

The Best Interests of the Minor: Assessing California's Ban on Dual Jurisdiction in the Juvenile Courts

SHANNA CONNOR[□]

Introduction

The juvenile court system began in the United States at the turn of the twentieth century, and was established both to protect abused and neglected children, and to provide rehabilitation and guidance for minors who had committed crimes.¹ From the beginning, the founders of the juvenile courts relied on the English doctrine of *parens patriae* (meaning “the father of the country”) to assert that the “benevolent state treatment of children was in their best interest.”² Today, the juvenile court system is still committed to caring for neglected and abused children, and it continues to adjudicate cases in which minors commit criminal acts. The California Welfare and Institutions Code (“WIC”) defines the purpose of the juvenile court system as providing “for the

[□] J.D./M.S.W. Candidate, 2004, University of California, Berkeley, Boalt Hall School of Law & School for Social Welfare; B.A., 1997, Wellesley College. The author would like to express her gratitude to her family, as well as Hillary Ronen, Rachel Sommovilla, and Noah Helman for their support; to Molly Dunn for generously sharing all of her protocol research with me and without whose help I could not have written this Comment; and to Frank Zimring for his insights and guidance.

¹ Margaret K. Rosenheim, *The Modern American Juvenile Court*, in *A CENTURY OF JUVENILE JUSTICE* 341 (Margaret K. Rosenheim et al. eds., 2002).

² Tanenhaus, David, *The Evolution of Transfer Out of the Juvenile Court*, in *THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT* 17-18 (Jeffrey Fagan & Franklin E. Zimring eds., 2000).

protection and safety of the public and each minor” under its jurisdiction, to “preserve the minor’s family ties whenever possible,” and 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.”³ WIC section 202 further states that minors in need of protective services “shall receive care, treatment, and guidance” in accordance with the child’s best interests and the interests of the public.⁴

In California, the vast majority of juvenile courts are divided into two separate entities, the dependency court and the delinquency court.⁵ The dependency court serves children who fall under WIC section 300 as a result of suffering neglect, or physical, emotional, or sexual abuse at the hands of their parents or caretakers.⁶ Children can enter the “300 system” either through a parent’s “voluntary” surrender, or involuntarily, as a result of a child welfare department investigation that discloses abuse or neglect.⁷ When a juvenile court finds that a child has suffered, or is at substantial risk of suffering neglect or abuse, the court may adjudge the minor a “dependent” of the court.⁸ The delinquency court, on the other hand, adjudicates cases that fall under WIC section 601 or section 602 (referred to as the “600 system”).⁹ Section 601 provides for jurisdiction over minors who commit status offenses (crimes that would otherwise not be illegal, if not for

³ CAL. WELF. & INST. CODE § 202(a) (West 1998).

⁴ *Id.*

⁵ Martha Bellinger, “Can We Talk?” *Facilitating Communication Between Dependency and Delinquency Courts*, 21 J. Juv. L. 1, 2-3 (2000); Molly Dunn, *Dependent or Delinquent?: Determining the Appropriate Status for Minors in California’s Juvenile Court 1* (May 2001) (draft) (unpublished article, on file with author).

⁶ Bellinger, *supra* note 5, at 2-3 (“Unlike many other states which are following the national trend of restructuring family law courts so that one jurist hears all legal matters pertaining to one family, all but three of California’s counties still maintain separate branches of the court system for the handling of abuse and neglect proceedings apart from delinquency proceedings.”).

⁷ CAL. WELF. & INST. CODE § 16507.4 (voluntary placement); *id.* § 328 (investigation by social worker).

⁸ *Id.* § 300.

⁹ *Id.* § 602.

the minor's age) such as habitual disobedience, truancy, or out of control behavior.¹⁰ Section 602 covers cases in which a minor commits a felony or a misdemeanor.¹¹ When a court determines that a minor is within its jurisdiction as a result of a status offense or criminal act, it may deem the minor a "ward" of the court.¹²

Case law has interpreted WIC section 202 as providing for different, but overlapping, state responses to the 300, 601, and 602 systems. In *In re Donald S.*¹³ and *In re Brian S.*,¹⁴ the court suggests that the 300 system offers children custody, care, and guidance, while minors in the 601 system are provided with these services, plus discipline and control.¹⁵ Because the 602 minors need further supervision, *Donald S.* suggests that the delinquency system serving these children provides for the custody, care, guidance, discipline, control, and rehabilitation of minors, as well as the protection of society.¹⁶

Although the dependency and delinquency systems are functionally separate, not all children fit into just one category.¹⁷ For example, a child may enter the dependency or foster care system because of physical abuse, and later come to the attention of the probation department as a result of truancy or some form of criminal behavior. When this happens, a delinquency petition is often filed to address the behavior. At this point, dual jurisdiction is possible. Another, though less common, example of the systems overlapping is when a child has been adjudicated a ward of the court, and as her probationary time comes to an end, the probation officer discovers that she does not have a safe home to return to, and seeks assistance from the child welfare department to file a petition for 300 status.

¹⁰ *Id.* § 601.

¹¹ *Id.* § 602.

¹² *Id.* §§ 601(a) & 602(a).

¹³ *In re Donald S.*, 253 Cal. Rptr. 274, 276 (Cal. Ct. App. 1988).

¹⁴ *In re Brian S.*, 181 Cal. Rptr. 778, 780 (Cal. Ct. App. 1982).

¹⁵ *Id.*

¹⁶ *Donald S.*, 253 Cal. Rptr. at 276.

¹⁷ See Dunn, *supra* note 5, at 1.

Although many children in California could fit into either or both the 300 or 600 systems, by California law, minors can only fall under the jurisdiction of either the dependency or the delinquency court at any given time.¹⁸ In 1989, the California legislature passed Welfare and Institutions Code section 241.1 (“section 241.1”), effectively prohibiting dual jurisdiction under the 300 and 600 systems.¹⁹ Section 241.1 mandates that each county’s probation department and child protective services (“CPS”) develop a protocol to use in assessing a minor who could fall under both jurisdictions.²⁰ Pursuant to the “jointly developed protocol,” probation and CPS are to determine which status, delinquency or dependency, “will best serve the best interests of the minor and the protection of society.”²¹ Both departments are to submit the recommendation to the juvenile court, and “the court shall determine which status is appropriate for the minor.”²²

Section 241.1 requires the probation department and CPS to consider a number of factors in making this initial determination. These include: (1) the nature of the referral, (2) the age of the minor, (3) the prior record of the minor’s parents for child abuse, (4) the prior record of the minor for out-of-control or delinquent behavior, (5) the parents’ cooperation with the minor’s school, (6) the child’s functioning at school, (7) the nature of the minor’s home environment, and (8) the records of other agencies that have been involved with the child and his or her family.²³ In addition, section 241.1 requires county protocols to contain a provision for resolution of interagency conflicts throughout

¹⁸ CAL. WELF. & INST. CODE § 241.1(d) (West 1998) (“Nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.”).

¹⁹ *Id.* § 241.1.

²⁰ *Id.* § 241.1(b).

²¹ *Id.* § 241.1(c).

²² *Id.*

²³ *Id.*

this process, as well as a provision for determining when a new petition should be filed to change a minor's status.²⁴

According to its legislative history, and the case law leading to and following its enactment, section 241.1 seeks to accomplish a number of specific goals. First, it is meant to avoid confusion and conflict between the two juvenile court systems in their provision of services, thereby preventing minors from "falling through the cracks."²⁵ Second, it is created to minimize duplication of services between the probation department and the child welfare department in offering such services.²⁶ Third, section 241.1 is intended to provide juvenile court judges with the information they need to implement sound decisions on behalf of children and society.²⁷

In this Comment, I consider the various ways that counties have chosen to implement section 241.1 and whether the children's best interests are served by this law. In Part I, I examine the legislative history of Welfare and Institutions Code section 241.1, and the case that spurred its passage, *In re Donald S.*,²⁸ in order to provide a greater understanding of the

²⁴ *Id.* In January 2003, Rule 1403.5 of the California Rules of Court was adopted, adding four more considerations to this list: (1) The history of any physical, sexual, or emotional abuse of the child; (2) Any services or community agencies that are available to assist the child and his or her family; (3) A statement by any counsel currently representing the child; and (4) A statement by any Court Appointed Special Advocate ("CASA") currently appointed for the child. CAL. RULES OF CT. 1403.5 (West 2003).

²⁵ ASSEM. COMM. ON JUDICIARY, S.B. 220, 1989-90 Reg. Sess. (Cal. 1989) (amended) (Aug. 21, 1989) [hereinafter ASSEM. COMM., 8/21/89]. The sponsors stated, "The purpose of this bill is to ensure better coordination between probation departments . . . and welfare departments . . . in their initial assessment of children who appear to come within both the dependency jurisdiction and delinquency jurisdiction of the juvenile court." *Id.*

²⁶ *In re Marcus G.*, 87 Cal. Rptr. 2d 84, 88 (1999) (reporting that the social worker in this case lamented, "The child welfare workers already have excessive caseloads. It appears to be a waste of our resources to have two departments covering the same duties for one child.").

²⁷ ASSEM. COMM., 8/21/89, *supra* note 25.

²⁸ 253 Cal. Rptr. 274 (Cal. Ct. App. 1988); *see also* Bellinger, *supra* note 5, at 4.

goals and purposes behind the 300/600 division. In Part II, I review the case law that has interpreted and reinforced the mandates of section 241.1, and the questions these cases raise regarding children's best interests and equal protection rights. Next, in Part III, I provide an overview of various counties' section 241.1 protocols, focusing on those in San Francisco and Los Angeles as they represent two clearly different approaches taken in California. Finally, in Part IV, I consider the policy and legal issues that arise from these disparities in the protocols and the extent to which they do or do not uphold the goals of the California Welfare and Institutions Code to protect children and to provide custody, care, and discipline as nearly as possible to that which should have been given to them by their parents.²⁹ In establishing a strict 300/600 division through section 241.1, the legislature and judiciary not only failed to achieve the primary goals for passing the law,³⁰ but they also established a system that probably does not serve children's best interests.

I. Background on Section 241.1: Legislative History and *In re Donald S.*

A. Legislative History

In 1986, the California Legislature created the California Child Victim Witness Judicial Advisory Committee to make findings and recommendations for improving the management of child abuse cases.³¹ In 1988, the Committee released a report that presented proposals for systematic reform.³² The report stated, "[T]here were numerous children who could be classified either as dependents or wards, but

²⁹ CAL. WELF. & INST. CODE § 202 (West 1998).

