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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,  
Plaintiff and Respondent,

v.

F.D.,  
Defendant and Appellant.

A137864

(San Francisco City and County  
Super. Ct. No. JW116398)

This case concerns whether F.D., a minor, should remain a dependent of the court, pursuant to Welfare and Institutions Code<sup>1</sup> section 300, or be declared a ward of the court, pursuant to section 602, subdivision (a). Such determinations are governed by section 241.1.

The juvenile court declared F.D. to be a ward of the court and F.D. alleges the following errors on appeal: (1) abuse of discretion by the juvenile court in reaching its decision; (2) defects in the section 241.1 report that was submitted to the juvenile court; and (3) failure of the juvenile court to declare F.D.’s violation of Penal Code section 626.10, subdivision (a), for possession of a knife at school, to be a felony or a misdemeanor.

<sup>1</sup> Subsequent statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

We find no merit in F.D.'s arguments that the court erred in declaring F.D. to be a ward of the court and find no material defects in the section 241.1 report. However, we agree with F.D., and the People concur, that the case must be remanded to the juvenile court for a determination whether F.D.'s violation of 626.10, subdivision (a), was a felony or a misdemeanor.

## **BACKGROUND**

### ***A. Procedural Background***

On February 14, 2007, the family court removed F.D. from her mother due to general neglect. F.D. was initially placed in a dependency foster home, but in June 2007 the court placed her in the home of her maternal step grandmother. In December 2010, the family court placed F.D. with her mother and ordered family maintenance after the mother filed for legal custody.

F.D.'s first contact with the probation department occurred when F.D., then 14 years old, was detained following an August 25, 2011 incident at her school in which she walked the hallway with an open knife attempting to scratch the wall. The next day, the prosecutor filed a petition, pursuant to section 602, subdivision (a), alleging that F.D., committed a felony violation of Penal Code section 626.10, subdivision (a) (possession of a knife on school grounds). On August 29, 2011, the court placed F.D. on home supervision, with a number of conditions, pending disposition.

On September 28, 2011, F.D.'s trial counsel filed a motion to dismiss the petition and grant F.D. informal probation, pursuant to section 654. The probation department agreed to informal probation, which was ordered by the trial court on October 13, 2011, without dismissing the petition.

On December 1, 2011, the dependency court terminated F.D.'s section 300 dependency, but on December 16, 2011 a new referral was filed for F.D.'s younger siblings, alleging general neglect by her mother. The younger siblings received family maintenance services in an attempt to prevent a section 300 dependency.

On January 23, 2012, the prosecutor filed a second section 602, subdivision (a), petition against F.D. alleging a felony robbery violation (Pen. Code, §§ 211, 212.5, subd.

(c)) and misdemeanor unlawful possession or use of pepper spray (Pen. Code, § 12103.7, subd. (d)).

On January 31, 2012, F.D. admitted the violation of Penal Code section 626.10, subdivision (a), from the first petition. The robbery charge from the second petition was amended to allege grand theft person (Pen. Code, § 487, subd. (c)), which F.D. admitted. She also admitted the violation of Penal Code section 12103.7.

On February 4, 2012, the Human Services Agency (HSA) learned that F.D.'s mother was drinking and neglecting her children. F.D. and the younger children were detained by family court.

On February 9, 2012, F.D. was placed in a 90-day program at the San Francisco Girl's Shelter. . She was released to her great-grandmother, D.C., on April 12, 2012.

On April 26, 2012, F.D. was placed at Euclid House Shelter under home detention orders. On May 1, 2012, the court held a detention hearing for violation of home detention after F.D. ran away from her placement at Euclid House.

On June 13, 2012, F.D. and her siblings were declared section 300 dependents of the court.

A first section 241.1 report was filed on July 10, 2012. The report recommended that F.D. remain a section 300 dependent and be placed on section 725, subdivision (a), probation.<sup>2</sup> The court followed this recommendation at the July 12, 2012 disposition hearing. F.D. was to reside with D.C.

