

Dual Jurisdiction in California: How the Juvenile Courts are Failing Crossover Youth

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Introduction

Crossover youth, or children involved in both the child welfare and juvenile delinquency systems,¹ are one of California's most vulnerable and sympathetic populations. These children's lives have been shaped by tragic circumstances, including parental or caretaker absence, neglect, sexual abuse, physical abuse, or emotional abuse.² These tragic circumstances bring children into the child welfare or foster care systems (i.e. dependency systems),³ making them more likely to engage in behavior that will bring them into contact with the juvenile delinquency system.⁴ Once in the delinquency system, crossover youth often face serious criminal charges⁵ with long-term consequences⁶. Despite the fact that attorneys are appointed to represent children in their dependency and delinquency proceedings, many children involved in the juvenile justice system⁷ feel alone and burdensome.⁸

The current juvenile justice system in California is failing. Children exiting the foster care system have extremely high rates of homelessness, poverty, and incarceration.⁹ One fourth of these children are incarcerated within two years of leaving the foster care system.¹⁰ One

¹ Herz et al., *Challenges Facing Crossover Youth: An Examination of Juvenile-Justice Decision Making and Recidivism*, 48 FAM. CT. REV. 305, 305 (2010).

² *National Foster Care Statistics*, ON THE MOVE, <http://www.onthemovebayarea.org/node/561> (last visited October 29, 2012).

³ CAL. WELF. & INST. CODE § 300 (West 2006).

⁴ *Fact Sheet, Intersection Between Juvenile Dependency and Delinquency: Available Research*, JUDICIAL COUNCIL OF CALIFORNIA (June 2005), <http://www.courts.ca.gov/documents/Ab129-FactSheetMay05.pdf> [hereinafter *Fact Sheet*].

⁵ See, e.g., CAL. WELF & INST. CODE § 707(b) (West 2012) (describing the procedures for children alleged to have committed murder, arson, robbery, rape, kidnapping, etc.).

⁶ For example, a juvenile adjudication may be considered a strike under California's "Three Strikes Law," and may have serious and lifelong implications for the child if he or she commits a crime later in life. See Amanda K. Packel, *Juvenile Justice and the Punishment of Recidivists Under California's Three Strikes Law*, 90 CAL. L. REV. 1157 (2002).

⁷ By juvenile justice system, I am referring to both the dependency and delinquency juvenile courts.

⁸ Johnny Madrid, *My Court Experience*, 1 J. CENTER FOR CHILD. & CTS. 3 (1999).

⁹ *Foster Care Facts*, CHILDREN'S LAW CENTER OF CALIFORNIA, http://www.clcla.org/facts_overview.htm (last visited Aug. 31, 2012).

¹⁰ *Id.* (citing MARK E. COURTNEY, AMY DWORSKY, JOANN S. LEE, & MELISSA RAAP, MIDWEST EVALUATION OF THE FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGES 23 AND 24 (2010)).

fourth will be homeless at some point.¹¹ Two thirds will need public assistance to purchase food.¹²

This paper explores California's juvenile justice system's current approach to this vulnerable population and recommends comprehensive legislation that will enable counties to holistically address crossover youth's needs. Part II provides an overview of California's current juvenile justice system. Part III, gives a brief history of the law relating to California's crossover youth. Part IV then discusses why there is a need for change in the law relating to crossover youth in California. Finally, Part V makes recommendations for how California can improve its current approach to crossover youth by enacting comprehensive legislation that addresses these children's needs holistically and effectively.

I. Overview of California's Juvenile Justice System

Traditional California's juvenile justice system is composed of two separate entities: the dependency system and the delinquency system.¹³ A child is considered a dependent when she has suffered physical, emotional, or sexual abuse, or when her parents or guardians are unwilling or unable to adequately supervise or care for her.¹⁴ In these circumstances, the "court assumes the role of the child's parent."¹⁵ In other words, the court strives to "secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents."¹⁶ Dependency services aim to help the child transition successfully into a healthy adulthood by offering her financial assistance, counseling, classes and other services.¹⁷ Because the child is involved in this system through no fault of her own, the system is not intended to be adversarial.¹⁸

¹¹ *Id.*

¹² *Id.*

¹³ See Martha E. Bellinger, "Can We Talk?" *Facilitating Communication Between Dependency and Delinquency Courts*, 21 J. JUV. L. 1 (2000) (describing how the juvenile justice system is comprised of separate dependency and delinquency systems, which are so separate that there are often problems with communication between the two systems).

¹⁴ CAL. WELF. & INST. CODE § 300 (West 2006).

¹⁵ Becca Dunlap, *Dependents Who Become Delinquents: Implementing Dual Jurisdiction in California Under Assembly Bill 129*, 5 WHITTIER J. CHILD & FAM. ADVOC. 507, 510 (2006).

¹⁶ CAL. WELF. & INST. CODE § 202 (West 2008).

¹⁷ Tracy Chan, *Serving the Best Interest of California's Dual-Jurisdiction Minors: The Need for Reunification of the Juvenile Court System*, 21 S. CAL. REV. L. & SOC. JUST. 211, 220 (2012).

¹⁸ *In re Charles T.*, 102 Cal. App. 4th 869, 872 (2002).

In contrast, a child is considered a delinquent when she commits a crime¹⁹ or engages in delinquent behavior (e.g. habitual tardiness, disobedience, curfew violations, etc.).²⁰ The juvenile delinquency system is adversarial, very similar to the adult criminal system.²¹ The United States Supreme Court recognizes the adversarial nature of juvenile delinquency proceedings and as a result has held that juveniles accused of crimes are afforded the same Constitutional protections as adults: the right to a notice of charges, right to counsel, right to confrontation and cross-examination, right to a transcript of the proceedings, and the right to appellate review.²² California juvenile delinquency judges must balance two competing interests: the protection of society and the rehabilitation of the minor.²³ To do this, judges are given broad discretion to place delinquent children on probation, in foster care or group homes, in secure confinement, or in juvenile hall.²⁴

Together, the dependency and delinquency systems make up California's juvenile justice system. The Welfare & Institutions Code governs the juvenile justice system, and provides for both the treatment and care of dependent children,²⁵ as well as the punishment and rehabilitation of delinquent children.²⁶ The Welfare & Institutions Code has codified the common law "parens patrie" philosophy.²⁷ "Parens patrie holds "the state will act in the best interests of a child" in all juvenile law proceedings.²⁸

Although the dependency and delinquency systems are both considered part of the juvenile justice system and both aim (at least in theory) to follow the "parens patrie" philosophy, these two entities are separate in many respects. They are often physically separate, and there are separate judges, separate agencies, and separate attorneys to help children navigate through these systems. More legally significant,

¹⁹ CAL. WELF. & INST. CODE § 602 (West 2002).

²⁰ CAL. WELF. & INST. CODE § 601 (West 2002).

²¹ See Alberto Bernabe, *The Right to Counsel Denied: Confusing the Roles of Lawyers and Guardians*, 43 LOY. U. CHI. L. J. 833 (2012) (explaining that attorneys for children in juvenile delinquency proceedings must take on a different role from attorneys in juvenile dependency proceedings because of the adversarial nature of delinquency proceedings. Instead of being a guardian of their client's interests, they must zealously advocate for the child's wishes in order to provide effective assistance of counsel.).