³⁰ See S.B. 220, 1989-90 Reg. Sess. (Cal. 1989).

³¹ California Child Victim Witness Protection Act, ch. 1282, § 1, 1986 Cal. Stat. 4472, 4473; see also ASSEM. COMM., 8/21/89, *supra* note 25; CAL. ATTORNEY GEN. OFFICE, CALIFORNIA CHILD VICTIM WITNESS JUDICIAL ADVISORY COMMITTEE, FINAL REPORT (1988) [hereinafter CHILD VICTIM FINAL REPORT].

³² CHILD VICTIM FINAL REPORT, *supra* note 31.

because there was no specified procedure mandating coordination between the responsible county departments, many of them did not receive services appropriate to their individual situations.”³³

In response to this finding by the Committee, Senator Nicholas Petris introduced Senate Bill 220 (“S.B. 220”) to the state legislature.³⁴ The purpose of this bill was twofold: (1) to ensure better coordination between the probation and welfare departments in their preliminary assessment of children who appear to come under the jurisdiction of both the dependency and the delinquency courts; and (2) to make sure that juvenile court judges have as much information as possible from which to make decisions that serve the needs of the child, family, and society.³⁵ In its original form, the proposed bill would have been added to WIC as section 245.1, and would have allowed for dual jurisdiction.³⁶

³³ ASSEM. COMM. ON JUDICIARY, S.B. 220 (July 12, 1989), 1989-90 Reg. Sess. (Cal. 1989) [hereinafter ASSEM. COMM., 7/12/89] (quoting CHILD VICTIM FINAL REPORT, *supra* note 31). The Committee staff noted that they had “not received any data regarding the number of cases where children could be classified either as dependents or wards.” *Id.*

³⁴ Bellinger, *supra* note 5, at 2.

³⁵ ASSEM. COMM., 8/21/89, *supra* note 25.

³⁶ Specifically, the bill provided:

Nothing in the juvenile court law shall be construed to prohibit a minor from being simultaneously both a ward and a dependent of the court. It would further require the judge of the juvenile court, prior to dismissing either the proceeding to declare the minor a dependent child of the court or the proceeding to declare the minor a ward of the court in favor of the other proceeding, to consider whether being simultaneously both a ward and a dependent of the court would be in the best interests of the minor.

S.B. 220, 1989-90 Reg. Sess. (Cal. 1989) (Jan. 19, 1989) (introduced). Notably, in the Senate Committee on the Judiciary, the bill’s purpose was “to make the greatest range of social services appropriate available to the minor, and not to preclude appropriate services simply because of the type of judicial proceeding.” S. COMM. ON JUDICIARY, BACKGROUND INFORMATION, S.B. 220, 1989-90 Reg. Sess. (Cal. 1989).

The proposal was amended in the state senate on April 3, 1989.³⁷ As a result, it changed numerically to section 241.1, and it changed in substance as well.³⁸ According to the Bill Analysis of S.B. 220, the original version neglected to address the problems that could arise from concurrent jurisdiction, namely, the increased incidence of interagency conflict, confusion, and lack of accountability when a child is under the care of both the probation and the child welfare departments, a situation that could allow the child to “slip through the cracks.”³⁹ Therefore, the amended bill removed the provision allowing dual jurisdiction, and presented the current language instead: “Whenever a minor appears to be both a dependent and a ward of the court . . . the county probation department and the county welfare department shall, pursuant to a jointly developed protocol . . . initially determine which status will serve the best interests of the minor and the protection of society.”⁴⁰ In May 1989, S.B. 220 was again amended to state explicitly that the section 241.1 provisions should not be interpreted to allow dual jurisdiction.⁴¹

B. *In re Donald S.: An Analysis and Critique*

The juvenile court case *In re Donald S.*,⁴² decided the year before S.B. 220 was introduced, was an influential factor in the legislative development of section 241.1. In outlining the need for the new provision, the state Department of Justice, along with other organizations sponsoring the bill,

³⁷ CAL. LEGIS. BILLS, S.B. 220 (Apr. 3, 1989) (amended).

³⁸ *Id.*

³⁹ Bellinger, *supra* note 5, at 4; *see also* Letter from California Department of Social Services, to Nicholas C. Petris, Member of the Senate (Mar. 10, 1989), *in* S. COMM. ON JUDICIARY, S.B. 220, 1989-90 Reg. Sess. (Cal. 1989) (opposing the bill, because dual jurisdiction would create confusion among the departments); Letter from California Probation, Parole and Correctional Association, to Nicholas Petris, Member of the Senate (Mar. 28, 1989), *in* S. COMM. ON JUDICIARY, *supra* (contending that dual jurisdiction would mean that some children would get “no services at all”).

⁴⁰ CAL. WELF. & INST. CODE § 241.1 (West 1998).

⁴¹ CAL. LEGIS. BILLS, S.B. 220 (May 8, 1989) (amended).

⁴² 253 Cal. Rptr. 274 (Cal. Ct. App. 1988).

explicitly referred to the *Donald S.* decision as precluding the option of dual jurisdiction.⁴³

The minor in *Donald S.* was a thirteen-year-old boy who was abandoned at birth by his mother and had spent five years in foster care until he was adopted in 1979.⁴⁴ In 1983, a petition was filed in juvenile court alleging physical abuse of the child by his adoptive parents, and Donald was once again adjudicated a dependent of the court, removed from his parents' care, and placed in a group home.⁴⁵ After two years in foster care, Donald was arrested and detained by the Los Angeles Sheriff's Department after the housemother at his group home reported that he had tried to kill her "by placing 'TSP' cleaner in her coffee pot and cleanser in the sugar bowl."⁴⁶ Donald was arrested, charged with assault with a deadly weapon, and subsequently committed to the California Youth Authority ("CYA") under 602 status.⁴⁷ Following Donald's commitment, the Department of Children's Services filed to terminate its jurisdiction, and the court granted the motion.⁴⁸ Donald appealed the decision, arguing that without continued 300 status, he would not have an "outside person to monitor his condition during his commitment to CYA."⁴⁹ The Court of Appeal held that minors cannot simultaneously fall under the jurisdiction of the delinquency and dependency courts.⁵⁰ It reasoned that the structure of the juvenile court system, the legislative intent of WIC, and policy considerations all dictated a strict 300/600 divide.⁵¹

The court first focused on the structure of the juvenile court system to justify its decision. Working under the presumption that the 300 and 600 jurisdictions provide children with not only overlapping, but equivalent services,

⁴³ Bellinger, *supra* note 5, at 3.

⁴⁴ *Donald S.*, 253 Cal. Rptr. at 274.

⁴⁵ *Id.*

⁴⁶ *Id.* at 275.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 276.

⁵⁰ *Id.*

⁵¹ *Id.*

the *Donald S.* court stated that if or when a child moves from being a dependent to a ward of the court, he will “automatically have the needs of his earlier designation cared for within the context of his subsequent designation and placement.”⁵² Specifically, the court explains that when a minor changes status, from a dependent (section 300) to a status offender (section 601) or “delinquent” (section 602), the role of the court is to determine the appropriate placement for the child, “meeting all the needs of the dependent child for custody, care and guidance, and for the status offender also providing necessary discipline and control.”⁵³ For the minor falling under the provisions of section 602, the court must find a placement that addresses the child’s need for custody, care, guidance, discipline, and control, as well as one which “[protects] the public from the conduct of the minor and [rehabilitates] the minor.”⁵⁴

In asserting the notion that the 300 and 600 systems provide equivalent services, the court defined children’s needs as food, shelter, medical care, safety, and behavior control, which are met not only in foster care, but also during a commitment to the CYA.⁵⁵ The court, however, neglected to consider the emotional role that foster families might provide to children in the dependency system, a role mandated by WIC section 202. Section 202 states that when a child is removed from her family, it is the purpose of the juvenile court 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.”⁵⁶

The court seemed to forget that the parent-child relationship is not based solely on the fulfillment of physical needs, but on an emotional bond as well.⁵⁷ It is this emotional

⁵² *Id.*

⁵³ *Id.* (citing CAL. WELF. & INST. CODE § 202 (West 1998)).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ CAL. WELF. & INST. CODE § 202(a) (West 1998).

⁵⁷ See JOSEPH GOLDSTEIN ET AL., *THE BEST INTERESTS OF THE CHILD: THE LEAST DETRIMENTAL ALTERNATIVE* 10 (1996) (claiming the parent-child relationship does not rest on biological ties).

attachment to a caregiver or foster family that a minor loses when his 300 status is terminated, and he enters juvenile hall or the California Youth Authority.⁵⁸ Moreover, the minor no longer has the support of, and cannot benefit from, the advocacy of the foster family, guardian, or dependency attorney once he is adjudicated a ward of the court, and thereby loses his legal relationship with them. In this regard, the services provided for children in the 300 system are not equivalent to those offered in the 600 system; rather, the two differ greatly. Indeed, the additional removal of what is often the dependent child's only emotional support network could be considered a further form of punishment for youth switching from the dependency to the delinquency structure. Finally, the presumption of equivalent services is further

The 'family' is generally seen as the fundamental unit responsible for and capable of providing a child on a continuing basis with an environment that serves her numerous physical, mental, and emotional needs. The child needs her body to be tended, nourished, and protected. She needs her intellect to be stimulated and altered to the happenings of her environment. She needs help in understanding and organizing her feelings and perceptions. She needs people whom she can love, who love her, and who can serve as safe targets for her anger and aggression. . . . As much as anything else, she needs to be accepted, valued, and wanted as a member of her family.

Id.

⁵⁸ Foster parents and families are also affected by this loss. See Susan B. Edelstein et al., *Helping Foster Parents Cope with Separation, Loss, and Grief*, CHILD WELFARE, Jan.-Feb. 2001, at 13 (addressing the related issue of foster parents' grief when their foster children are removed from their home).

Generally, raising a child from infancy strengthens the bond between foster parent and child. The foster parent feels like the functional and psychological parent of the child and thus finds the loss of the child to be particularly painful. The length of time the child was cared for by the foster parent is another important factor. Usually, the longer a relationship lasts, the more severe the impact of the loss will be for both parent and child.