On September 11, 2012, the prosecutor filed a third section 602, subdivision (a), petition alleging a felony robbery violation (Pen. Code, §§ 211, 212.5, subd. (c)). F.D. was ordered to wear an ankle monitor on September 18, 2012. On October 30, 2012, F.D.'s counsel filed a motion to dismiss this third petition because, at a prior hearing, the court specifically found that the prosecutor had failed to make a prima facie case that

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<sup>2</sup> The recommendation was that "the minor be made a 725(a) W&I ward of the court." This incorrectly stated the effect of section 725, subdivision (a), under which the court specifically does not make the minor a ward.

F.D. had aided and abetted the robbery, concluding that F.D. was merely present at the scene. The court dismissed the petition on November 13, 2012.

The probation officer's October 31, 2012 compliance report noted that F.D. had been suspended from Mission High School for refusal to cooperate and threatening to slap the school dean. F.D. was then enrolled at Oakland High School, but had attended only one day and was refusing further attendance. F.D. had not been charging her ankle monitor on a daily basis, despite attempted intervention. F.D. went AWOL from C.D.'s house after tampering with the monitor, and was returned two days later by her father.

On November 9, 2012, the probation department filed a motion to revoke F.D.'s section 725, subdivision (a), probation, pursuant to section 777, subdivision (a)(2). The motion alleged three violations: (1) going AWOL from her guardian's home and failing to charge her ankle monitor; (2) refusing to attend school; and (3) failing to follow HSA directives and C.D.'s household rules. On November 13, 2012, F.D. admitted the first two violations.

On November 29, 2012, the court revoked F.D.'s section 725, subdivision (a), probation and ordered a new section 241.1 report. A new 241.1 report was filed on December 13, 2012 and recommended that F.D.'s section 300 dependency be dismissed and that she be declared a ward of the court, pursuant to section 602. F.D.'s counsel filed an alternative disposition memorandum on December 14, 2012, recommending that F.D. be returned to C.D., because an out of home placement as a section 602 ward would take F.D. away from the Bay Area.

A contested section 241.1 and disposition hearing was held on December 14, 2012. The court declared F.D. a ward of the court and ordered her into out-of-home placement.

On January 3, 2013, the court ordered that F.D. be placed at Euclid House, because it would not interrupt F.D.'s long-term treatment for sickle cell anemia at the University of California San Francisco (UCSF).

On February 7, 2013, in the Juvenile Dependency Division of the court, F.D.'s dependency case was formally dismissed, terminating F.D.'s status as a dependent of the court.

On February 8, 2013, F.D. filed a timely notice of appeal from the December 14, 2012 dispositional findings and orders.

**B. *The December 13, 2012 Section 241.1 Report***

The probation officer submitted a report pursuant to section 241.1 prior to the section 241.1 hearing. The report stated that a "CASE"<sup>3</sup> meeting was held on December 12, 2012, attended by F.D.'s assigned probation officer and HSA worker, a HSA representative, a probation department supervisor, a city attorney, and F.D.'s dependency attorney.

The report summarized F.D.'s history with the HSA and with the probation department. The report also summarized F.D.'s history with the Department of Mental Health.

With respect to F.D.'s medical history, the report states that she has been diagnosed with sickle cell anemia and was being treated through UCSF Benioff Children's Hospital.

The report recommended that F.D.'s section 300 dependency status be dismissed; that F.D. be made a ward of the court, pursuant to section 602; and that F.D. be placed on probation. The report states: "CASE reviewed and considered all of the following: the nature of the minor's most recent referral; the minor's age; the parents' past and current involvement with the minor; the parents' history of child abuse and/or neglect; the minor's past behavioral history; the minor's school performance; the parents' involvement and cooperation with the minor's school; the nature of the minor's home environment; the minor's placement history; and, any other information made available to CASE for review. CASE Review also heard and reviewed the minor's Dependency

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<sup>3</sup> We find no definition of the acronym "CASE" in the record.

Attorney's input and reviewed a psychological evaluation that was previously submitted by the Public Defender's Office."

The report informed the court that F.D.'s dependency attorney recommended that F.D. remain in the dependency system, noting that "[t]he minor has a long history with the 300 WIC system. Entered dependency system for medical neglect because the mother is not caring for her issues with sickle cell. Clearly she is going to enter a group home, but desires that to be with the Dependency System."