²² *In re Gault*, 387 U.S. 1, 10 (1967).

²³ CAL. WELF. & INST. CODE § 202 (West 2008).

²⁴ Chan, *supra* note 17, at 222-223.

²⁵ See, e.g., CAL. WELF. & INST. CODE §§ 300-304.7 (West 2006).

²⁶ See, e.g., CAL. WELF. & INST. CODE §§ 600-602 (West 2012).

²⁷ CAL. WELF. & INST. CODE § 202 (West 2008).

²⁸ Chan, *supra* note 17, at 211-212.

however, is that each jurisdiction defines its procedures and rules differently.

For example, one jurisdiction may appoint the county's public defender office represent minors in the dependency and delinquency system, while another jurisdiction may have a separate office for attorneys working in each system.²⁹ The dependency system has jurisdiction over a child after a judge³⁰ has found the child has suffered or is at a substantial risk of suffering serious physical or emotional harm by a preponderance of the evidence.³¹ The delinquency system, however, has jurisdiction over a child only after a judge³² has found that a child has either engaged in delinquent or criminal behavior beyond a reasonable doubt.³³

Despite the separation between the dependency and the delinquency system, there is often considerable overlap in the children that are involved in these two systems. Research consistently confirms that children who are abused and maltreated are much more likely to engage in delinquent and criminal behavior than the general population of children.³⁴ It is a well-settled premise among jurists, attorneys, sociologists, and psychologists that "children experiencing abuse and neglect are more

²⁹ For example, the Orange County Office of the Public Defender represents all children and adults in dependency, delinquency, and criminal cases. COUNTY OF ORANGE, OFFICES OF THE PUBLIC DEFENDER, <http://www.pubdef.ocgov.com/> (last visited Apr. 8, 2013). San Diego County, by contrast, appoints the Office of the Public Defender to represent children and adults in criminal or delinquency cases, and a separate non-profit agency to represent children and adults in dependency cases. DEPENDENCY LEGAL GROUP OF SAN DIEGO, A NON-PROFIT PUBLIC BENEFIT CORPORATION, <http://www.dlgsd.com/> (last visited Apr. 8, 2013); COUNTY OF SAN DIEGO, PUBLIC DEFENDER, http://www.sdcounty.ca.gov/public_defender/index.html (last visited Apr. 8, 2013).

³⁰ Because of privacy concerns, juvenile dependency proceedings do not involve a jury. See William W. Patton, *Pandora's Box: Opening Child Protection Cases to the Press and Public*, W. ST. U. L. REV. 181, n. 13 (2000) (explaining that confidentiality is one reason jury trials are not used in juvenile dependency proceedings). See also, Melissa L. Bruger, *Introducing the Construct of the Jury Into Family Violence Proceedings and Family Court Jurisprudence*, 13 MICH. J. GENDER & L. 1, 12 (2006) (explaining that as of 2006, fewer than ten states allowed juries in dependency proceedings).

³¹ CAL. WELF. & INST. CODE § 355 (West 2013); CAL. WELF. & INST. CODE § 300 (West 2006). See also *In re Savannah M.*, 131 Cal. App. 4th 1387, 1394 (2005).

³² Juvenile delinquents are not entitled to a jury trial, despite the serious consequences of juvenile adjudications. See *In re Kevin S.*, 113 Cal. App. 4th 97, 108 (2003); see also *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971).

³³ CAL. WELF. & INST. CODE § 601 (West 2012); CAL. WELF. & INST. CODE § 602 (West 2012). See also *In re Michael V.*, 178 Cal. App. 3d 159, 165 (1986).

³⁴ JOHN A. TUELL, PROMOTING A COORDINATED AND INTEGRATED CHILD WELFARE AND JUVENILE JUSTICE SYSTEM: AN ACTION STRATEGY FOR IMPROVED OUTCOMES (2005).

prone to engaging in delinquent behavior.”³⁵ It is estimated that “child abuse and neglect increase the risk of any arrest of a juvenile by 55% and the risk of committing a violent crime by 96%.”³⁶ In San Diego County, this overlap is so large that one juvenile courtroom’s calendar is exclusively dedicated for one afternoon every week to address whether these children’s needs should be addressed in the delinquency or dependency systems.³⁷

II. History of the Law Addressing Crossover Youth in California

From the late 1980’s to 2005, all California county juvenile courts exercised “exclusive jurisdiction” over crossover youth.³⁸ “Exclusive jurisdiction” means that a child can only have hearings in and receive services from either the dependency or delinquency system. Even if a child qualifies for both because she falls within the statutory definition of both a dependent and a delinquent, she must be classified as one and remain solely in that system.³⁹ Case law and statutory language were clear that there was an absolute ban on juvenile courts exercising simultaneous dependency and delinquency jurisdiction over minors.⁴⁰

One of the earliest and most famous cases demonstrating the concept of exclusive jurisdiction is *In re Donald S.*⁴¹ Donald was removed from his home when he was under a year old after he was physically abused.⁴² Donald was put into foster care and adopted by parents who also physically abused him.⁴³ After being removed from this home as well, Donald acted out and tried to poison a worker at his group home.⁴⁴ Delinquency charges were filed as a result of this incident, and Donald’s dependency case was dismissed.⁴⁵ On appeal of this dismissal, the court acknowledged “the reality [that] a child may be adjudged a dependent child and removed from his home, subsequently engage in conduct which causes him to be adjudicated as a status behavior, and in a deteriorating set

³⁵ Bellinger, *supra* note 13, at 6.

³⁶ CENTER FOR JUVENILE JUSTICE REFORM, SUPPORTING YOUTH IN TRANSITION TO ADULTHOOD: LESSONS LEARNED FROM CHILD WELFARE AND JUVENILE JUSTICE 9 (2009).

³⁷ ADMINISTRATIVE OFFICE OF THE COURTS, SAN DIEGO DEPENDENCY REPRESENTATION 1 (2010), <http://www.courts.ca.gov/documents/cfcc-sandiego-dependencyrep-rfp-qna.pdf>.

³⁸ S. 220, 1989-1990 REG. SESS. (1990); A.B. 129, 2003-2004 REG. SESS (Cal. 2004).

³⁹ Cal. R. Ct 5.510(c). *See also* CAL. WELF. & INST. CODE § 304 (West 2012); CAL. WELF & INST. CODE § 316.2 (West 2001); CAL. WELF & INST. CODE § 726.4 (West 2000).

⁴⁰ *Id.* at 138. S. 220, 1989-1990 REG. SESS. (1990).

⁴¹ *In re Donald S.*, 206 Cal. App. 3d 134 (1988).