Id.

weakened when one considers the increasing criminalization of the juvenile delinquency system in California.⁵⁹

The second reason the court offered for denying Donald dual jurisdiction was legislative intent.⁶⁰ The court stated, “We find no indication either in the governing statutes or in the case law that the Legislature intended to provide duplicative services to minors who were initially dependent children and were later adjudicated delinquent children”⁶¹ The court, however, fails to cite cases or any other evidence showing that duplication of services is a valid or realistic concern. The court also interpreted the language in specific provisions of WIC, which refer to proceedings in which a minor falls within the provisions of “Section 300, 601, or 602”⁶² as precluding a minor from simultaneously falling under the dependency and delinquency systems.⁶³ The court does not entertain the possibility that the legislature simply

⁵⁹ Nell Bernstein, *The Strong Arm of the Law: Catch-21*, LEGAL AFFAIRS, Mar.-Apr. 2003, at 37 (discussing California’s passage of Proposition 21, the Gang Violence and Juvenile Crime Prevention Act, in 2000, and the subsequent effects of increased transfers of juveniles to criminal court); Amanda K. Packer, *Juvenile Justice and the Punishment of Recidivists Under California’s Three Strikes Law*, 90 CAL. L. REV. 1157, 1158-59 (2002) (providing an overview of California’s “Three Strikes Law” and its punitive effect on juvenile offenders); see also Center on Juvenile and Criminal Justice, About Proposition 21 (indicating that 62.1% of voters approved of Prop. 21), at http://www.cjcj.org/jjic/prop_21.php (last visited Jun. 19, 2003). See generally Akira Morita, *Juvenile Justice in Japan: A Historical and Cross-Cultural Perspective*, in A CENTURY OF JUVENILE JUSTICE, *supra* note 1, at 360 (comparing the Japanese and American juvenile justice systems and asserting that the two systems have diverged in both theory and practice since the 1970s, as the American juvenile justice system has become increasingly criminalized and the “rehabilitative ideal has declined”); Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799 (2003) (discussing the recent policy trends that have made the juvenile justice system more punitive and by which many young offenders have been tried and sentenced as adults).

⁶⁰ *In re Donald S.*, 253 Cal. Rptr. 274, 276 (Cal. Ct. App. 1988).

⁶¹ *Id.*

⁶² *Id.* The court is referring to language used in WIC sections 653, 701, and 702. Both WIC sections 701 and 702 require the court to determine whether “the minor is a person described by Section 300, 601, or 602.” CAL. WELF. & INST. CODE §§ 701-02 (West 1998).

⁶³ *Donald S.*, 253 Cal. Rptr. at 276.

overlooked the option of dual jurisdiction, as opposed to making an intentional and definitive statement regarding the dependency and delinquency statuses.

It is not clear that a strict 300/600 division was truly intended by the California legislature before *Donald S.* was decided. However, even provided that the California legislature meant for minors to fall under either the dependency or the delinquency branch of the juvenile court system, the underlying concern expressed by the court—that of agencies providing “duplicative services”—appears neither realistic, nor consistent with the goals of WIC. Given its stated purpose of providing children with custody, care, and discipline “as nearly as possible equivalent” to that which a parent would provide, it is difficult to believe the juvenile court would worry about a system in which children might receive too much attention. The court may have simply been skeptical of the government’s ability to communicate effectively between agencies, to coordinate services for the children under its care. The consequences of this lack of faith in governmental organization, however, has the practical effect of depriving children without families of the only sources of emotional support they may possess, and inflicting an additional punishment on such minors as they enter into the delinquency system.

Finally, the court outlined policy reasons for separating the 300 jurisdiction from the 600 jurisdiction, namely, that allowing dual or joint jurisdiction “presents the possibility of conflict . . . over the custody and welfare of the minor child” by the probation and child welfare departments.⁶⁴ If by “conflict” the court means increased debate and concern regarding the minor’s well being, then deeming such disagreement as a negative consequence of dual jurisdiction demonstrates the control-based, rather than youth welfare-based perspective of the court. Moreover, such tension is likely already present in the delinquency system between other minors’ parents, families, or adult friends who advocate on their behalf, and the probation department. To deny such

⁶⁴ *Id.*

potentially healthy debate and advocacy for minors without “intact” families is simply unjust.⁶⁵ Furthermore, the court fails California’s most vulnerable children by expecting governmental incompetence in its assumption that the child welfare and probation departments could not create procedures through which to deal with interagency conflict.

In its reasoning, the court also referred to the probation department’s significant need for discretion in its supervision of minors, asserting that this “delegation of authority has even been held to limit the authority of the juvenile court” in instances where the California Youth Authority (“CYA”) and the court have differed in their notions of the ward’s rehabilitative needs and progress.⁶⁶ Although CYA may indeed demand a great deal of discretion, the court does not even consider ways in which the child welfare agency could maintain responsibilities and contact with the minor, while respecting the role of the probation department. Moreover, the court alludes to situations in which it must compromise and show deference to the recommendations to CYA when its views on a child’s rehabilitation differ from that of the correctional institution,⁶⁷ and yet the court would never suggest removing the judiciary from the process of supervising minors.

Finally, the court held that there is no need for dual jurisdiction, as the juvenile delinquency system provides structures by which a minor can seek resolution of problems independently, “without the need for either parent, guardian or other adult to act on his behalf.”⁶⁸ By such reasoning, the court made two fundamental and highly suspect assumptions.

⁶⁵ It is possible, of course, that by “conflict,” the court was referring to disagreement between agencies regarding financial responsibilities for the minor. If this is the reasoning, again it is not in accordance with the mandates set forth in WIC section 202.

⁶⁶ *Donald S.*, 253 Cal. Rptr. at 276 (citing *In re Owen E.*, 592 P.2d 720 (Cal. 1979)).

⁶⁷ *Id.* (“This delegation of authority [to CYA] has even been held to limit the authority of the juvenile court to set aside a CYA commitment order when the court’s view of the ward’s rehabilitative progress and continuing needs differed from that of the CYA.”).

⁶⁸ *Id.*

First, the court suggested that the purpose of the dependency system rests in a single function: that of resolving minors' problems. As discussed above, this ignores the emotional and relational importance of a foster family, guardian, or social worker to a youth without a functional or "intact" family, which can be tremendous.⁶⁹ Second, this reasoning assumes that minors in the delinquency system are sufficiently mature, intelligent, articulate, and confident to "seek resolution of problems on [their] own behalf."⁷⁰ Although they may be provided with "summaries . . . of new court decisions which may affect their rights,"⁷¹ it is not difficult to imagine that the power dynamics in juvenile hall or CYA are such that some minors may not understand the scope of their rights, or feel empowered or comfortable enough to assert them.

In referring to *Donald S.* as justification for passing S.B. 220,⁷² the state legislature did not adequately address the weak reasoning or legal arguments that the Court of Appeal employed in its decision. Clinging solely to the notion that the dependency and delinquency systems should remain separate entities in order to minimize the "risk of interagency conflict," the California legislature and supporters of S.B. 220, neglected to reflect on the various other aspects of the 300/600 division, which the *Donald S.* case presented, such as the emotional networks that are legally lost in the jurisdictional divide, and the lack of an outside advocate to monitor and assist in the minor's condition once she shifts from the 300 to the 600 system. While the original introduction of S.B. 220 could very well have sought to rectify the *Donald S.* decision (as S.B. 220 initially provided for dual jurisdiction), the eventual passage of the revised bill effectively institutionalized the ill-considered reasoning of the case.

⁶⁹ See *supra* note 57 and accompanying text.

⁷⁰ *Donald S.*, 253 Cal. Rptr. at 276.

⁷¹ *Id.* at 277.

⁷² S. COMM. ON JUDICIARY, NOTES FOR COMMITTEE HEARING ON S.B. 220, 1989-90 Reg. Sess. (Cal. 1989) (citing *Donald S.* as authority that "a juvenile court judge cannot make a child simultaneously a dependent of the court and a ward of the court").

II. The Implementation of Section 241.1 in Case Law

The California Court of Appeal did not interpret or assess the implications of section 241.1 for nearly ten years following its enactment. *In re Marcus G.*,⁷³ decided in 1999 by the First District Court of Appeal, was the first published case to do so. Since *Marcus G.*, there have only been a couple of other cases addressing the section 241.1 issue, including *In re Jaime M.*,⁷⁴ and an unpublished case, *In re William K.*⁷⁵ Both *Marcus G.* and *Jaime M.* reinforced the need for compliance with the section 241.1 assessment requirements before a juvenile court judge can make a proper status determination for a minor. *William K.*, on the other hand, addressed the standards a juvenile court judge must apply in rejecting or accepting the joint recommendation of the probation and child welfare departments. In addition to dealing with issues of legal standards and section 241.1 compliance, these cases also bring into focus the underlying issues of the 300/600 dichotomy, namely, whether the denial of dual jurisdiction violates minors' equal protection rights, and whether children's needs are adequately represented under this jurisdictional split.

A. *In re Marcus G.*

Of these three cases, *In re Marcus G.* was the first to make an impact on the interpretation of section 241.1. The appellate court in *Marcus G.* reversed the trial court's order to terminate Marcus's dependency status, as the record did "not show that the procedures set forth in section 241.1 were

⁷³ 87 Cal. Rptr. 2d 84 (Cal. Ct. App. 1999).

⁷⁴ L.A. County Dep't of Children & Servs. v. Super. Ct., 104 Cal. Rptr. 2d 425 (Cal. Ct. App. 2001) [hereinafter *In re Jaime M.*]. Jaime M. is the real party in interest.