### ***C. The December 14, 2012 Section 241.1 Hearing***

Prior to the hearing, F.D. filed an alternative disposition memorandum arguing that she should "return to the [HSA] placement with her great grandmother . . . and remain a Welf. & Inst. Code Section 725." Attached to the memorandum was a psychological report prepared by Caroline Salvador-Moses.<sup>4</sup> The court stated that it had received and reviewed the memorandum and psychological report.

Rayi Kanti, a science teacher at the Woodside Learning Center in the Youth Guidance Center, testified on behalf of F.D. Kanti described F.D.'s behavior: "In my class her behavior is great. I don't see anything negative. She's always quiet. Once in a while she likes to laugh loud but that's okay. She's very—she does her work. So I'm happy with her behavior so that's why I'm here." Kanti stated that F.D. makes a good effort and takes pride in her work, which is neat and organized.

Paniz Bagheri, a case manager with the SAGE project, a non-profit organization that has a life skills program for girls, knew F.D. from her participation in SAGE's program and met with her twice a week. When F.D. first entered the Youth Guidance Center, Bagheri found her shy and reticent, but she now seemed "to be really opening up and kind of reaching out and wanting to talk to myself and others."

Bagheri discussed with F.D. why she had cut off her ankle monitor. F.D. explained that she was uncomfortable in school, felt out of her element, and that other students taunted her about the ankle monitor. F.D. said that she was open to attending

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<sup>4</sup> The report is confidential and not part of the record on appeal.

school in Oakland if she didn't have to wear an ankle monitor. Bagheri believed that F.D. had accepted responsibility for why she was currently in custody.

Maurice Ellis, a counselor at the Youth Guidance Center, was not F.D.'s counselor but knew her from transporting her or being at the unit where she resided. Ellis described F.D. as "bubbly, joyful, . . . friendly." He had heard no negative reports about F.D., who was respectful to him.

Salvador-Moses is a psychologist specializing in post-traumatic stress disorder and child and family therapy. She had worked in the dependency system for 13 years, primarily as an on-site consultant, providing psychological consultations on cases. She also worked in the delinquency system and consulted on whether a minor should or should not remain a dependent.

Salvador-Moses conducted a psychological evaluation of F.D. She determined that F.D. had a "full scale I.Q" of 56, "indicative of severe impairment of her cognitive abilities." The cognitive impairment could impair F.D.'s ability to understand the consequences of her behavior. On the Wide Range Achievement test, F.D. "showed delays in her achievement in all areas that include spelling, reading and mathematics, about three grid levels behind." F.D. performed higher than would be expected from her I.Q., speaking to the level of effort that she was putting into school work. Salvador-Moses did not believe F.D. was malingering because she was engaged, focused, and appeared to try her best.

Additional testing indicated that F.D. suffered from depression, post-traumatic stress disorder, and oppositional defiant features.

Salvador-Moses recommended that F.D. remain in the dependency system. One reason for her recommendation was the long-term involvement of HSA "in terms of monitoring and provision of services." She also noted that F.D. was closely bonded to her biological parents, her siblings, and her great grandmother. In addition, F.D.'s sickle cell anemia was an issue that HSA could monitor and ensure that services were in place, because HSA had a close relationship with UCSF.

F.D. wanted to reunify with her mother and Salvador-Moses testified that HSA would be able to monitor and supervise the conditions of F.D.'s contact with her mother. She believed that F.D. would be harmed by a placement far from the Bay Area because of "the level of connection and attachment that [F.D.] has with her family."

On cross-examination, Salvador-Moses said that she did not believe that the delinquency system would fail to provide for F.D.'s medical needs, but felt that HSA had strengths in that regard.

D.C. testified to her belief that F.D. was ready to change and read a letter that F.D. had written to her, expressing regret for the behaviors that had led her into custody and expressing gratitude and appreciation for D.C. D.C. said that she "would love to have [F.D.] back."