⁴² *Id.* at 136.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 137.

of circumstances, finally commit a crime, which provides the basis for his adjudication as a delinquent child.”⁴⁶ Despite the court’s recognition of interrelatedness of the circumstances leading to Donald’s dependency and delinquency cases, the court reaffirmed the dismissal of his dependency case, holding that a child with an open dependency and delinquency court could only be adjudicated in one court at a time.⁴⁷ Thus, in Donald’s case, the delinquency court retained sole control over Donald’s placement, education, and treatment.⁴⁸

Up until 2005, when a child in a situation like Donald’s was determined to be both a dependent and a delinquent, the Welfare and Institutions Code required counties to hold a hearing to determine which status was appropriate.⁴⁹ Counties had discretion to develop written protocol and procedure for labeling these children.⁵⁰ The following circumstances were to be taken into consideration by the courts in determining whether the delinquency or dependency system was best for each child: (1) the elements/circumstances of the offense, (2) victim information, (3) dependency history, (4) delinquency history, (5) residence status/information, (6) evidence of gang activity, (7) evidence of alcohol/substance abuse, (8) health/mental health information, (9) school information, (10) family information, (11) minor’s statement, etc.⁵¹ Both probation and child welfare services were required to develop a joint recommendation and case plan addressing these factors to aid the court in its decision.⁵²

In the fall of 2004, the California legislature passed Assembly Bill 129 (A.B. 129), which gives counties the option to exercise dual jurisdiction over crossover youth.⁵³ The bill does little to change the circumstances of California’s crossover youth because it contained many holes, as will be discussed below. This bill falls far short of meeting the

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 138.

⁴⁹ CAL. WELF. & INST. CODE § 241.1(a) (West 2007).

⁵⁰ *Id.* In San Diego, these hearings are called “Meet and Confer” hearings. SAN DIEGO COUNTY OFFICE OF EDUCATION, EXECUTIVE SUMMARY OF FOSTER YOUTH SERVICES – JUVENILE DETENTION GRANT YEAR-END REPORT 2008-2009 (2009) available at <http://www.sdcoe.net/ssp/support/fys/pdf/SDCOE-FYS%20EOY%20JD%20Grant%20Report%20to%20CDE%202008-2009.pdf>.

⁵¹ Herz et al., *supra* note 1, at 310.

⁵² *Id.* at 310.

⁵³ A.B. 129, 2003-2004 REG. SESS. (Cal. 2004), available at http://www.courts.ca.gov/documents/AB129_bill-chaptered.pdf (codified at CAL. WELF. & INST. CODE § 241.1(a) (West 2007)).

needs of crossover youth because of its failure to include a number of important provisions.

Most significantly, A.B. 129 does not mandate counties to exercise dual jurisdiction.⁵⁴ Further, it does not provide clear guidelines of implementations for counties that chose to exercise dual jurisdiction,⁵⁵ nor does it impose any timelines for the determination of children's statuses.⁵⁶ Finally, it does not reconcile contradictions with other Welfare & Institutions Code sections that were premised on the exercise of exclusive jurisdiction.⁵⁷ Because of these shortcomings, California's legislature must do more. Comprehensive legislation that addresses the complexity of crossover youth's needs must be implemented statewide. This legislation must compel counties to exercise dual jurisdiction whenever children are entitled to services and hearings as both a dependent and a delinquent, mandate uniform and holistic procedures for implementation of dual jurisdiction, facilitate communication and coordination between delinquency and dependency agencies, and address housing complications that arise under the current implementation of dual jurisdiction.

III. Need for Change

A. Shortcomings of Exclusive Jurisdiction

In Despite the fact that A.B. 129 gives counties discretion to exercise dual or exclusive jurisdiction,⁵⁸ the majority of California counties still exercise exclusive jurisdiction.⁵⁹ Only nine counties in California have adopted protocols in response to A.B. 129.⁶⁰ For the crossover youth not residing in these nine counties, A.B. 129 has had little to no effect. The counties who have not responded to A.B. 129 still have hearings pursuant to Welfare & Institutions Code 241.1, where they chose an appropriate designation for each crossover child and the exercise exclusive jurisdiction.⁶¹ These hearings offer very limited options for the court when determining the appropriate designation for crossover youth:

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *E.g.* CAL. WELF. & INST. CODE § 206 (West 2012).

⁵⁸ A.B. 129, 2003-2004 REG. SESS. (Cal. 2004), *available at* <http://www.courts.ca.gov/documents/AB129bill-chaptered.pdf>.

⁵⁹ *Assembly Bill 129: Dual Status Children*, CALIFORNIA COURTS: THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/7989.htm> (last visited Oct. 31, 2012).

⁶⁰ *Id.*

⁶¹ CAL. WELF. & INST. CODE § 241.1(a) (West 2007). *See also* Cal. R. CT 5.510(c).

the court may place a crossover child on informal probation,⁶² label her as a dependent,⁶³ or label her as a delinquent.⁶⁴

1. Informal Probation

When determining the appropriate status for a crossover youth, one option for the Court is informal probation. In exclusive jurisdiction counties, informal probation is the most common outcome of 241.1 hearings.⁶⁵ Under this option, delinquency ward-ship is continued or postponed during an informal probation period, where the child's behavior is monitored.⁶⁶ While not being formally under the supervision and control of the delinquency system, the child is given terms of informal probation she must complete.

For example, terms may include substance abuse education and treatment, mental health services, or decision-making programs.⁶⁷ During this informal probation period, the court continues or postpones delinquency proceedings.⁶⁸ This means that the child is not formally declared a delinquent⁶⁹ and she is not deemed to be within the jurisdiction of the delinquency court.⁷⁰ This allows the dependency system to retain jurisdiction over her, and does not force the court to determine whether a delinquent or dependent label is most appropriate for her at that hearing.

This outcome reflects a compromise – the child is held accountable for her delinquent behavior, but is not abandoned by the dependency system. A study of these hearings in Los Angeles revealed that approximately 61% of children remain as dependents with these methods of informal supervision.⁷¹ However, in cases not involving crossover youth (i.e. children not in the child welfare system), these informal supervision programs are regarded as appropriate only for children that do not need the supervision of probation because of a strong family support system, good discipline records at school, a lack of delinquency history, or

⁶² See CAL. WELF. & INST. CODE §§ 654.2, 725, 790 (West 2012).

⁶³ CAL. WELF. & INST. CODE § 241.1(b) (West 2007); CAL. WELF & INST. CODE §§ 601–602 (West 2012).

⁶⁴ CAL. WELF. & INST. CODE § 241.1(a) (West 2007); CAL. WELF. & INST. CODE § 300 (West 2006).

⁶⁵ Herz et al., *supra* note 1, at 310.

⁶⁶ See CAL. WELF. & INST. CODE §§ 654.2, 725, 790 (West 2012).

⁶⁷ CAL. WELF. & INST. CODE § 654 (West 2012).

⁶⁸ See CAL. WELF. & INST. CODE §§ 654.2, 725, 790 (West 2012).

⁶⁹ CAL. WELF & INST. CODE §§ 601–602 (West 2012).

⁷⁰ *Id.*

⁷¹ Herz et al., *supra* note 1, at 309.

have committed a relatively minor offense.⁷² The fact that informal supervision is chosen so often for crossover youth demonstrates the difficulty of black and white status determinations for judges. Judges are forced to make decisions while balancing competing desires to compassionately address the effects maltreatment and abuse have on dependents' behavior with the desire and obligation to protect society from harmful and often dangerous delinquent behavior. This difficulty is exacerbated by the fact that minors are not given the right to present witness testimony or other evidence to aid judges in their determination.⁷³ These modes of informal supervision are creative methods for courts to exercise "dual supervision,"⁷⁴ and get around the obligation to make a black and white status determination imposed by exclusive jurisdiction. The common use of this loophole for dependents demonstrates the lack of logic behind exclusive jurisdiction.