⁷⁵ *In re William K.*, No. B130483 (Cal. Ct. App. July 6, 1999). The court has also decided *In re John C.*, which dealt with an eleven-year-old minor who was declared a ward of the court under WIC section 602 and who argued that the superior court abused its discretion in not ordering a section 241.1 hearing. *In re John C.*, No. 01CEJ600714001 (Cal. Ct. App. Sept. 27, 2002). The Court of Appeal held that the juvenile waived his claim to a section 241.1 hearing and that he failed to establish that he was subject to dependency status. *Id.*

followed.”⁷⁶ In addition, the court held that the decision to terminate Marcus’s dependency status should have been made in the delinquency court, as opposed to the dependency court, and that an order terminating a minor’s dependency jurisdiction must be supported by substantial evidence.⁷⁷

Marcus G. involved a fifteen-year-old boy, born in 1982, who had been adjudicated a dependent of the court when he was four months old.⁷⁸ Marcus’s mother was developmentally disabled, and his father was deceased.⁷⁹ The child’s grandmother was appointed his legal guardian in 1985.⁸⁰ But in 1991, when Marcus was nine years old, she requested that her grandson be removed from her home, because he no longer wanted to live with her.⁸¹ The boy was then assigned to a long-term foster care placement where he lived with his foster mother until 1997.⁸² At a six-month review hearing in 1997, the dependency court discovered that Marcus had been arrested for robbery earlier in the year, and he was declared a ward of the court under section 602.⁸³ The Department of Human Services moved to dismiss his dependency jurisdiction.⁸⁴ The judge initially denied the motion, stating, “I just don’t want to let this kid be caught between the cracks after his wardship is dismissed,” but the court eventually granted the dismissal of Marcus’s dependency jurisdiction.⁸⁵ The Court of Appeal reversed and remanded the decision with instructions to determine whether the section 241.1 procedures indeed had been followed, and, if not, to direct compliance with those guidelines.⁸⁶

The court emphasized the importance of following the requirements of section 241.1, if only to ensure that a minor’s

⁷⁶ *In re Marcus G.*, 87 Cal. Rptr. 2d 84, 87 (Cal. Ct. App. 1999).

⁷⁷ *Id.*

⁷⁸ *Id.* at 85.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 85-86.

⁸⁶ *Id.* at 90.

mental health, emotional, and educational needs are considered, and that a plan is created for the probation department to address such needs.⁸⁷ The court called attention to Marcus's hyperactivity, learning disabilities, attention deficit disorder, and emotional problems, as well as the fact that he was on psychotropic medication, under the care of a psychiatrist, and a special education student at a unique school for children with emotional issues.⁸⁸ The court noted that "[n]othing in the social worker's report" indicated the method in which the probation department would address these needs, and held that the "individual circumstances unique to Marcus's case must be assessed in accordance with the statutory mandate of section 241.1."⁸⁹

Along with the compliance concern, two other critical issues were raised in *Marcus G.* First, the minor argued that continuation of dependency jurisdiction was in his best interests because otherwise, there would be no one to "reinstigate a dependency proceeding upon termination of [his] wardship."⁹⁰ Similar to the minor's argument in *Donald S.*,⁹¹ Marcus asserted that the Department of Human Services would have no incentive to act on its own in reinstating a dependency proceeding; the probation department likely would avoid the additional paperwork and court time, and the court-appointed attorney would no longer have "any recognized relationship" with the minor.⁹² The court discounted this concern, turning to the language of section 241.1 and its requirement that county protocols include a method "for determining when a new petition should be filed to change the minor's status."⁹³ As discussed below, this

⁸⁷ *Id.* at 88.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 89.

⁹¹ *In re Donald S.*, 253 Cal. Rptr. 274, 276 (Cal. Ct. App. 1988) (arguing that without dual jurisdiction, no one would monitor the minor's condition in CYA).

⁹² *Marcus G.*, 87 Cal. Rptr. 2d at 89.

⁹³ *Id.* The court further held that under WIC section 329, anyone could appeal to the social worker to assess whether to establish a dependency proceeding. *Id.*

response is inadequate to the extent that few California counties actually incorporate such criteria in their section 241.1 protocols.⁹⁴

The other significant issue discussed, though not resolved, in *Marcus G.* was the constitutional implications of the termination of dependency jurisdiction.⁹⁵ Marcus argued that ending his 300 status denied him equal protection of the law in that wards of the court “with intact families” are able to return home if their probation ends before they turn eighteen.⁹⁶ Children, such as Marcus, switching from the 300 to the 600 system, however, “have no homes to return to” and are, therefore, more likely to remain in the delinquency system until they reach the age of majority.⁹⁷ Because the court had already determined that the order terminating dependency jurisdiction was to be reversed, and because the court considered this a “premature” legal concern, it refused to address the issue.⁹⁸

The question about equal protection remains, however. Unlike children who are living with their parents when they enter the delinquency system, dependent children are deprived of their emotional support network and makeshift families due to the ban on dual jurisdiction. Therefore, those minors’ chances of transferring out of the delinquency system and establishing a healthy and positive living situation before reaching the age of majority are conceivably lessened.

B. In re Jaime M.

In re Jaime M. relied heavily on the reasoning and decision in *In re Marcus G.* in holding that a complete and formal section 241.1 report must be submitted to the court before a status determination can be made for the minor.⁹⁹ *Jaime M.* also emphasized the importance of completing the section 241.1 assessment in a timely fashion and the need for a

⁹⁴ See *infra* Part III.

⁹⁵ *Marcus G.*, 87 Cal. Rptr. 2d at 89.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *In re Jaime M.*, 104 Cal. Rptr. 2d 425, 429 (Cal. Ct. App. 2001)

clearly communicated status determination by a juvenile court judge.¹⁰⁰

Jaime was born with PCP in her system, and was declared a dependent of the court when she was ten months old.¹⁰¹ By the time she was fifteen, she had been through seventeen placements, including several at McLaren Children's Center ("MCC"), a non-secure facility for children in the dependency system.¹⁰² Jaime had also been sent to psychiatric hospitals on various occasions for "assaultive behaviors" and "danger to self and others."¹⁰³ In May 1998, she was placed at the Metropolitan State Hospital.¹⁰⁴ In April 1999, while still at the hospital, Jaime was charged with one count of robbery and three counts of battery after attacking a ward attendant, taking his keys and attempting to escape.¹⁰⁵ Although Jaime was not adjudicated a ward of the court under section 602, she was detained at another facility under the custody of the probation department.¹⁰⁶

On December 4, 2000, more than twenty months after the hospital incident took place, a referee of the delinquency court ordered the release of Jaime to the Department of Children and Family Services ("DCFS") and directed that she be transported to MCC.¹⁰⁷ DCFS was unaware of the decision by the delinquency referee until a dependency attorney learned of the order the following day.¹⁰⁸ Shortly thereafter, DCFS moved ex parte to vacate the order, arguing that WIC section 206 prohibits placing children "alleged or adjudicated" to fall under section 602 in the same facility as children in the 300 system, and that Jaime should therefore be placed apart from other dependent children.¹⁰⁹

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 426.

¹⁰² *Id.* at 426-27.

¹⁰³ *Id.* at 427.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

Despite the possibility that they eventually may be adjudged otherwise, the Court of Appeal held that minors “alleged” to fall under the jurisdiction of the delinquency court are “inappropriate for detention alongside section 300 dependents.”¹¹⁰ But it also held that Jaime’s status was, as of yet, undetermined.¹¹¹ “As *In re Marcus G.* demonstrates, such a decision must be made clearly and carefully,” and with the necessary information provided through the section 241.1 assessment.¹¹² A section 241.1 report had been prepared in this case, though notably unsigned by the minor’s social worker.¹¹³ Nevertheless, the juvenile court had delayed making a status determination until it received more information from the mental health department on coordinating services for Jaime,¹¹⁴ leaving her in juvenile hall, without mental health services, for nearly twenty-one months.¹¹⁵ The Court of Appeal ordered the writ of mandate, and directed the juvenile court to proceed with a determination of the minor’s status in accordance with the requirements of section 241.1.¹¹⁶

Jaime M. demonstrates the limitations of section 241.1 in achieving its goal of preventing minors from “falling through the cracks.” Although a section 241.1 assessment can, in theory, call attention to a child with special or pressing needs, it can also be used to delay decision-making and/or placement proceedings. *Jaime M.* shows that such children slip through the cracks not because of the feared duplication of services, or even necessarily because of a lack of coordination among governmental agencies, but because they are unwanted children. Jaime was a difficult case. She presented severe behavioral and emotional issues, and neither the mental health facility nor DCFS wanted to deal with them. In such a case, section 241.1 fails its core purpose.

¹¹⁰ *Id.* at 428.

¹¹¹ *Id.*

¹¹² *Id.* at 429.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 430.

C. In re William K.

In re William K.,¹¹⁷ an unpublished opinion by the Second Appellate District, Division Four, addresses the practice of placing children under “dual supervision” through the use of informal probation by a trial court. Some courts effectively avoid section 241.1’s strict 300/600 split by not adjudicating a minor a ward of the court, but instead imposing informal probation, thereby maintaining the support and services of both the probation department and the child welfare department.¹¹⁸ The juvenile court judge in *William K.* placed the minor on informal probation, contrary to the joint recommendation of the probation and child welfare departments to adjudicate him a ward of the court and place him in a secure treatment setting.¹¹⁹ The Court of Appeal vacated the order and remanded the case, holding that the juvenile court’s decision was not supported by substantial evidence in the record.¹²⁰

The minor in *William K.* was born in May 1986.¹²¹ When he was ten years old, the Department of Children and Family Services (“DCFS”) filed a section 300 petition, alleging that William’s caregivers, his maternal grandmother and uncle, had failed to meet his needs.¹²² The petition claimed that William suffered from special medical and behavioral problems, including asthma, attention deficit disorder with hyperactivity, and sporadic explosive bi-polar and conduct disorders.¹²³ His mother purportedly was dealing with substance abuse problems, and his father’s whereabouts were unknown.¹²⁴ Further, the petition asserted that William’s custodial uncle had physically abused William, and an

¹¹⁷ *In re William K.*, No. B130483 (Cal. Ct. App. July 6, 1999).

¹¹⁸ See Bellinger, *supra* note 5, at 9 (discussing the practice of dual supervision in Los Angeles county).

¹¹⁹ *William K.*, No. B130483, slip op. at 6.

¹²⁰ *Id.* at 12, 14.

¹²¹ *Id.* at 2.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

accompanying DCFS report indicated that another uncle had raped him five years earlier.¹²⁵

Pending adjudication, William was placed in several group homes before finally being placed in the Research and Treatment Institute (“RTI”), a residential treatment center that provided therapy and counseling services.¹²⁶ In May 1997, the juvenile court officially sustained the section 300 petition and continued William’s placement at the institute.¹²⁷ Throughout his stay at RTI, the staff consistently gave William poor reports, stating his need for continued treatment.¹²⁸ One such report claimed, “William continues to display assaultive behavior which makes him a danger to others. His aggression is mainly toward other children who are smaller than he. Assaultive incidents appear to have a pre-meditated aspect.”¹²⁹

Despite these reports and a lack of significant improvement, however, William was placed in a group home in December 1998.¹³⁰ On February 4, 1999, when William was twelve years old, he was arrested for allegedly kicking a dog to death at the group home, and a section 602 petition was filed.¹³¹ In the subsequent section 241.1 assessment, prepared jointly by the probation department and the child welfare department, the agencies reported that William had injured several animals at the group home in addition to the dog, assaulted children at school, and urinated in a closet.¹³² These actions, they claimed, represented “a very serious and potentially expanding level of murderous violence and uncontrolled rage that demands immediate psychiatric intervention in a secured probation setting.”¹³³ The assessment also stated that William was no longer appropriate

¹²⁵ *Id.* at 2-3.

