than not that the defendant will be found guilty at trial. This can have huge ramifications because a DA may be willing to reduce or drop some charges or potential strikes in a plea bargain, and thus going to trial potentially could result in a stiffer sentence and strikes (this is sometimes derisively called a “trial tax”).[In 1998, 63% of those juveniles charged with a felony in adult court were convicted, according to research reported by the Bureau of Justice Statistics:
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1039>]
- The public defender thinks that the juvenile's case is so poor that the juvenile is so unreasonable not to accept the plea that the public defender tries to get the juvenile declared incompetent. (This can happen if the juvenile truly has serious mental disabilities.)
- If the public defender outright refuses the client's wishes, which is very rare, the juvenile can move the court to replace his or her attorney with another. This is called a *Marsden* motion. See *People v. Marsden*, 465 P.2d 44 (Cal. 1970) (en banc). They are rarely granted.
- The juvenile (theoretically) always has the option of firing his or her public defender and hiring a private attorney. For obvious reasons, this too is rare.