2. *Delinquency*

Courts' second option is labeling a crossover youth as a delinquent. In Los Angeles, approximately 29% of 241.1 hearings have this result.⁷⁵ Labeling a juvenile as a delinquent may be done if the child has engaged in repeated delinquent behavior or if, because of the seriousness of her crime,⁷⁶ she is not eligible for informal supervision.⁷⁷ If a child was previously labeled as a dependent, the result of this determination is the termination of the dependency court's jurisdiction. More than simply a change in legal classification, this status change

⁷² See Cal. R. CT 5.516(b) (listing the factors the Court should consider when determining if a child should be placed on informal probation: "(1) If the condition or conduct is not considered serious, whether the child has had a problem in the home, school, or community that indicates some supervision would be desirable; (2) whether the child and the parent or guardian seem able to resolve the matter with the assistance of the social worker or probation officer without formal court action; (3) whether further observation or evaluation by the social worker or probation officer is needed before a decision can be reached; (4) the attitudes of the child and the parent or guardian; (5) the age, maturity, and capabilities of the child; (6) the dependency or delinquency history, if any, of the child; (7) the recommendation, if any, of the referring party or agency; (8) the attitudes of the affected persons; and (9) any other circumstances that indicate that a program of informal supervision would be consistent with the welfare of the child and the protection of the public").

⁷³ *In re Henry S.*, 140 Cal. App. 4th 248 (2006).

⁷⁴ Bellinger, *supra* note 13, at 10.

⁷⁵ Herz et al., *supra* note 1, at 309.

⁷⁶ *See id.*

⁷⁷ See CAL. WELF. & INST. CODE § 654.3 (West 2000). *See also* CAL. WELF & INST. CODE § 790 (West 2007).

results in several major changes to the child's life. It is this outcome that demonstrates the pitfalls of exclusive jurisdiction the most.

In a child's eyes, one of the most significant consequences of a delinquent label is its likelihood to have an impact on where she is placed. Delinquent children are statutorily prohibited from being housed in the same foster or group home as dependent children.⁷⁸ Thus, a formerly dependent child may be removed from his or her foster or group home as a result of being labeled a delinquent.

This practice of segregation is unjust and inefficient, since foster children are already highly likely to experience a great deal of instability in their placements. The average number of group home placements among Los Angeles foster youth was 3.22.⁷⁹ In other counties, this number was as high as ten placements.⁸⁰ The instability punishes foster children for delinquent behavior in addition to any punishment imposed by the court. This is unjust, since children who are not in the foster care system are obviously not removed from their parents' homes solely as a result of becoming tied up in the delinquency system.

The case of Jaime M.⁸¹ demonstrates the frustrations of a child in this situation. Jaime was labeled a dependent when she was ten months old.⁸² By the time she was fifteen, she had been placed in seventeen different homes. After continued instability, she attempted to escape from her placement by stealing keys and attacking an attendant, resulting in her arrest and filing of robbery and battery charges.⁸³ These charges eventually resulted in Jaime being labeled as a delinquent,⁸⁴ prohibiting her from returning to the placement she had been living in previously.⁸⁵

Adding to the difficulty of placement instability, a child crossing over from dependency to delinquency may no longer qualify for many critical dependency services as a result of her status change. For example, a child may lose her Court Appointed Special Advocate (CASA), a mentor or advocate who provides continuity and stability to the child's life by mentoring the child and providing an additional voice for the child in court besides the child's dependency or delinquency attorneys.⁸⁶ Since CASAs

⁷⁸ CAL. WELF. & INST. CODE §206 (West 2012).

⁷⁹ Herz et al., *supra* note 1, at 309.

⁸⁰ *Id.* at 308.

⁸¹ *In re Jaime M.*, 87 Cal. App. 4th 320 (2001).

⁸² *Id.* at 322.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 323.

⁸⁶ *About Us*, COURT APPOINTED SPECIAL ADVOCATE FOR CHILDREN, <http://www>.

are assigned to dependents, a child that crosses from the dependency to delinquency system is at risk of losing what is likely to be their only stable support system as they are simultaneously coping with their criminal charges and being bounced from one placement to another. A child labeled as a delinquent is no longer eligible for dependency's "holistic approach to services," and may no longer be eligible for other dependency assistance and services, including emancipation and efforts to keep sibling groups in the same placements.⁸⁷

A dependent crossing over to the delinquency system may also lose her dependency attorney. While it is true that delinquency attorneys are appointed to represent children, the delinquency attorney's ethical duty is only to zealously advocate for the child's wishes, not for the child's best interests.⁸⁸ Dependency attorneys, in contrast, take on a dual role to advocate not only for the child's wishes, but to guard and advocate the child's best interests.⁸⁹ While dependency attorneys are not intended to step in the shoes of a child's parent, their dual role as an advocate for the child's best interests and wishes is key in the effectiveness of the overall dependency system acting as a parental substitute.

The loss of the dual advocate is illogical and unfortunate: just as children who are not dependents do not lose their parents' love or support as a result of their misbehavior, children who are labeled as delinquents should not lose the benefits of a system that is intended to serve as a parental substitute of the state as a result of their misbehavior. The delinquency system takes over in ensuring that the child's physical needs, including shelter and food, are provided for. However, this is not adequate, because clearly "a parent-child relationship is not based solely on the fulfillment of physical needs, but on an emotional bond as well. It is this emotional attachment to a caregiver or foster family that a minor loses when his 300 status is terminated...The minor no longer has the support

californiacasa.org/About/index.htm (last visited Sept. 8, 2012).

⁸⁷ Dunlap, *supra* note 15, at 526.

⁸⁸ See *In re Angel R.*, 163 Cal. App. 4th 905, 909 (2008) (holding that juvenile delinquency attorneys have the same ethical duties as counsel for adult criminal defendants).

⁸⁹ A minor's dependency attorney's ethical duty is to dually advocate for both the child's best interests and stated wishes. *In re Kristen B.*, 163 Cal. App. 4th 1535, 1541 (2008). "Counsel's paramount duty to serve the minor's best interests, rather than the minor's wishes, is reinforced by the fact that appointed counsel for minor's routinely serve in a dual role, as both the child's legal counsel and the child's guardian ad litem." *Id.* (citing *In re Zamar G.*, 153 Cal. App. 4th 1253, 1265 (2007)).

of, and cannot benefit from, the advocacy of a foster family, guardian, or dependency attorney once he is adjudged a [delinquent].”⁹⁰

Not only does the child lose the state as a parental substitute, but the termination of dependency services also precludes her biological family’s involvement and may prevent her family from receiving other crucial dependency services. When dependency jurisdiction is terminated, the minor and her family lose the case plan from the dependency system.⁹¹ Even if a child has been removed from her parents’ home, it is still in her best interest for her parents to receive substance abuse treatment, parenting classes, domestic violence education, etc.⁹² However, with the label of delinquent, a child and her family lose all of these services with the termination of dependency jurisdiction.