¹²⁶ *Id.* at 3.

¹²⁷ *Id.* at 4.

¹²⁸ *Id.* at 3-4.

¹²⁹ *Id.* at 4.

¹³⁰ *Id.* at 5.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

for a 300 status placement, as his behavior and his needs were beyond the resources of the child welfare agency.¹³⁴

A hearing was held on February 24, 1999.¹³⁵ In rejecting the joint section 241.1 recommendation, the juvenile court placed William on informal probation, under the care of DCFS.¹³⁶ DCFS subsequently filed for a writ of mandate, and the Court of Appeal granted the writ, reasoning that the juvenile court “did not make express findings with respect to most” of the factors enumerated in Rule 1405(b) of the California Rules of Court (which outlines the considerations on which a court must base its decision to place a minor on informal probation).¹³⁷ The court stated that because the evidence in the record demonstrated William’s long-standing tendency toward violence, and because, other than two of the nine factors, “the record supports only findings *unfavorable* to the juvenile court’s order,”¹³⁸ the writ of mandate was granted. The court found that the juvenile court had abused its discretion in ordering informal probation.¹³⁹

In all three cases, *In re Marcus G.*, *In re Jaime M.*, and *In re William K.*, the Court of Appeal upheld the procedural

¹³⁴ *Id.* at 5-6.

¹³⁵ *Id.* at 6.

¹³⁶ *Id.*

¹³⁷ *Id.* at 6, 10-11, 14. The factors outlined in Rule 1405(b) are: (1) If the condition or conduct is not considered serious, whether the child has had a problem in the home, school, or community which indicates that 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 and without formal 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 affected persons; and (9) Any other circumstances that indicate a program of informal supervision would be consistent with the welfare of the child and the protection of the public. CAL. RULES OF CT. 1405(b) (West 2003).

¹³⁸ *William K.*, No. B130483, slip op. at 12.

¹³⁹ *Id.* at 12-13.

and substantive requirements of section 241.1, reinforcing the importance of the section 241.1 assessments and the standards to which a juvenile court is held in making its status determinations. The case law does not, however, offer great insight into the deeper 300/600 questions that emerge from the circumstances and the fundamental arguments of these cases. None of the cases deals with the *Donald S.* issue, that when a dependent minor enters the delinquency system, no one from the “outside” is assigned to monitor his condition in juvenile hall or CYA placement.¹⁴⁰ The cases do not address the *Marcus G.* concerns, either, that after a dependent child is placed under the jurisdiction of the delinquency court “there is no one to reinstitute a dependency proceeding upon termination of the wardship.”¹⁴¹ In dismissing this concern, the court relied on the requirement of section 241.1 that counties provide a provision for determining when a change in a minor’s status is appropriate, and did not even consider the related equal protection argument that was raised.¹⁴²

A number of questions remain regarding the meaning and implications of section 241.1, questions that case law has yet to clarify. Because this law is still slowly developing, individual counties’ section 241.1 protocols, and the ways in which they are followed, can have a tremendous effect on the well being of California’s most needy children.

III. The Section 241.1 Protocol

Welfare and Institutions Code section 241.1 states: “The probation department and the child protective services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor” who appears to come “within the description of both Section 300 and Section 601 or 602.”¹⁴³

¹⁴⁰ See *supra* note 49 and accompanying text.

¹⁴¹ *In re Marcus G.*, 87 Cal. Rptr. 2d 84, 89 (Cal. Ct. App. 1999); see *supra* note 90 and accompanying text.

¹⁴² See *supra* note 98 and accompanying text.

¹⁴³ CAL. WEL. & INST. CODE § 241.1(b) (West 1998). Rule 1403.5 of the California Rules of Court, adopted January 1, 2003, provides a timeframe

This protocol must require consideration of a number of factors, including “the nature of the referral, the age of the minor, the prior record of the minor’s parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents’ cooperation with the minor’s school, the minor’s functioning at school, the nature of the minor’s home environment, and the records of other agencies which have been involved with the minor and his or her family.”¹⁴⁴ These protocols are also intended to include a provision for dealing with interagency conflict, which may arise during the assessment process, and “provisions for determining the circumstances under which a new petition should be filed to change the minor’s status.”¹⁴⁵

Not all of California’s fifty-eight counties have implemented a section 241.1 protocol, although most have developed at least an outline of established guidelines for arriving at the 300/600 status recommendation.¹⁴⁶ Of the protocols that have been created and implemented, the variations are vast in terms of their scope, structure, and compliance with the requirements of WIC. Differences

for counties to develop their protocols: “On or before January 1, 2004, the probation and child welfare departments must adopt a written protocol for the preparation of joint assessment reports, including procedures for resolution of disagreements between the probation and child welfare departments, and submit a copy to the Judicial Council.” CAL. RULES OF CT. 1403.5 (West 2003).

¹⁴⁴ CAL. WEL. & INST. CODE § 241.1(b). Rule 1403.5 adds several other factors for the joint assessment to address, including “the history of any physical, sexual, or emotional abuse of the child; . . . any services or community agencies that are available to assist the child and his or her family; a statement by any counsel currently representing the child; and a statement by any Court Appointed Special Advocate currently appointed for the child.” CAL. RULES OF CT. 1403.5.

¹⁴⁵ CAL. WEL. & INST. CODE § 241.1(b).

¹⁴⁶ During May 2003, Journal staff and I contacted each of the fifty-eight counties, either by phone or mail, to request their section 241.1 protocols. Twenty-seven counties responded. Of the counties that responded, twenty-three had protocols and four did not. See Appendix A for a more detailed report. Several other county protocols were provided by Molly Dunn, staff attorney at Legal Services for Children, Inc., which she gathered throughout 1999-2000 for her paper. See Dunn, *supra* note 5. Copies of all protocols are on file with the author.

abound in regard to the circumstances that prompt a section 241.1 assessment (and hence, which minors are affected by its provisions), whether a child's parents, or dependency or delinquency attorney(s) may be involved in the section 241.1 process, and the responsibilities assigned to each agency.

There are significant similarities among the county protocols as well. Namely, almost all protocols refer to section 241.1's eight listed considerations by which a joint assessment should be guided,¹⁴⁷ and more disturbingly, few county protocols offer a provision for deciding when a new petition should be filed to adjust a minor's 300/600 status.¹⁴⁸ The differences in county protocols have far-reaching implications for the minors that allegedly fall under both the dependency and delinquency courts' jurisdictions. Depending on its philosophy and approach, a county can either minimize the fundamental problems of the 300/600 divide or exacerbate them.

A. Approaches to the Section 241.1 Protocol

Nearly all of the county protocols begin with a paragraph outlining the purpose of the section 241.1 assessment procedure. These introductions are largely similar, and often adopt the language of section 241.1 to describe their mission: to determine which status will "serve the best interests of the minor and the protection of society."¹⁴⁹ Differences in approaches do emerge, however, from the actual terms and structures of the protocols. Some counties focus on increasing effective communication and collaboration between the various departments associated with

¹⁴⁷ Mendocino County only mentions seven considerations in its protocol, neglecting the age of the minor in its deliberations. Mendocino County, Protocol for W&I Code Section 241.1 Referrals (n.d.) [hereinafter Mendocino Protocol].

¹⁴⁸ Dunn, *supra* note 5, at 32. Tulare is one of the few counties that addresses this issue of when a new petition should be filed. Tulare County Health & Human Servs., Child Welf. Servs. Div., Policies and Procedures Manual, Section 20-19: Welfare & Institutions Code Section 241.1 Policy, at 5 (June 15, 2002) [hereinafter Tulare Protocol].

¹⁴⁹ CAL. WELF. & INST. CODE § 241.1.

juvenile justice while others aim toward a broader mission of child advocacy.

These differences in approach can be categorized in a number of ways, including proactive versus passive, and standardized versus individualized.¹⁵⁰ Proactive counties are those that have developed new or innovative structures to meet the needs of at-risk children, and have created clear procedures and timelines for completing section 241.1 assessment reports. Passive counties, on the other hand, serve only the minimum number of children required by section 241.1 and have developed a protocol that provides only a general sketch of the roles and responsibilities of involved agencies. “Standardized” and “individualized,” on the other hand, refer to the various methods employed in the section 241.1 process. Counties taking a standardized approach emphasize a more distanced and uniform procedure for initially determining a minor’s status, while counties using a more individualized formula for this determination take into account a broad range of perspectives and the needs of the minor involved. Los Angeles serves as an example of a county that takes a more proactive and individualized approach,¹⁵¹ whereas San Francisco models a more passive and standardized method for the section 241.1 joint recommendation process.¹⁵²

¹⁵⁰ See Dunn, *supra* note 5, at 24 (categorizing county section 241.1 protocols according to those that “employ a broad interpretation of section 241.1” and those that “interpret section 241.1 more strictly”).

¹⁵¹ Memorandum from Michael Nash, Presiding Judge of the Los Angeles County juvenile court, to participants in the Los Angeles County Juvenile Justice System regarding the WIC section 241.1 Protocol (Oct. 8, 1997) (on file with author) [hereinafter Memo from Judge Nash, 10/8/97]; see also Los Angeles County, DCFS-Probation WIC 241.1 Joint Assessment Protocol (Nov. 2001), <http://dcfs.co.la.ca.us/Policy> [hereinafter Los Angeles Protocol].

¹⁵² San Francisco County, Protocol for Implementation of Welfare & Institutions Code § 241.1 (Mar. 27, 2000) [hereinafter San Francisco Protocol].

B. Scope of Section 241.1 Assessments

The scope of a section 241.1 protocol is one indication of a county's passive or proactive approach to the 300/600 problem. Protocols differ greatly in terms of which minors initially fall under the section 241.1 process, and under what circumstances. Some counties provide for a section 241.1 assessment under a wide range of situations, to serve both as a preventive measure in keeping dependents out of the delinquency system, and as a way to determine the best placement for the minor and for the protection of society. Other counties adopt a more narrow scope for their section 241.1 assessments, serving a smaller cross-section of minors that purportedly fall into the jurisdiction of both the dependency and the delinquency jurisdictions.