Caren Shapiro is a court-appointed attorney in the dependency system and F.D. was her client. She believed that F.D. should remain in the dependency system because "she's experienced a lot of loss, a lot of chaos, a lot of instability, just a lot of psycho-social factors that are well served through therapy and other social services that I think [HSA] can help to facilitate." When asked whether the delinquency system could provide F.D. the needed services, Shapiro stated that she was not as familiar with that system and could "only speak to what I know that the social worker at [HSA] can provide."

Gabriel Maldonado, F.D.'s probation officer, testified for the People. Maldonado prepared the section 241.1 report. At the meeting, the participants considered whether F.D.'s health conditions would be addressed within the delinquency system. At a section 241.1 meeting, the probation officer and social worker decide what would best serve the interest of the child, though all participants may participate in the discussion. If the probation officer and social worker are not in agreement, the city attorney votes. The minor's dependency attorney may make a presentation, but does not have a vote in the recommendation.

Maldonado explained the rationale of the section 241.1 report's recommendation: "[G]iven the amount of services previously already given by . . . HSA, and that her

delinquent behavior had been increasing and she was putting herself at risk, it just seemed it was a better fit for her to be a 602, to better serve her needs.” Maldonado explained that in the delinquency system a minor has access to required therapy, and that whether granted probation at home, or ordered into residential treatment or a ranch, there is always a mental health component. At the meeting, the HSA supervisor who attended and Amy Hipps, the HSA social worker assigned to F.D., agreed that F.D. would be better served in the delinquency system.

Maldonado’s recommendation was for an out-of-home placement as a section 602 ward of the court. He based this recommendation on current instability within F.D.’s family. He did not recommend that F.D. be placed with D.C. again because after F.D. was placed with D.C., she was arrested again, although the charges had been dismissed, and had been violating her home detention. She was violating her curfew, not attending school, and was tampering with her ankle monitor.

Maldonado stated that the probation department has a close working relationship with UCSF and that F.D.’s medical needs would be met, whatever the court’s disposition.

Maldonado was not a placement officer, so he was not aware of where out-of-home placement facilities were available. He explained that a placement officer looks into the best placement considering the needs of the child. Defense counsel stated that she wished to present a witness, Rebecca Marcus, who was in charge of placement in defense counsel’s office. Marcus was not available that day, but counsel wanted Marcus to prepare a declaration “to inform the court of the placements through the 602 system, because we’ve heard a lot about why she’s remained a dependent but we haven’t heard much about what’s available through these out-of-home placements.”

The court did not believe that a declaration from Marcus would be helpful: “Counsel, I don’t know how that’s going to help me. . . . Every point you’re raising are things that are well known to the HSA department and, yet, the supervisor there and the person who was personally supervising her, Amy Hipps, both have recommended that she become part of the 602 system. [¶] Now, they all know that aspect of it better than certainly I know or better than you know or better than Rebecca Marcus knows. They

know the system. They know the advantages their system has and they know the advantages this system has, or the disadvantages, and yet they're making a recommendation and, to be honest, that's telling to the court. [¶] If I'm sitting here, trying to figure out what's the best system and the two people who work with HSA, namely her own supervisor and her own case worker, both say we think it's better for her to be in the juvenile system, that has to be very persuasive and it is and, frankly, nothing Marcus can say is going to change that."

The court stated that it would not continue the case and that counsel could have had a declaration prepared for the hearing. After a recess, defense counsel asked the court if it wanted to have a declaration from Marcus and the court stated: "the only thing that is in the back of my mind is—has to do with after leaving the placement. But we don't know what the situation is . . . going to be like. It seems to me she's going to go to an out-of-home placement." The court believed it unrealistic to expect that D.C., who was 77 years old, could take care of F.D. along with a 19-month-old child and a seven-year-old child. The court noted that F.D.'s mother was in San Francisco and was "more of a distraction than she is a supporting and positive influence, and it's at this point she shouldn't be having that much contact with her." Therefore, the court concluded that F.D. "needs to be referred to out-of-home placement."

With regard to whether the placement should be in the dependency system or the delinquency system, the court stated: "it's telling to me that [HSA] is recommending that she go to the . . . juvenile delinquency side of matters, in 602." As to what would happen to F.D. once probation was terminated, the court stated: "Well, some—a decision's going to have to be made on that; they're not going to just drop her in the middle of nowhere. They're going to have to make a decision at that point as to where she goes. [¶] And I would assume that they would take a lot of things into consideration, including another 241 hearing. I don't know who would initiate that. I don't know if that would be initiated by probation, if they can do it on their own."