An unpublished case,⁹³ *In re T.W.*, demonstrates the dramatic effect termination of dependency jurisdiction can have on a child.⁹⁴ In this case, Candice was declared a dependent due to multiple allegations of physical abuse and general neglect while living with her mother before she was six years old.⁹⁵ Between the ages of six and twelve, Candice lived in 26 different foster homes.⁹⁶ When she was 14 years old, she became pregnant.⁹⁷ While pregnant, she was taken into protective custody, where she had an outburst and injured a staff member at the facility.⁹⁸ Because of this outburst, she was declared a delinquent, terminating the dependency court’s jurisdiction over her.⁹⁹ A few months later, she gave birth to a son who was also declared a dependent of the court because of Candice’s volatile history and current detention in juvenile hall.¹⁰⁰

⁹⁰ Shanna Connor, *The Best Interests of the Minor: Assessing California’s Ban on Dual Jurisdiction in the Juvenile Courts*, 7 U.C. DAVIS J. JUV. L. & POL’Y 285, 294-95 (2003).

⁹¹ Email from Tilisha Martin, Supervising Attorney, Dependency Legal Group of San Diego, to author (Nov. 3, 2012, 14:40 EST).

⁹² Dunlap, *supra* note 15, at 543-544.

⁹³ Due to concerns for juvenile clients’ privacy, many juvenile dependency and delinquency cases are not published. Tilisha Martin, Remarks at California Western School of Law during Child Welfare Law & Policy, (July 10, 2012). Because of this, I have chosen to refer to unpublished cases to demonstrate how the law applies to different sets of facts rather than cite them as authoritative law.

⁹⁴ *In re T.W.*, No. D041068, 2003 WL 21101814 (Cal. Ct. App. May 15, 2003).

⁹⁵ *Id.* at *1.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

After the birth of her son, Candice was returned to her mother's care despite her mother's previous history of neglect and abuse to Candice and her five siblings.¹⁰¹ Eventually, her mother was unwilling to house Candice because of Candice's uncontrollable behavior.¹⁰² She was again returned to juvenile hall.¹⁰³ While in juvenile hall, the dependency proceedings regarding Candice's son continued.¹⁰⁴ However, Candice continued to be bounced around: she was eventually released from juvenile hall, again returning to her mother's custody.¹⁰⁵ Candice eventually ran away, prompting the social worker to recommend that Candice's rights to her son be terminated.¹⁰⁶

During her son's dependency proceedings, Candice received no protective services herself since her dependency case had been terminated, despite the fact that she was only fourteen years old.¹⁰⁷ Without these protective services, she was returned to her mother without assistance or services for either of them, and then later left in juvenile hall for over six months.¹⁰⁸ Unsurprisingly, Candice's parental rights to her son were eventually terminated.¹⁰⁹ When the appellate court considered the agency's abandonment of Candice, the court found that the agency's recommendations were appropriate, since the court had declared her to be a delinquent.¹¹⁰

Adding to the dramatic impact of the loss of dependency services can have on youth, these children are not emotionally or psychologically mature enough to face delinquency charges and consequences on their own. In the landmark case *In re Gault*, the United States Supreme Court recognized the seriousness and the adversarial nature of delinquency proceedings.¹¹¹ This is especially true as criminal punishments are getting more severe for children, and delinquency proceedings are moving away from a "parens patrie" philosophy to a heavier emphasis on punishment.¹¹²

Non-dependent children naturally seek guidance from their parents (and possibly their delinquency attorney) as they deal with any criminal

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at *2.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at *4.

¹⁰⁸ *Id.* at *1.

¹⁰⁹ *Id.* at *2.

¹¹⁰ *Id.* at *4.

¹¹¹ *In re Gault*, 387 U.S. 1, 10 (1967).

¹¹² Chan, *supra* note 17, at 216.

charges. Dependents not only do not have this option, but are likely to be simultaneously coping with the loss of services and key figures in their lives that were supposed to substitute in providing this guidance. The Welfare & Institutions Code recognizes that children do not possess the capacity to act in their own best interests.¹¹³ Because of this, children should not be permitted to make serious decisions (e.g. whether to admit to a charge, whether to testify, etc.) without someone guarding and advocating for the child's best interests. Since a child labeled as a delinquent has an attorney who is strictly an advocate for her wishes,¹¹⁴ and she has lost her dependency attorney and CASA, she does not have a legal professional or parental figure advocating for her best interest. There is no codified intent of the delinquency system to protect the general welfare of delinquent minors, so the delinquent minor is left on her own to recognize and guard her best interests.¹¹⁵

In addition to the child's difficulty in recognizing and advocating for her best interests, it is likely that a child labeled as a delinquent may also be improperly assessed by probation or sentenced by the court. Parents have continuous relationships with their non-dependent children. This knowledge allows them to point out relevant and possibly mitigating factors to the child's delinquency attorney and judge. This continuous knowledge is crucial at the sentencing phase, since many mitigating factors address an individual's life circumstances and history.¹¹⁶ For a dependent child, a CASA or dependency attorney (with access to a child's social worker's reports) may fulfill this role. If a child no longer has her parents nor a dependency figure with this knowledge, this history is not available. Since she is not likely to be able to comprehend, let alone communicate, mitigating circumstances in the same way, much of this information may not be brought to a delinquency judge's or a probation officer's attention when assessing programs and implementing sentencing.

This risk is demonstrated by another unpublished appellate decision, *In re Alicia C.*¹¹⁷ Alicia was declared a delinquent despite the fact that there had been eight child protective services referrals for sexual abuse, two for general neglect, and one for caretaker absence while Alicia

¹¹³ CAL. WELF. & INST. CODE § 202 (West 2008).

¹¹⁴ ROBERT W. STERLING, ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 7 (2009), available at http://www.njdc.info/pdf/role_of_juvenile_defense_counsel.pdf.

¹¹⁵ Chan, *supra* note 17, at 221.

¹¹⁶ Cal. R. 4.423(b).

¹¹⁷ *In re Alicia C.*, 2011 WL 1601751 (Apr. 28, 2011).

was living with her mom.¹¹⁸ While her delinquency attorney was aware of these referrals and could talk to Alicia about them, there is no way he could have the details or intimate knowledge that a parental figure could give him in this situation. Further, it is unlikely that Alicia would be able to understand or communicate these details, as she had been only ten years old when some of the sexual abuse allegations occurred.¹¹⁹ Without this crucial information, the attorney's ability to formulate a persuasive argument to mitigate Alicia's sentence would be minimal.

Aside from the numerous burdens exclusive jurisdiction imposes on delinquent children, its inefficiency also adds to the burdens on crossover youth. Once a child is labeled solely as a delinquent, delinquency jurisdiction can later be terminated if there has been a change in circumstances¹²⁰ or if it is in the best interest of the child and society.¹²¹ For some delinquent children, termination may occur before the child reaches the age of 18. Before a court may terminate delinquency jurisdiction, it must consider whether modification of jurisdiction to dependency is appropriate.¹²² When the Court is faced with a decision about whether or not to terminate jurisdiction, the judge will be faced with another status determination: dependency v. termination. Again, the judge will have the same difficulties of considering a child's life circumstances and delinquent history as in a 241.1 hearing.

3. *Dependency*

The third and final option for courts in exclusive jurisdiction counties conducting 241.1 hearings is to label the child solely as a dependent. Only about 10% of children with 241.1 hearings in Los Angeles receive this outcome.¹²³ The result of labeling a child solely as a dependent is that the dependency system's jurisdiction is uninterrupted, preventing the delinquency system from exercising jurisdiction. The delinquency charges are dismissed completely, and the child does not receive services from probation and is not held accountable for her delinquent or criminal behavior.