San Francisco has adopted a narrow approach to when a section 241.1 assessment is appropriate.¹⁵³ In its protocol, the county states that its Juvenile Court Committee for Assessment and Status Evaluation ("CASE") should assess and report to the juvenile court "only on cases that come within either of the following categories: (a) the minor is an active dependent of the Juvenile Court whose conduct has given rise to the filing of a delinquency petition; or (b) the minor is an active ward of the Juvenile Court, currently on formal or informal probation, is placed in the home of a parent or guardian, and is subject to the filing of a dependency petition as the result of a substantiated referral for child abuse or neglect perpetrated in the home."¹⁵⁴ In other words, only

¹⁵³ *Id.*; see also Dunn, *supra* note 5, at 27 ("Counties that tend toward a stricter construction of their 241.1 protocols construe the circumstances that trigger a section 241.1 protocol more narrowly."). Amador County also takes a more narrow approach to those minors who fall under the section 241.1 provisions, providing only for minors who are currently under either the 300 or 600 jurisdiction, or where referrals to both courts are made simultaneously. Amador County, Protocol to Determine Status of Minor 1, 3 (n.d.) [hereinafter Amador Protocol]. Humboldt and Mendocino counties do not explicitly cover the situations where the protocols would apply. Humboldt County, WIC 241.1 Interagency Protocol (Feb. 25, 2003) [hereinafter Humboldt Protocol]; Mendocino Protocol, *supra* note 147.

¹⁵⁴ San Francisco Protocol, *supra* note 152, at 3.

minors that are already under the jurisdiction of the juvenile court, either in the 300 or the 600 system, and are formally referred to a second branch of the court, are subject to the section 241.1 assessment.

A number of counties adopt a broader interpretation of when and to whom section 241.1 applies.¹⁵⁵ Los Angeles County,¹⁵⁶ for example, presents four different situations in which a section 241.1 assessment is necessary: (1) when the minor is a dependent of the court, and a petition is filed in the delinquency court; (2) when a minor who is living at home on probation, under either section 601 or 602, is the victim of child abuse and/or neglect; (3) when the probation department wants to seek an early termination of a minor's wardship status, and send him or her home, but is unable to do so because of the potential for abuse/neglect, or because there is no home to which the minor can return; and (4) when a delinquency petition is filed but the child is neither a ward nor a dependent of the court, and there is cause to believe that abuse/neglect were critical factors in the minor's behavior.¹⁵⁷

¹⁵⁵ See Dunn, *supra* note 5, at 25 ("Those counties that tend to interpret 241.1 broadly, provide a detailed and expansive list of events that trigger the 241.1 protocol.").

¹⁵⁶ El Dorado, Sacramento, and Santa Barbara counties adopt a similar approach to that employed in Los Angeles County. El Dorado County, Protocol for Cooperative Efforts Among Probation, Child Protective Services, Mental Health and the Juvenile Court 1-2; Sacramento County, Agreement No. 7250-00/03-536, at 3-6 (June 23, 2000); Santa Barbara County, Dep't of Soc. Servs. & Probation Dep't, 241.1 WIC Joint Assessment: Minors Coming Within 300 and 601/602 WIC Protocol 3 (n.d.) [hereinafter Santa Barbara Protocol]. Some counties, such as Monterey, provide for three scenarios by which a 241.1 assessment should be made: (1) When a minor is in the dependency system and the probation department is proposing to file a 600 petition; (2) When a child is simultaneously subject to 300 and 600 petitions; and (3) When a minor is a ward of the court and the probation or child welfare department believes that a 300 petition should be filed. Monterey County, W&I Code Sec. 241.1 Memorandum of Understanding 1-2 (Jan. 1, 2001). The protocol does not include the possibility of early termination of wardship. *Id.*

¹⁵⁷ Los Angeles Protocol, *supra* note 151, at 1-2. Merced County outlines detailed procedures for several different possibilities, including: (1) When a minor is declared a dependent and a delinquency petition is filed for him or her; (2) When a minor is a ward of the court and a probation officer

For this last category of cases, Judge Nash, Presiding Judge of the Los Angeles County juvenile court, provides the example of a minor who is charged with battery on a parent whom the minor claims perpetrated abuse against the minor.¹⁵⁸

C. Structure of Counties' Section 241.1 Protocols

The organization of a county's protocol also demonstrates the passive or proactive approach behind it. A well-developed procedure, which details the channels of communication, timelines for reports, and the roles and responsibilities of each involved agency, indicates a commitment to serving the best interests of minors in the juvenile justice system, as well as the protection of society. Furthermore, the inclusion of additional avenues for improving interagency communication, and provisions that provide for other agencies' or individuals' involvement, also demonstrate a county's proactive stance toward the section 241.1 process. Once again, Los Angeles County offers an example of a well-structured section 241.1 procedure, whereas San Francisco County to date provides for minimal services.

1. Los Angeles County

In a memorandum dated October 8, 1997, the presiding judge of the Los Angeles County juvenile court, Michael Nash, addressed the issue of communication among the county's probation and child welfare departments.¹⁵⁹ In

hears of possible abuse and seeks to file a 300 petition; (3) When a minor is a ward of the court and there are allegations of abuse or neglect based on a referral from someone in the community; (4) When a minor is a ward of the court and allegations of abuse or neglect are raised during a section 602 hearing; (5) When a minor has not been declared either a dependent or a ward of the court, but a 600 petition has been filed, and allegations of abuse or neglect are raised: (a) before the 600 petition is filed; (b) during the 602 hearing, but outside of court; or (c) during the 602 hearing, after the 600 petition has been filed. Merced County, § 241.1 Protocol, Memorandum of Understanding: Application and Implementation of Welfare and Institutions Code Section 241.1, at 4-17 (Apr. 17, 2001) [hereinafter Merced Protocol].

¹⁵⁸ Memo from Judge Nash, 10/8/97, *supra* note 151, at 2.

¹⁵⁹ *Id.* at 1-2.

seeking to close these communication gaps, the judge offered a clear outline of when and who should initiate the various section 241.1 assessments, and the timelines applicable for each type of situation:

Where a petition is filed in the Delinquency Court on a minor who is a dependent of the court, the joint assessment should be completed and filed in the Delinquency Court on or before the time of the appearance on the pre-plea report. As previously noted, Probation is the lead agency for the preparation of the report.¹⁶⁰

As mentioned above, Los Angeles dictates that section 241.1 reports be completed in four different types of circumstances,¹⁶¹ all of which are addressed in Judge Nash's memo, with designated point-persons, contact information, and timeframes.¹⁶² The memo also details which department

¹⁶⁰ *Id.*

¹⁶¹ See *supra* note 157 and accompanying text.

¹⁶² Memo from Judge Nash, 10/8/97, *supra* note 151, at 1-2. Merced County also provides detailed information regarding point-persons, contact information, and timeframes. Merced Protocol, *supra* note 157. Several other counties include timelines for the assessment or the writing of the report, including Glenn and Santa Barbara Counties. Glenn County, Protocol Pursuant to Welfare and Institutions Code Section 241.1, at 6 (May 6, 2003); Santa Barbara Protocol, *supra* note 156, at 3, 6. Amador, Colusa, Humboldt, Mendocino, Mono, Nevada, Placer, and Tehama counties fall far short of offering this degree of detail or instruction in their protocols. See Colusa County, Protocol for Welfare & Institutions Code Section 241.1 Proceedings (n.d.); Mono County Protocol for Welfare and Institutions Code Section 241.1, Reports for Juvenile Court (n.d.); Placer County 241.1 Protocol (Oct. 4, 2000) [hereinafter Placer Protocol]; Humboldt Protocol, *supra* note 153; Tehama County Protocol for Welfare and Institutions Code Section 241.1; see also Amador Protocol, *supra* note 153; Medocino Protocol, *supra* note 147; Letter from Judge M. Kathleen Butz, Presiding Judge of Nevada County Juvenile Court, regarding Welfare and Institutions Code § 241.1 (May 23, 2003) (indicating that the protocol used by Nevada County is embodied in two or three lines of a Memorandum of Understanding ("MOU") between the Probation Department and the Special Multidiscipline Assessment and Referral Team ("SMART") and explaining what is contained in the MOU).

is responsible for writing the court report,¹⁶³ and the process for writing such reports, including “interviews with the minor, the minor’s parents/guardians, and appropriate collateral contacts” such as a representative from the child’s current placement.¹⁶⁴

In addition to outlining the various responsibilities and timeframes for the four different types of situations that prompt a section 241.1 assessment, Los Angeles differentiates timelines for minors who are detained versus those who are not detained.¹⁶⁵ Specifically, Judge Nash emphasized, “the most important part of this procedure is ensuring that the assessment is completed before the adjudication without interfering with any statutory speedy trial rights.”¹⁶⁶ It is of note, however, that in situations where the probation department is seeking early termination of a minor’s wardship, there is “no specific time line” set by the court, an arrangement that most likely fails to inspire either department to initiate a section 241.1 assessment.¹⁶⁷ As a minor can remain in the delinquency system until he reaches the age of majority, receiving what the *Donald S.* court considered “equivalent” services to those which he would be given in foster care (food, shelter, etc.),¹⁶⁸ and given the additional work of finding a suitable foster placement for the minor, the likelihood of either the probation or the child welfare department undertaking the additional work of petitioning for early termination of wardship for a minor, without a structured or court-imposed time frame, is minimal. Perhaps with greater encouragement and structure from the county, a probation officer or social worker may be more inclined to start the process of moving a minor from the 600 system to the 300 system.

¹⁶³ See also Merced Protocol, *supra* note 157 (outlining similar requirements).

¹⁶⁴ Memo from Judge Nash, 10/8/97, *supra* note 151, at 6.

¹⁶⁵ *Id.* at 4; see Los Angeles Protocol, *supra* note 151.

¹⁶⁶ Memo from Judge Nash, 10/8/97, *supra* note 151, at 4.

¹⁶⁷ *Id.*

¹⁶⁸ *In re Donald S.*, 253 Cal. Rptr. 274, 276 (Cal. Ct. App. 1988).