Probation Officer Al Harper told the court that, under a newly funded program, the probation department would be employing its own social workers who would ensure that

after minors are no longer subject to supervision by the probation department, they can still access the services and receive placements that they need.

Defense counsel stated that the section 241.1 meeting did not have the benefit of Salvador-Moses's full report, having been provided only a one-page summary. Counsel agreed that F.D. should go to an out-of-home placement, but under the dependency system and not the delinquency system. Counsel continued to express concern about what would happen to F.D. once she no longer came under section 602.

The court ultimately followed the recommendation of the section 241.1 report to make F.D. a ward of the court under section 602.

## **DISCUSSION**

### ***I. Acceptance of the Recommendations Made in the Section 241.1 Report***

#### ***A. Legal Standard***

In *In re Joey G.* (2012) 206 Cal.App.4th 343, 347 (*Joey G.*), the court summarized the law with respect to a minor with cases in both the dependency system and the delinquency system: “Under section 300, a child who is neglected or abused falls within the juvenile court’s protective jurisdiction as a ‘ “dependent child of the court.” ’ [Citation.] As a dependent, the juvenile court may remove the minor from the home, or place the minor in alternative care that meets his or her needs for custody, care and guidance. [Citation.] Alternatively, the juvenile court may take jurisdiction over a minor as a ‘ “ward of the court” when the child is habitually disobedient or truant’ under section 601, or commits a crime under section 602. [Citation.] When a minor is adjudged a ward of the court, the minor is subject to more-restrictive placements because of his or her criminal conduct and the court may commit the minor to a juvenile home, ranch, camp, forestry camp, or juvenile hall. [Citation.] The Legislature has declared that a minor cannot simultaneously be both a dependent and a ward of the juvenile court. [Citation] [¶] Section 241.1 sets forth the procedure for handling cases with dual jurisdiction in which a minor is both a dependent under section 300 and a ward under sections 601 or 602. It requires the probation department and the welfare department to jointly develop a written protocol to determine which status will best serve the interests of the minor and

the protection of society. Once completed, the report is presented to the juvenile court for a determination of the appropriate status for the minor. [Citation.] The joint assessment report must contain the joint recommendation of the probation and child welfare departments and also include (1) a description of the nature of the referral, (2) the age of the child, (3) the history of any physical, sexual or emotional abuse of the child, (4) the prior record of the child's parents for abuse of this or any other child, (5) the prior record of the child for out-of-control or delinquent behavior, (6) the parents' cooperation with the child's school, (7) the child's functioning at school, (8) the nature of the child's home environment, (9) the history of involvement of any agencies or professionals with the child and his or her family, (10) any services or community agencies that are available to assist the child and his or her family, (11) a statement by any counsel currently representing the child, and (12) a statement by any court-appointed special advocate (CASA) volunteer currently appointed for the child.”<sup>5</sup>

A trial court's determination under section 241.1, whether to retain section 300 dependency status or declare section 601 or 602 wardship, is reviewed for abuse of discretion. (*Joey G.*, *supra*, 206 Cal.App.4th at p. 346.) “To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice.” (*Ibid.*) In the absence of an abuse of discretion, we may not reverse the decision of the juvenile court if it is supported by substantial evidence.<sup>6</sup> (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.)

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<sup>5</sup> The list of items required in a section 241.1 report is derived from section 241.1 and California Rules of Court, rule 5.512, subdivision (d).

<sup>6</sup> As an application of review for sufficiency of the evidence, F.D. cites *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1014, in which the court found that there was insufficient evidence to support the order dismissing the minor's dependency petition because the joint assessment required by section 241.1 had not been performed or presented to the court. In this case, however, a section 241.1 report was prepared and considered by the court, so we find *Marcus G.* inapposite.