An outright dismissal of a dependent's delinquency charges is inefficient and unjust for three reasons. First, it treats dependent and non-dependent children differently in the delinquency system. Non-dependent

¹¹⁸ *Id.* at *2.

¹¹⁹ *Id.*

¹²⁰ CAL. WELF. & INST. CODE § 778 (West 2012).

¹²¹ CAL. WELF. & INST. CODE § 785 (West 2011).

¹²² *Id.*

¹²³ Herz et al., *supra* note 1, at 309.

children are required to complete community service, attend classes, and possibly pay restitution, for identical behavior. Second, an outright dismissal of charges does nothing to protect society from this child's delinquent and often criminal behavior in the future. Probation services are available not only to rehabilitate minors, but also to protect the community.¹²⁴ Under exclusive jurisdiction, these consequences are not imposed and these services are not available to children who are labeled solely as dependents. Finally, an outright dismissal precludes a dependent from receiving the guidance and support of probation. Since dependent children are likely to have a weaker support system than non-dependent children,¹²⁵ they are likely to have the strongest need for this guidance and monitoring.

Under exclusive jurisdiction, attorneys and professionals are often required to push and fight to "the limits of the code to attain needed services" for crossover youth.¹²⁶ These children have the most complex needs of children in our society. They are likely to "have co-occurrence of problem behaviors in many areas of their lives and...the intensity of treatment needs is often greater than that of youth known to a single system."¹²⁷ In Los Angeles County, the rates of mental illness and substance abuse in this population are alarming – 28% have a history of mental illness, 17% have a history of substance abuse, and 38% have a history of both.¹²⁸ It is inappropriate to require professionals to bend over backwards to stretch the law and find loopholes in statutes to find help for the children with the most complex needs. Further, exclusive jurisdiction "hamper[s] the ability of courts, probation, and child welfare to address family issues in a holistic manner."¹²⁹ Focusing on a label of dependent or delinquent forces these children's strengths, weaknesses, and needs to play a secondary role in their cases.

B. Why Current Implementation of Dual Jurisdiction is Still Not Enough

A.B. 129 was a response to many of the problems associated with exclusive jurisdiction discussed above. However, while the bill

¹²⁴ See County of San Diego, ABOUT THE PROBATION DEPARTMENT, <http://www.sdcountry.ca.gov/probation/about.html> (last visited April 1, 2013).

¹²⁵ See Johnny Madrid, *My Court Experience*, 1 J. CTR. FOR CHILD. & CTS. 3 (1999) (describing one foster child's feeling as though he was looked upon by society as a burden throughout his experience in the child welfare system).

¹²⁶ Chan, *supra* note 17, at 232.

¹²⁷ Herz et al., *supra* note 1, at 317.

¹²⁸ *Id.* at 309.

¹²⁹ Chan, *supra* note 17, at 232.

acknowledges the burdens of exclusive jurisdiction on crossover youth and society, “it merely scratches at the surface.”¹³⁰ A.B. 129 does not guide counties on methods of implementation whatsoever. It is daunting and impractical for many exclusive jurisdiction counties to switch from the procedures that have been in place and had been approved by the courts for decades.¹³¹ This difficulty is reflected in the fact that despite the implementation of A.B. 129 and the 2008 recommendation of the American Bar Association for counties to move away from the exclusive jurisdiction model,¹³² only nine of California’s 58 counties have done so.¹³³

Since the implementation of A.B. 129, there have been two published and multiple unpublished Court of Appeal cases regarding disputes over whether lower court actions followed the proper procedures in these status determination hearings.¹³⁴ Instead of arriving at a comprehensive solution to the pitfalls of exclusive jurisdiction, A.B. 129 “ignores the substantive issues and neatly shifts the burden to the counties, leaving them shaking their heads.”¹³⁵

A.B. 129 is inadequate, because currently, not nearly enough crossover children are being considered for dual jurisdiction. In order for a child to be considered for dual jurisdiction in California, she must first be lucky enough to live in one of the nine California counties that exercise dual jurisdiction. Second, she might also have to be considered a “special” case in one of these counties. Many of the courts in these dual jurisdiction counties will only do so in “unique” or “extraordinary” cases where the dependency or delinquency systems are not adequate to address a child’s needs.¹³⁶ Despite qualifying under the statutory definitions of a dependent, delinquent, and a dual status minor, a child will only receive the services she statutorily is entitled to receive if a court considers her case to fall within one of these undefined “unique,” “special,” or “extraordinary,”

¹³⁰ Marc L. McCulloch, *Still Between a Rock and a Hard Place*, 28 J. JUV. L. 118, 147 (2007).

¹³¹ *Id.*

¹³² AMERICAN BAR ASSOCIATION, ABA POLICY REPORT ON CROSSOVER AND DUAL JURISDICTION YOUTH (2008), available at http://www.njjn.org/uploads/digital-library/resource_671.pdf.

¹³³ Judicial Council of California/Administrative Office of the Courts, *Assembly Bill 129: Dual Status Children*, <http://www.courts.ca.gov/7989.htm> (last visited October 31, 2012).

¹³⁴ *In re Joey G.*, 206 Cal.App.4th 343 (2012); *D.M. v. Superior Court*, 173 Cal.App.4th 1117 (2009); *In re Alicia C.*, 2011 WL 1601751 (Apr. 28, 2011); *In re Steven E.*, 2007 WL 2917586 (Oct. 9, 2007).

¹³⁵ McCulloch, *supra* note 130, at 147.

¹³⁶ Chan, *supra* note 17, at 239.

categories as well. Thus, the reality is, even though A.B. 129 recognizes the problems associated with dual jurisdiction, many crossover youth are still being handled as though the bill was never passed.

Further, A.B. 129 raises confidentiality concerns for the children that are treated under a dual jurisdiction protocol. The bill is silent on confidentiality and imposes no safeguards to protect a child's private information.¹³⁷ This means, "a minor's statements or admissions made for the purposes of behavioral screening, assessment, or treatment may appear in a file that is accessible by the probation department."¹³⁸ This is problematic because "absent proper safeguards, such statements can be used as admissions of guilt or to enhance punishments."¹³⁹ Probation stands for a law enforcement agency's concerns about the wellbeing and safety of the community, and the delinquency system is inherently adversarial.

Many children involved in the juvenile justice system already report they fear a "mysterious file [following] them at every turn."¹⁴⁰ Since a juvenile delinquency attorney's aim is to ensure the best sentence, judgment, or plea bargain for her client, the delinquency attorney is likely to advise her client not to speak to a social worker or counselor if there are no safeguards to prevent her statements from being used against her in delinquency proceedings.

A child's distrust of adults associated with the juvenile justice system is likely to be perpetuated when her delinquency attorney advises her of the potential negative consequences of sharing incriminating information with her social worker or counselor. Without careful consideration of what information obtained from dependency's treatment and services should be shared with the delinquency system, a dual status child may not feel comfortable using dependency services knowing she may be making statements that can later be used against her. Therefore, in order for children to be truly served by either system, there must be protocols regarding confidentiality.