In a number of ways, Los Angeles County demands more of its probation and child welfare departments than the minimum requirements set out in section 241.1. While most counties require that the agencies focus on section 241.1's eight listed considerations in their reports, the Los Angeles juvenile courts ask for more detailed investigations by which to determine a child's needs.¹⁶⁹ "The assessment shall also include any outside services or financial assistance that the minor is receiving or might be eligible for, and whether the minor would be eligible for each of these services if the minor is declared a dependent or a ward" of the court, such as special education, supplemental security income, and mental health services.¹⁷⁰

Los Angeles County also involves more individual and governmental actors in its investigations and assessments than that which is called for in WIC. In addition to interviewing the minor, and his or her parents/guardians, the county protocol also provides that the child welfare and probation departments "shall notify the minor's dependency and delinquency attorneys and the minor's Court Appointed Special Advocates (CASA)" whenever a joint assessment has been requested.¹⁷¹ These attorneys and representatives are allowed to provide information to the agencies and write a statement on behalf of the minor for inclusion in the court report.¹⁷² The mental health department is also invited to participate in the investigation, where appropriate.¹⁷³

¹⁶⁹ Memo from Judge Nash, 10/8/97, *supra* note 151, at 6; *see* Los Angeles Protocol, *supra* note 151, at 2-4.

¹⁷⁰ Memo from Judge Nash, 10/8/97, *supra* note 151, at 6.

¹⁷¹ *Id.* at 5-6.

¹⁷² *Id.*

¹⁷³ Memorandum from Michael Nash, Presiding Judge of the Los Angeles County Juvenile Court, to all participants in the L.A. County Juvenile Justice System (June 28, 2000) (on file with author); Los Angeles Protocol, *supra* note 151, at 3. Mental health information is also used as a factor for consideration in several counties, including Placer, San Francisco, and Tulare. *See* Placer Protocol, *supra* note 162, at 1; Tulare Protocol, *supra* note 148, at 3; San Francisco "CASE" Assessment Report Format 1, *attached to* San Francisco Protocol, *supra* note 152 [hereinafter S.F. CASE Assessment].

Another way in which Los Angeles County takes a proactive approach to the 300/600 issue is through their START Program and their Juvenile Automated Index, both of which are critical elements of the county's section 241.1 protocol structure.¹⁷⁴ START stands for "Start Taking Action Responsibly Today" and is a weekly report generated by the juvenile court to inform dependency attorneys of alleged criminal activity by their clients.¹⁷⁵ The report lists all dependent minors with law enforcement contact over the previous week and allows dependency attorneys to follow up with their clients, prepare for a section 600 proceeding if necessary, and contact the child welfare department "regarding intensified services to the minor to prevent further delinquent behavior."¹⁷⁶ The Juvenile Automated Index ("JAI") is similarly designed to improve communication between those working in the juvenile justice system. JAI is a data program that provides information on the 300 or 600 status of any minor that comes into contact with either the Los Angeles probation department or child welfare department. Both of these agencies have access to JAI, and are encouraged to run a search on any minor that comes into the juvenile court system, in order to determine whether a section 241.1 assessment should be initiated.¹⁷⁷

2. San Francisco County

In comparison to the Los Angeles County protocol, San Francisco presents a much less complicated, though well-organized structure, in terms of established procedures and resources. Its scope, on the other hand, is significantly more

¹⁷⁴ Memo from Judge Nash, 10/8/97, *supra* note 151, at 3; *see also* Memorandum from Michael Nash, Presiding Judge of the Los Angeles County juvenile court, to all participants in the L.A. Juvenile Justice System, Dissemination of the "START" Report (June 12, 1998) (on file with author) [hereinafter Memo from Judge Nash, 6/12/98].

¹⁷⁵ Memo from Judge Nash, 6/12/98, *supra* note 174.

¹⁷⁶ *Id.*

¹⁷⁷ Memo from Judge Nash, 10/8/97, *supra* note 151, at 3; *see also* Los Angeles Protocol, *supra* note 151, at 2 (requiring probation and social workers to access the JAI "for every child with whom they come into contact").

limited in the types of cases to which it applies and the actors involved. As mentioned above, the San Francisco section 241.1 protocol applies only to “those cases in which the minor is actively under the jurisdiction of either the dependency or delinquency division” of the juvenile court when another petition is filed.¹⁷⁸ The assessments are conducted on a weekly basis, at the Juvenile Court Committee for Assessment and Status Evaluation (“CASE”) meetings.¹⁷⁹ CASE consists of one standing member from each of the following agencies: (1) the probation department, (2) the human services department, and (3) the City Attorney’s Office, all of whom hold positions of supervisor, manager, or above, at their respective agencies. The 300/600 status determinations are conducted through a voting process between the standing members from the probation department and the child welfare department with the City Attorney’s Office representative breaking a “tie vote.”¹⁸⁰ Although the protocol states that “every effort” be made to ensure the minor’s child welfare worker and/or probation officer attend the section 241.1 assessment meeting, these individuals are not allowed to participate in the status-determination vote.¹⁸¹

The San Francisco protocol also provides for involvement of far fewer individuals in the assessment process. No mention is made of the minor’s delinquency attorney or Court Appointed Special Advocate, or of his or her parents/guardian. Rather, the protocol seemingly prohibits the involvement of anyone other than the child’s dependency attorney: “Nothing in this protocol is intended to permit any other person, other than the minor’s dependency attorney, to attend CASE meetings.”¹⁸² In fact, the protocol actually allows only minimal involvement on the part of the child’s dependency attorney: “The minor’s dependency attorney may attend the first five minutes of the portion of the CASE

¹⁷⁸ San Francisco Protocol, *supra* note 152, at 3.

¹⁷⁹ *Id.* at 2.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 1-2.

¹⁸² *Id.* at 1.

meeting dedicated to discussing the attorney's client."¹⁸³ Furthermore, the protocol outlines a rather half-hearted procedure for notifying the child's dependency attorney of the CASE meeting, and does not describe any consequences for failing to do so:

Every effort shall be made by the City Attorney's CASE representative to provide notice to the minor's dependency attorney 24 hours in advance of the CASE meeting. . . . Notice of the CASE meeting may not be possible in all cases due to the exigent need to complete CASE review. Failure to notice the minor's dependency attorney of the CASE meeting, or failure of the minor's dependency attorney to attend . . . shall not constitute grounds for postponing the CASE meeting or invalidating CASE's recommendation to the court.¹⁸⁴

One could argue that the structure of the assessment process, the permanent members of the committee, and the voting procedures create a more objective system by which to recommend an appropriate status for a minor. But they also greatly limit the flow of information upon which the decisions are based. Without input from the minor's CASA representative, delinquency attorney, or other individuals involved in the child's life, the San Francisco assessment committee fails to meet the goal of section 202, "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."¹⁸⁵ Any parent required to make a decision as far-reaching and important to his child's future as a 300 versus a 600 status, would presumably seek out rather than avoid relevant information related to his or her child's needs and the resources available to meet those needs.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ CAL. WELF. & INST. CODE § 202(a) (West 1998).

Other than limiting the actors involved in the minor's assessment, San Francisco does not go beyond the call of duty outlined in section 241.1 in any other significant respect. The county protocol does not discuss any type of START program or Juvenile Automated Index, by which the probation and child welfare departments can communicate the need for preventive action, prepare for upcoming court appearances, or share critical information with each other. Nor does the protocol allow for the involvement of the mental health department or anyone else in the status recommendation.¹⁸⁶

D. Compliance with Section 241.1

Most counties comply, at least in writing, with the eight factors set out in section 241.1.¹⁸⁷ Without any statistics on how often these factors are truly utilized in analyzing a minor's situation, it is difficult to determine whether counties are really in compliance with WIC. Not surprisingly, some counties do not comply with section 241.1. Some have not even created section 241.1 protocols.¹⁸⁸ Very few, if any, protocols provide a provision "for determining the circumstances under which a new petition should be filed to change the minor's status,"¹⁸⁹ even though this was the very provision that the court in *Marcus G.* cited to dismiss Marcus's argument that without continued section 300 status, he would no longer have anyone to "reinstitute a dependency proceeding upon termination of [his] wardship."¹⁹⁰

Although technically in conformity with the mandated 300/600 divide, many counties allow for the "voluntary"

¹⁸⁶ San Francisco County's CASE Assessment Report Format does, however, suggest that CASE members briefly discuss the minor's history with the Department of Mental Health. S.F. CASE Assessment, *supra* note 173.

¹⁸⁷ CAL. WELF. & INST. CODE § 241.1(b).

¹⁸⁸ Madera and Modoc Counties responded to our inquiry that they did not have section 241.1 protocols. Fax from John W. DeGroot, Presiding Judge of the Madera County Juvenile Court (May 21, 2003) (on file with author); Fax from Modoc County Superior Court (May 19, 2003) (on file with author).

¹⁸⁹ CAL. WELF. & INST. CODE § 241.1(b).

¹⁹⁰ *In re Marcus G.*, 87 Cal. Rptr. 2d 84, 89 (Cal. Ct. App. 1999).

provision of dual services. For example, the Santa Barbara County section 241.1 protocol states, “Nothing in this protocol shall prohibit the Probation Department or Social Services from jointly providing services on a voluntary or informal basis . . . when [a] minor has already been declared a dependent or ward under Sections 300 or 601/602 WIC . . .”¹⁹¹ Ventura County uses similar language to communicate its blessing on such informal cooperation.¹⁹²

Los Angeles County goes a step further than Santa Barbara and Ventura by providing for “dual supervision” of minors by the probation and child welfare departments. Following the standard section 241.1 assessment, a Los Angeles County juvenile court judge may place a minor on informal supervision, pursuant to WIC section 725(a) (court probation) or WIC section 654.2 (informal probation).¹⁹³ In such a case, the Department of Children and Family Services “remains the lead agency responsible for planning and treatment” of such a minor, including all safety issues and comprehensive services, such as medical, mental health, and dental care, educational and placement services, and investigations of child abuse allegations.¹⁹⁴ The probation department, on the other hand, continues its responsibility to enforce “conditions of probation related to any delinquent behavior,” monitoring community service, collection of restitution, and substance abuse counseling.¹⁹⁵ In addition, the

¹⁹¹ Santa Barbara Protocol, *supra* note 156, at 2.

¹⁹² Ventura County, 241.1 Welfare and Institutions Code Joint Assessment: Minors Coming Within WIC 300 and 601/602 Protocol, at 1 (Nov. 30, 2001) (“If, after assessing the best interests of the child and protection of society, the [probation officer] and the [social worker] believe one or both matters can be handled informally without filing a new petition, no assessment report will be prepared . . .”).