## **B. Application to F.D.'s Case**

### **1. Objections to the Section 241.1 Report**

F.D. contends that “it is clear the [Legislature’s] instructions for preparing a section 241.1 report were not followed. This section 241.1 report was inadequate because it failed to address, or incorrectly addressed, some crucial areas. In addition, the social worker’s report for the minor’s dependency case, which was written one day before the section 241.1 meeting, contained information that was entirely inconsistent with the conclusion of the section 241.1 report.”

In support of her contentions, F.D. presents a number of objections to the section 241.1 report. However, F.D.’s counsel made none of these objections at the section 241.1 hearing, thereby waiving them on appeal. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502 [citing cases in which appellate courts have applied the forfeiture doctrine in dependency proceedings in a wide variety of contexts, including with regard to various reports required by statute].) In any case, F.D.’s objections are meritless and consist of citations to misstatements that are not material,<sup>7</sup> speculation that is not supported by the record,<sup>8</sup> reference to a supposed contradiction that is not supported by the record,<sup>9</sup> and deficiencies that were sufficiently resolved at the section 241.1 hearing.<sup>10</sup>

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<sup>7</sup> F.D. states that the report “was also wrong about when [F.D.] was detained in the second dependency case—it occurred in April 2012, not June 2012, as . . . reported.” F.D. does not explain how a misstatement in this regard could have been material to the court’s decision.

<sup>8</sup> The section 241.1 report stated that F.D. was involved in a strong arm robbery on September 8, 2012, without also stating that the charge was dismissed. Maldonado testified at the section 241.1 hearing that the charge had been dismissed. F.D. argues that if, at the section 241.1 meeting, Hipps had not been aware that the robbery charge had been dismissed, the omission could have prejudicially influenced Hipps’s opinion. However, Hipps’s status review report, filed with the dependency court on November 27, 2012, cites the dismissal of the robbery charge, demonstrating that any omission by Maldonado at the section 241.1 meeting would not have misled her.

<sup>9</sup> F.D. states that a day before the section 241.1 meeting, Hipps praised the placement of F.D. with C.D. However, Hipps’s status report involved the placements of F.D.’s siblings as well as F.D. While the report clearly praised the placement of “the

## **2. Sufficiency of the Evidence**

Although F.D. does not directly challenge the sufficiency of the evidence supporting the trial court's determinations, she begins her argument with a review of the facts of her case as they correspond to the criteria that a section 241.1 report must address. She concludes that "it is apparent from a consideration of these criteria that [F.D.] should have remained a dependent."

We reject F.D.'s implied challenge to the sufficiency of the evidence. The judgment of the court was well supported by the facts that F.D. was refusing to attend school, had run away from D.C.'s home, and had tampered with her ankle monitor. The section 241.1 report stated that HSA "believes they can no longer keep the minor safe because she is beyond parental control and is not listening to the agency's social worker." This assessment by the HSA provides substantial support for the court's disposition.

## **3. Abuse of Discretion**

F.D. contends that "[t]he trial court abused its discretion in not fully considering [the criteria that a section 241.1 report must address], giving little or no weight to the opinions of Dr. Salvador-Moses and the Multidisciplinary Committee<sup>11</sup>, and instead

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children" with C.D., it was also clear that F.D.'s current placement was in juvenile hall, so that praise of a placement with C.D. did not apply to F.D.

<sup>10</sup> F.D. states that the section 241.1 report never addressed "how probation intended to deal with [F.D.'s] severe cognitive impairment. There was no discussion of any placement that might be available, and appropriate, to address this additional disability of the minor." However, there was in depth discussion at the hearing about the need for F.D. to receive services for cognitive impairment and other issues.

<sup>11</sup> The probation department report prepared for the November 29, 2012 hearing on the third petition noted, under the heading "Multidisciplinary Team Recommendations," that F.D.'s case was presented "to the MDT Committee on 11/21/12. The Committee's recommendation was she remain a 725(A) WIC and thus Dependency place the minor. The Committee cited that HSA has only placed the minor with relatives and has not exhausted their resources." We find no further information about this recommendation or the individuals participating in the recommendation in the record. F.D. cites no reference to this recommendation by her counsel at the December 14, 2012 section 241.1 hearing.

relying exclusively on what [F.D.'s] social worker, the social worker's supervisor, and Mr. Maldonado concluded." The record does not support F.D.'s argument.