Finally, A.B. 129 imposes no timelines for status determinations, and does not offer guidance for counties in this regard. As a result, the current implementation of dual jurisdiction under the bill creates instability and inefficiency in the juvenile justice system. There is no time

¹³⁷ McCulloch, *supra* note 130, at 134; *see also* A.B. 129, 2003-2004 REG. SESS. (Cal. 2003).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ McCulloch, *supra* note 130, at 133.

limit for a court to have a hearing under Welfare & Institutions Code § 241, no time limit for the status determination to be made, and no time limit for probation or child welfare services to submit their status recommendations. Not only is this inefficient, it is unjust. Many of these children are incarcerated, and they languish in juvenile hall while the county agencies and courts experiment with implementing dual jurisdiction.

While in juvenile hall, these needy children are unlikely to be receiving services. This is troubling, especially considering the high rates of mental illness and substance abuse among these children. In the case of Jaime M., she was left untreated in juvenile hall for a total of 21 months while waiting for the court to decide her status and placement.¹⁴¹ It is not uncommon for children to be housed in juvenile hall for up to three months while they wait for a status determination.¹⁴²

C. Solution: Comprehensive Legislation to Address Crossover Youth's Needs

One of out every five foster children in America lives in California.¹⁴³ Because California's current approach to dealing with this large population is neither uniform nor informed, it is imperative that comprehensive statewide legislation be passed to meet these children's needs and to protect society. A.B. 129 is only a "patch" in a system that has been failing California's foster children for decades.¹⁴⁴ Although comprehensive legislation would need to be carefully considered and planned by state legislators to avoid being simply another "patch," the following recommendations are crucial to any legislation aiming to address the overlap between the dependency and delinquency systems.

IV. Recommendations

A. Mandatory Exercise of Dual Jurisdiction

Exclusive jurisdiction harms and punishes crossover youth by adding instability to these children's lives while taking away services. Children that qualify as dependents should receive dependency services to

¹⁴¹ *In re Jaime M.*, 87 Cal.App.4th 326 (2001).

¹⁴² *See id.* *See also* D.M. v. Superior Court, 173 Cal.App.4th 1117 (2009); *In re E.A.*, 2009 WL 3204951 (Oct. 7 2009); *In re T.W.*, 2003 WL 21101814 (May 15, 2003).

¹⁴³ Dunlap, *supra* note 15, at 507 (citing TOM PARRISH ET AL., EDUCATING CALIFORNIA'S FOSTER YOUTH: THE POLICIES AND PRACTICING AFFECTING THE EDUCATION OF YOUTH RESIDING IN GROUP HOMES 1 (2003)).

¹⁴⁴ McCulloch, *supra* note 130, at 131-132.

help them transition to adulthood, and children that qualify as delinquents should receive delinquency services to rehabilitate and punish them. It only makes sense that children with more needs should receive more services. Instead of focusing on a status or label for these children, attorneys, judges, probation officers, and social workers should be focused on the child's strengths, weaknesses, and needs.

Thus, if a child falls within the jurisdictional statute of the delinquency court, she should receive services from the delinquency system; if she falls within the jurisdictional statute of the dependency system, she should receive services from the dependency system. Instead of labeling a child and allowing that label to have enormous effects on her living situation and family, each system should focus on children's strengths, weaknesses, and needs – whether they are involved in one or both systems.

If less time and fewer resources are focused on the procedure of labeling crossover youth and finding loopholes to provide services for these children, counties will instead be more able to experiment and develop progressive juvenile justice programs. Effective implementation of dual jurisdiction has the potential to save resources and allows for creative collaboration between child welfare and probation agencies, including “positive youth development, cognitive behavioral interventions, overarching case management, continuity of care, and restorative justice.”¹⁴⁵

B. Implementation of Uniform Procedures

For the maximum benefit of dual jurisdiction, there needs to be a clear delineation of responsibilities between the agencies. Otherwise, duplicative efforts and confusion over which agency should be providing what services are likely. For example, there may be confusion over which agency provides for medical care for a dual status child detained in juvenile hall. This could lead to a probation officer and social worker both separately spending time ensuring the same child receives something as small as eyeglasses. To avoid this, comprehensive legislation could develop a strategy plan, which delineates responsibilities between the delinquency and dependency agencies.

Los Angeles County may serve as a helpful example for legislators in developing this strategy. Los Angeles courts exercised a form of dual

¹⁴⁵ CENTER FOR JUVENILE JUSTICE REFORM, SUPPORTING YOUTH IN TRANSITION TO ADULTHOOD: LESSONS LEARNED FROM CHILD WELFARE AND JUVENILE JUSTICE 21 (2009).

supervision for years before the adoption of A.B. 129 through the statutory loopholes mentioned above which allow for informal supervision.¹⁴⁶ While doing so, they developed a plan where responsibilities were clearly delegated.¹⁴⁷ Under this plan, the delinquency system, through probation, “assumes responsibility for monitoring community service, substance abuse counseling or treatment, collection of restitution, other conditions of probation ordered by the Delinquency Court.”¹⁴⁸ The dependency system, through a social worker, assumes responsibility for “medical care, mental health services, dental care, visitation between the child and family, educational services, emancipation planning, placement services, investigation of child abuse allegations.”¹⁴⁹ A similar statewide plan for dual status children could delineate responsibilities efficiently and effectively to meet crossover youth’s needs. If Los Angeles County could develop a strategy to prevent confusion and duplicative efforts before dual jurisdiction was formally implemented, surely a state legislature should be able to do the same.

C. *One Judge, One Attorney*

Assigning one judge to both a child’s dependency case and delinquency case allows for continuity and familiarity between the child and the juvenile justice system. Not only does the child feel more comfortable with a familiar judge, but the judge is also able to view the child in a more holistic manner. Since many court-ordered programs in the juvenile justice system are left to the judge’s discretion,¹⁵⁰ this would permit the judge to have a more complete picture of the child when exercising that discretion. For example, a child’s sexual abuse history detailed in her dependency file is very relevant when determining what methods of treatment are available if she is later accused of sexually molesting another child and is prosecuted in the delinquency system. It is for reasons such as this that the American Bar Association similarly recommends for a one judge approach when practicable.¹⁵¹

Similarly, attorneys trained in both delinquency and dependency also provide for more holistic and continuous representation for dual status children. Cross training makes sense on a system-wide scale. Since

¹⁴⁶ Bellinger, *supra* note 13, at 20 (citing Memorandum of Understanding from Presiding Judge Michael Nash for All Participants in the Los Angeles County Juvenile Justice System (July 9, 1999)).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *In re Corine W.*, 45 Cal.4th 522, 532 (2009).

¹⁵¹ AMERICAN BAR ASSOCIATION, *supra* note 132.

California counties are required to appoint counsel for children in dependency proceedings¹⁵² and counsel is a federal constitutional right in delinquency proceedings,¹⁵³ a single attorney approach would be more cost effective than having two attorneys appointed for each child. Together with a strategic delineation of roles as previously discussed, cross training “makes for a more stable system for crossover youth...[and] solidifies each system’s role in the case and holds them accountable for delegated functions.”¹⁵⁴

Most importantly, however, cross training attorneys would provide better conditions for building trust and zealous advocacy. As crossover youth navigate through the juvenile justice system, they interact with several adults at different stages, including dependency attorneys, delinquency attorneys, probation officers, social workers, CASAs, judges, foster parents, juvenile hall staff, police officers, educators, and therapists. These adult figures must explain to the child who they are and what their role in the juvenile justice system is. The child is likely to have a difficult time remembering and understanding what each adult’s role is, rendering confidentiality difficult and trust virtually impossible.