¹⁹³ See Bellinger, *supra* note 5, at 11 (discussing Los Angeles’s informal probation).

¹⁹⁴ Dual Supervision Cases, Memorandum of Understanding between Los Angeles Department of Children and Family Services and Los Angeles County Probation Department (July 9, 1999) (on file with author).

¹⁹⁵ *Id.*

probation department prepares reports for the delinquency court.¹⁹⁶

Although technically compliant with WIC, Santa Barbara, Ventura, and especially Los Angeles County allow for greater flexibility than that which is called for in section 241.1. These manipulations of the 300/600 division clearly stem from a concern for children's well being. Describing its "dual supervision" protocol, Los Angeles County states that agency "treatment and guidance is to be consistent with the best interest of each child while considering accountability for behavior and protection of the community."¹⁹⁷

The structures and provisions that Los Angeles County has put into place also appear to address the *Donald S.* concerns that prompted the ban on dual jurisdiction, that is, interagency confusion and the duplication of agency services. As respective agency responsibilities are clearly outlined, chances of interagency "toe-stepping" will be minimized. Moreover, if effective, this dual supervision is also in accordance with the purpose of the juvenile court system as set out in section 202, to provide care, treatment, and guidance according to the child's best interest and the interests of the public.

The disparities in approach, scope, structure, and compliance with section 241.1 indicate the significant differences in philosophy that California's counties take toward minors in the dependency and delinquency systems. With only a written protocol and without data detailing the results of these section 241.1 assessments, however, our knowledge of the effectiveness and consequences of the 300/600 divide is limited. Even if most counties comply with the guidelines set out in section 241.1 in structuring their protocols, there is no way of determining whether they actually follow those procedures. Focusing merely on the counties' documented legal format, we do not know whether

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

or how many children ultimately receive the services they need, how such services differ by county, or whether the services rendered come close to those “which should have been given by his or her parents.”¹⁹⁸

Although some counties demonstrate a great commitment to their children’s well being through protocols that call for proactive and individualized procedures, delineated responsibilities, and organized and thoughtful communication structures (Los Angeles, for example), the ultimate effectiveness of such protocols is yet to be determined. Moreover, as *In re Jaime M.* illustrates, section 241.1 protocols can be manipulated against the best interests of the minor if the child welfare department and probation department do not cooperate in an effective or time efficient manner or if neither agency is willing to assume responsibility for a particular child.

Conclusion

The California legislature and judiciary articulated noble intentions for establishing a divided juvenile court. Case law as well as the documented legislative history behind S.B. 220 all suggest that the purpose of section 241.1 was to avoid confusion and conflict between the two juvenile court systems, to keep kids from “falling through the cracks,” to minimize duplication of services between government agencies, and to provide juvenile court judges with greater information on which to base their decisions that affect children and society. Unfortunately, good intentions are not an adequate substitute for careful, deliberate lawmaking. The 300/600 division mandated by section 241.1 not only fails the primary purposes of WIC—to protect the best interests of children, and to provide “custody, care, and discipline as nearly as possible equivalent to that which should have been

¹⁹⁸ CAL. WELF. & INST. CODE § 202(a) (West 1998); *cf.* Bellinger, *supra* note 5, at 3 (arguing that “joint assessments can make a real difference in the life of an abused and neglected child”).

given by [a child's] parents"¹⁹⁹—but it also creates a system that threatens equal protection violations for minors, and leaves some of California's most desperate children in a greater state of need.

The intentions were honorable; it is important to have a government equipped to care for these children without interagency conflict, confusion, or waste. However, in this case, the legislature and the judiciary took the easy way out. First, they chose to rely on *Donald S.*, a poorly reasoned case filled with misguided assumptions about the dependency and delinquency systems, and one that overestimates the emotional, intellectual, and personal resources of minors moving from the 300 to the 600 system. Demonstrating minimal independent thought or research, the legislature focused on the *Donald S.* court's faulty logic (which had, in turn, based at least part of its decision on the ambiguous textual language of WIC) to pass a bill that would significantly affect the well being of these children. Second, the legislature created a juvenile court structure based on a lack of confidence in government agencies. Rather than earnestly working to develop a system where the probation department and the child welfare department coordinate services for children, the legislature assumed that dual jurisdiction would result in conflict, confusion, and duplication of services. In this way, neither the legislature nor the judiciary demonstrated vision, courage, or diligence. Under the rhetoric of good intentions and efficient government, they instead left vulnerable children in the juvenile court system with *fewer* resources and *less* support than they otherwise might have had under a structure of dual jurisdiction.

Because section 241.1 requires a "protocol" for meeting children's needs, its success is wholly dependant on the actors who choose to employ it, and the manner in which they do so. In this way, section 241.1 serves as a tool by which individuals and government agencies that are already prepared and willing to care for these children can determine

¹⁹⁹ CAL. WEL. & INST. CODE § 202.

which system will best meet children's needs and protect society. It does not, however, ensure that either the child welfare department or the probation department will care for children compassionately and proactively, or to a degree equivalent to that which a parent would. Because of this limitation, California's counties differ greatly in their approach to section 241.1, presenting various missions, scopes, and structures, as well as degrees of compliance with WIC's mandates. Some counties, like San Francisco, appear to use the section 241.1 protocol in a passive and narrow manner, whereas Los Angeles seems to have employed the section 241.1 assessment procedure in a proactive, broad way to truly analyze and attempt to meet children's needs.

Provided that the law does not, on its own, guarantee compassionate or competent care for children, California would nonetheless benefit from a juvenile justice law that offers greater protection and support for its abused and neglected children who are entering (or are already in) the delinquency system. Although dual jurisdiction would require a tremendous amount of work on the part of the government, both at the lawmaking level and at the implementation stage, it might prevent abused and neglected children from navigating the juvenile delinquency system on their own. It would address the concerns raised in the *Donald S.* and *Marcus G.* cases by providing an "outside person" to monitor minors' progress and conditions in juvenile hall and reinstitute dependency proceedings where necessary.²⁰⁰ Hopefully, as a result, minors' chances of remaining in the delinquency system, with all its attendant stigmas and restrictions, for a longer period of time than necessary, will be reduced.

Although I would advocate for dual jurisdiction in California's juvenile court system, I also believe that the state legislature must continue its efforts of keeping children from ever entering the foster care system. Such efforts include supporting community and family-oriented educational and social services and finding ways to move children already in

²⁰⁰ *In re Marcus G.*, 87 Cal. Rptr. 2d 84, 89 (Cal. Ct. App. 1999); *In re Donald S.*, 253 Cal. Rptr. 274, 276 (Cal. Ct. App. 1988).

the dependency structure to more permanent living situations, either through family reunification or adoption. The tragedy of California's ban on joint jurisdiction is that children who have already suffered maltreatment, generally at the hands of those who should have loved them most, are left with less support and greater instability as they enter the frightening and isolating experience of the juvenile delinquency system. If more children were either returned to their families, when their parents are able to maintain a stable and loving home, or were adopted, these children would not lose the little support they once had through the dependency system, if they fall under the jurisdiction of the delinquency court. As demonstrated in cases such as *Donald S.* and *William K.*, the children moving from the dependency to the delinquency systems are young (twelve to fourteen years old), vulnerable, and alone. They need advocates to help keep them out of the juvenile delinquency system and to provide support, love, encouragement, and help when and if they are adjudged wards of the court.

Appendix A

In May 2003, Journal staff and the author contacted each of the fifty-eight counties, listed below, to request the counties' section 241.1. protocol. Inquiries were made via phone and then mail. Below are the results of our research.²⁰¹ Twenty-three counties responded by sending their protocols. Two counties responded indicating that they did not have a protocol. Two counties responded that they were in the process of developing a protocol. All protocols are on file with the author.

County	Protocol Received	Responded, Does Not Have a Protocol
1. Alameda County		X ²⁰²
2. Alpine County		
3. Amador County	X	
4. Butte County		
5. Calaveras County		
6. Colusa County	X	
7. Contra Costa County		X ²⁰³
8. Del Norte County		
9. El Dorado County	X	
10. Fresno County		
11. Glenn County	X	
12. Humboldt County	X	
13. Imperial County		
14. Inyo County	X ²⁰⁴	
15. Kern County		
16. Kings County		
17. Lake County		
18. Lassen County	X	
19. Los Angeles County	X ²⁰⁵	
20. Madera County		X
21. Marin County		
22. Mariposa County	X	

²⁰¹ Because Los Angeles, Santa Clara and Inyo Counties had their protocols on the internet, we did not contact them personally.

²⁰² Alameda County reported that it has drafted a protocol, but it has not been accepted by the Probation Department, and is therefore inactive. Interview with Ed Valencia, Probation Department, Alameda County (June 24, 2003).

²⁰³ Contra Costa County is still in the process of developing a protocol. Telephone Message from Lois Haight, Presiding Judge of Contra Costa County juvenile court (July 1, 2003).

²⁰⁴ Inyo County's protocol is available on the internet at <http://www.inyocourt.ca.gov> (last visited Apr. 16, 2003).

²⁰⁵ Los Angeles County's protocol is available at <http://dcfs.co.la.ca.us/Policy/> (last visited June 29, 2003). To access the protocol from the website, click on the link for "CWS (Child Welfare Services) Handbook." When in the Table of Contents, follow the links to Section 0070-549.10.

County	Protocol Received	Responded, Does Not Have a Protocol
23. Mendocino County	X	
24. Merced County	X	
25. Modoc County		X
26. Mono County	X	
27. Monterey County	X	
28. Napa County		
29. Nevada County	X	
30. Orange County		
31. Placer County	X	
32. Plumas County		
33. Riverside County		
34. Sacramento County	X	
35. San Benito County		
36. San Bernardino County		
37. San Diego County		
38. San Francisco County	X	
39. San Joaquin County	X	
40. San Luis Obispo County		
41. San Mateo County		
42. Santa Barbara County	X	
43. Santa Clara County	X ²⁰⁶	
44. Santa Cruz County		
45. Shasta County		
46. Sierra County		
47. Siskiyou County		
48. Solano County		
49. Sonoma County		
50. Stanislaus County		
51. Sutter County		
52. Tehama County	X	
53. Trinity County		
54. Tulare County	X	
55. Tuolumne County		
56. Ventura County	X	
57. Yolo County		
58. Yuba County		

²⁰⁶ Santa Clara's protocol is available on the internet at <http://www.cacsc.org/resources/binder/agreedual.htm> (last visited Apr. 16, 2003).