The trial court read and considered the section 241.1 report. F.D. had a full and fair opportunity to present evidence in favor of her alternative disposition memorandum, including the testimony of Salvador-Moses and the psychological report, which the court indicated it had reviewed. While the court found it very persuasive that both F.D.'s HSA social worker and her probation officer recommended that F.D. become a ward of the court, the court stated: "I'm not saying it doesn't mean I can't consider other things. And I have considered other things. And in light of the overall testimony and the reports I read, I think it's a good recommendation and I'm going to follow it." The record demonstrates that the court was fully informed about the law, took care to consider all available information, and made a careful and reasoned decision. We find no indication that the court acted in an arbitrary or capricious manner or reached a patently absurd judgment.

F.D. notes that the court would not allow the case to be continued in order to obtain a declaration from Marcus. However, the court clearly stated that it would not find a declaration from Marcus helpful because any information Marcus could provide was well-known to HSA, which had recommended that the F.D. be made a ward of the court. We find no abuse of discretion in the court's denial of a continuance, particularly when F.D.'s counsel provided no reason why a declaration could not have been prepared beforehand.

F.D. also asserts that the court had "lingering doubts about the correctness of [its] decision." In support of this assertion, F.D. cites comments by her dependency attorney at the February 7, 2013 dependency hearing in which the court terminated its jurisdiction with respect to F.D.: "I have some additional information that I can share from the public defender and I am happy to do that, because this is all in an email from . . . the public defender who represents [F.D.] . . . [¶] The Monday following the Friday afternoon [section 241.1 hearing] she was called in by the judge, who said, 'I am very concerned about this child's placement once she leaves our system.' And then they called Kimiko

Burton, who said, ‘About a month before she is going to be released from your system, call me and I will make sure a new case is opened for her.’ ”

Even if we were to credit this hearsay report and find it properly part of the record on appeal, nothing in it supports an assertion that the court doubted the correctness of its decision. It only indicates a lingering concern about how F.D. might re-enter the dependency system once she leaves the delinquency system—a concern that the court also expressed at the section 241.1 hearing. It does not indicate that the court abused its discretion in reaching its determination; rather, it demonstrates that the court was actively engaged in ensuring that the delinquency and dependency systems would work together at transition points to ensure that F.D. received the services she needed.

F.D. has failed to demonstrate that the trial court abused its discretion in accepting the recommendation of the section 241.1 report.

## **II. *Possession of Knife not Declared a Misdemeanor or Felony***

F.D. admitted a violation of Penal Code section 626.10, subdivision (a), for possessing a knife on school grounds, which was charged as a felony. A violation of Penal Code section 626.10, subdivision (a), is a “wobbler” offense, meaning that it can be either a felony or a misdemeanor. (*In re William V.* (2003) 111 Cal.App.4th 1464, 1468.) F.D. argues that the juvenile court failed to declare F.D.’s violation to be a felony or a misdemeanor and that we must remand for the court to make that determination.

Section 702 provides, in relevant part: “If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.” In *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 (*Manzy W.*), the court determined that “[t]he requirement is obligatory: ‘. . . section 702 means what it says and mandates the juvenile court to declare the offense a felony or misdemeanor.’ ” The *Manzy W.* court determined that if the juvenile court fails to make the mandatory express declaration, the case must be remanded so that the juvenile court may comply with the requirements of section 701. (*Manzy W.*, at p. 1204.)

When F.D. admitted the facts alleged against her—facts that justified a finding that F.D. violated Penal Code section 626.10, subdivision (a)—the court failed to declare whether F.D.’s violation was a felony or a misdemeanor. Accordingly, we must remand to the juvenile court to make the required determination. The People concur.

**DISPOSITION**

The case is remanded to the juvenile court for a determination whether F.D.’s violation of Penal Code section 626.10, subdivision (a), was a felony or a misdemeanor. The court’s order declaring that F.D. is a ward of the court, pursuant to section 602, subdivision (a), is affirmed.

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Brick, J.\*

We concur:

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Kline, P.J.

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Haerle, J.

\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.