Further, a child is not likely to understand the fact that the court is divided into the delinquency and dependency systems, let alone understand the different roles and ethical obligations of a dependency and delinquency attorney. One attorney who is able to be with a dual status child as she navigates both systems allows for greater trust, and deeper understanding, for the child and the attorney. A dual status child is more likely to have trust in the court system as a whole if she feels as if she has a true advocate who can represent her in all aspects of her life.

It is easy to imagine the difficulty a child would have in trusting a delinquency attorney who was only focused on her criminal charges, but was unable to answer questions about what effect these criminal charges would have on matters that are so important to her, such as visitation with her mother and her foster care placement. Without understanding and being able to advocate for these important client interests, an attorney is not able to fully meet her ethical duty of “exercise[ing] independent professional judgment and render[ing] candid advice...[by] refer[ing] not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client’s situation.”¹⁵⁵

¹⁵² CAL. WELF. & INST. CODE § 317(c) (2012).

¹⁵³ *Abbott Laboratories v. Gardner*, 387 U.S. 1, 41 (1967).

¹⁵⁴ Dunlap, *supra* note 15, at 541.

¹⁵⁵ MODEL RULES OF PROF’L CONDUCT Advisor 2.1 (2012).

Cross training in delinquency and dependency is in the best interest of the child and is necessary for the attorney to give competent representation. Although not specifically stated, it is likely for these same reasons the American Bar Association also recommends the single attorney model that allows for “continuity of representation.”¹⁵⁶

D. Do Away with “Lead Agency” and “On Hold” Approaches

Under A.B. 129, counties choosing to exercise dual jurisdiction have the option of adopting either a “lead agency” or “on hold” approach.¹⁵⁷ Neither of these options adequately addresses the needs and circumstances of crossover youth.

The “on hold” approach “requires the county to put the minor’s dependency status on hold until the delinquency jurisdiction has been terminated.”¹⁵⁸ In other words, the dependency case is paused until the conclusion of the child’s delinquency proceedings. Compared with exclusive jurisdiction, the “on hold” approach creates an overall smoother transition for the youth back into the dependency court after her delinquency case is finished. There is no need for a new dependency petition to be filed before she can resume her dependency services.¹⁵⁹

However, this approach is only a marginal improvement from exclusive jurisdiction. Under this model, children still only receive services from one agency at a time. The focus remains on labeling the minor, rather than looking at the minor’s full dependency history simultaneously and holistically. This approach does not encourage coordination between dependency and delinquency services, meaning the same limited representation and disjointed services common under exclusive jurisdiction will persist. Further, when dependency proceedings are put “on hold,” it is likely that a child’s likelihood of being reunified with her parents will be decreased.¹⁶⁰ This is especially likely if putting the jurisdiction and proceedings “on hold,” means parents are ineligible for services during the hold period.

¹⁵⁶ AMERICAN BAR ASSOCIATION, *supra* note 132.

¹⁵⁷ CAL. WELF. & INST. CODE § 241.1 (West 2007).

¹⁵⁸ Chan, *supra* note 17, at 238.

¹⁵⁹ Dunlap, *supra* note 15, at 534.

¹⁶⁰ Only two counties (Siskiyou and Stanislaus) currently use the “on hold” method of exclusive jurisdiction. Judicial Council of California/Administrative Office of the Courts, *Assembly Bill 129: Dual Status Children*, <http://www.courts.ca.gov/7989.htm> (last visited Oct. 31, 2012). In both of these counties, it is the judge’s discretion whether to use the “on hold” or “lead agency” model. *Id.* Because of the discretionary nature of the protocols in these counties, it is not known what effect of termination of jurisdiction is on reunification efforts.

The alternative for counties exercising dual jurisdiction under A.B. 129 is exercising the “lead court/lead agency” protocol. Under this approach, counties choose whether the probation or child welfare agency will take the lead in a dual status child’s case.¹⁶¹ That agency (either child welfare or probation) will “be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.”¹⁶² Determining what agency should take the lead leaves the court with the same difficult determinations regarding a crossover child’s behavior and history: “is this child more delinquent or more dependent?” The lead agency approach is also problematic in that it creates the risk that crossover youth will fall through the cracks.¹⁶³ Identifying a lead agency places more responsibility on one agency, creating the risk that the non-lead agency will not work as hard as it would otherwise, since they know that a probation officer or social worker also has responsibility of the case.¹⁶⁴ While calendaring hearings and case management are important tasks, these administrative tasks could also be delegated within the previously mentioned strategic plan for delineating responsibilities, as was done in Los Angeles County. Uniformly assigning duties and responsibilities in cases based on the agencies’ capabilities eliminates confusion between the agencies, permits efficient coordination between agencies, and ultimately allows for both systems to remain involved and actively provide services, reducing the likelihood that children will fall through the cracks.

E. Consideration of Current Housing Inconsistencies in Welfare & Institutions Code

Welfare & Institutions Code § 206 prohibits children labeled as dependent and children labeled as delinquent from residing in the same placement. This prohibition captures the lack of practical planning behind A.B. 129 and demonstrates why it is imperative that any new legislation addressing the needs of crossover youth be carefully considered. This provision is illogical under either exclusive or dual jurisdiction, as it is well accepted among sociologists and psychologists that aggregating

¹⁶¹ A.B. 129, 2003-2004 REG. SESS. (Cal. 2003), available at <http://www.courts.ca.gov/documents/AB129bill-chaptered.pdf>.

¹⁶² Dunlap, *supra* note 15, at 535.

¹⁶³ Chan, *supra* note 17, at 238.

¹⁶⁴ *Id.*

delinquent children increases the rates and severity of delinquent behavior.¹⁶⁵

Considering this provision within the context of A.B. 129 multiplies the illogic: If a dual status child is considered to be both a dependent and delinquent, this provision would theoretically prohibit her from living with other children with the same status designation as herself. On a more individual level, though, a child labeled as dependent currently risks her current placement in their foster or group home if she is determined to be dual status or a delinquent. Thus, a foster brother and sister that have been living together stably for years may be prohibited from living together as a result of a court's determination that dual status is appropriate for the brother after he has been involved in a series of fights at school.

Conclusion

Johnny Madrid, a foster child who grew up to be a lawyer, described the juvenile court system as “another branch in the lives of foster youth – a branch amidst a forest that we’re supposed to muddle through and map out.”¹⁶⁶ For crossover youth, this branch is not only within a dark and intimidating forest, but it is tangled and broken. The high rates of homelessness, poverty, and incarceration demonstrate that something must be done to fix this branch. The “patch” of A.B. 129 is not enough to fix this branch. However, dual jurisdiction within more comprehensive and careful legislation has that potential. Only legislation that fully considers crossover youth's needs by providing children an advocate to help guide them through this forest and by allowing for as much stability in placements as possible can realistically mend this branch.

¹⁶⁵ See Kenneth A. Dodge et al., *Deviant Peer Influence in Intervention and Public Policy for Youth*, SOC. POL'Y REP. 3 (2006); see also Uberto Gatti et al., *Iatrogenic Effect of Juvenile Justice*, J. CHILD PSYCHOL. & PSYCHIATRY (2009).

¹⁶⁶ Madrid, *supra* note 125, at 3.

