

**IT'S A KID WITH A CHANCE:
RECONCILING CALIFORNIA'S DELINQUENCY AND DEPENDANCY COURTS
UNDER DUAL STATUS PROGRAMS**

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INTRODUCTION

James is twelve years old and is a small child. He looks maybe nine or ten. He is in sixth grade after repeating third grade twice. A lonely child, James lives in a neighborhood of subsidized housing with his grandmother and four siblings. His father is nowhere to be found and his mother is incarcerated on several drug charges. His uncle, recently released from prison, also lives in the home. James walks home from school one afternoon. No one notices him. No one ever notices James. He goes into the nearby Winn Dixie. He didn't have lunch or breakfast and is hungry. James pockets a Snickers bar, looks around the store, and walks away. Once outside, while pulling the candy bar from his pocket, he is approached by a security guard and is later arrested by the local police for a misdemeanor petty theft. Sometime after being arrested and processed into the juvenile detention center, James kicks a detention officer. Although James is twelve, he barely stands four feet, seven inches tall and weighs just eighty-five pounds; but James now has a new felony charge. Yes, kicking a detention officer is a third-degree felony battery on a detention facility worker. The situation repeats itself and by the time James gets to court for his first arraignment, he faces three charges: one misdemeanor and two felonies. Thus begins James life-long journey into the juvenile and criminal justice systems. James is ultimately adjudicated delinquent and ordered confined at the department of juvenile justice

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(DJJ). He is placed in a secure state facility many hours away from his grandmother, further estranging him from his family. As James grows older, he becomes institutionalized and commits more offenses within the system, ultimately resulting in direct filing him to the adult system by age fifteen.¹ Could this scenario have gone differently? Absolutely!²

Children like James are known as “crossover youth”: minors who have experienced maltreatment and engaged in delinquent behavior.³ The general rule in California has historically been that “minors *cannot* be both dependent children of the court and delinquent wards of the court at the same time.”⁴ The result of this rule has been that dually involved youth, or minors with cases pending simultaneously in the dependency and delinquency courts, are more likely to spend extended time in the delinquency system and exhibit higher rates of recidivism than youth without a foster care history.⁵

Candice’s story is an excellent example of the dramatic negative effect California’s historical rule of terminating dependency jurisdiction upon involvement with the juvenile justice system has on a child’s life.⁶

Candice was declared a dependent due to multiple allegations of physical abuse and general neglect while living with her mother before she was six years old.

¹ See CAL. WELF. & INST. CODE § 707(a)(1) (West Supp. 2014) (stating that minors at least sixteen years old, or minors at least fourteen years old who committed previous certain offenses enumerated within the statute, may be tried and prosecuted as an adult, depending upon the severity of the crime); see also *Annie E. Casey Foundation Forum on Crime Victims’ Rights and Juvenile Justice Reform*, NATIONAL CENTER FOR VICTIMS (Jan. 8, 2013), <http://www.victimsofcrime.org/docs/anne-e-casey/anne-e-casey-meeting-report.pdf?sfvrsn=0> (stating that “in recent years, there has been a push to ‘transfer’ juveniles from the juvenile justice to the adult system to be tried as adults.”).

² Judy L. Estren & Kristin Windkur, *Community-Based Solutions for Delinquent Youth: A Guide for Advocates*, 29 CHILD LAW PRACTICE 49 (2010).

³ Denise C. Herz et al., *Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice*, GEORGETOWN.EDU (Mar. 2012), <http://cjjr.georgetown.edu/pdfs/msy/AddressingtheNeedsofMultiSystemYouth.pdf>.

⁴ SHOUSE LAW GROUP, <http://www.shouselaw.com/juvenile-delinquency-dependency.html#3> (last visited Jan. 19, 2016) (emphasis added).

⁵ *Permanency through Collaboration between Delinquency and Dependency Courts*, COURTWORKS (May 2008), http://www.americanbar.org/content/dam/aba/publishing/child_courtworks/08_05_vol10iss2.authcheckdam.pdf.

⁶ See *In re T.W.*, No. D041068, 2003 WL 21101814 (Cal. Ct. App. May 15, 2003).

Between the ages of six and twelve, Candice lived in twenty-six different foster homes. When she was fourteen years old, she became pregnant. While pregnant, she was taken into protective custody, where she had an outburst and injured a staff member at the facility. Because of this outburst, she was declared a delinquent, terminating the dependency court's jurisdiction over her. A few months later, she gave birth to a son who was also declared a dependent of the court because of Candice's volatile history and current detention in juvenile hall.⁷

California began to address this issue in 1997 by enacting California Welfare and Institutions Code section 241.1, which requires that the social services and probation departments come together and make a joint assessment of the youth to determine which system is most appropriate for both the child and society.⁸ California continues to make strides in the right direction in better assisting crossover youth through the enactment of California Assembly Bill 129 (AB 129) in 2005.⁹ From AB 129 dual status programs emerged, allowing crossover youth dually involved with the dependency and delinquency courts to benefit from services provided by both court systems at the same time.¹⁰ With the creation of dual status programs, there is finally an avenue to foster communication and collaboration of both services and funding opportunities for the juvenile court systems. Dual status programs no longer treat a wayward youth as facing separate and distinct issues of dependency and delinquency, but instead take a more holistic approach toward addressing the youth as an individual.

However, a large variance exists in California's dual status programs: each system's view of the youth and the interest each system seeks to serve. The delinquency system's focus is on the actions of the young person as someone who puts society at risk, and juvenile justice services

⁷ Kiley Schaumleffel, *Dual Jurisdiction in California: how the Juvenile Courts are Failing Crossover Youth*, 17 UC DAVIS JOURNAL OF JUVENILE LAW & POLICY 78, 90 (2013); see also *In re T.W.*, No. D041068, 2003 WL 21101814 (Cal. Ct. App. May 15, 2003).

⁸ CAL. WELF. & INST. CODE § 241.1 (West Supp. 2014).

⁹ See ASSEMB. B. 129 (Ca. 2004), available at <http://www.courts.ca.gov/documents/AB129bill-chaptered.pdf>.

¹⁰ CALIFORNIA COURTS, <http://www.courts.ca.gov/7989.htm> (last visited Dec. 27, 2013); COURTS.CA.GOV, <http://www.courts.ca.gov/documents/AB129bill-chaptered.pdf> (last visited Dec. 27, 2013).

historically seek to remediate the minor's behavior.¹¹ On the opposite end of the spectrum, the dependency system views the minor as a *victim*, and child welfare services work to nurture and protect the minor, as well as reunify the family.¹² Two different attorneys, who have two very different end result goals in mind, then come together to represent a dual status minor.¹³ To ensure effective operation of dual status programs, a minor cannot be looked to as both the perpetrator and the victim. This chasm between the court systems' approaches must be reconciled.

This comment proposes that California juvenile dual jurisdiction programs adopt a standard of cooperation, bridging the gap between the delinquency court's focus on remediating the minor's wrongful actions and the dependency court's focus on protecting the minor from third-party abuse and/or neglect. Part I of this comment provides an overview of the operation of the delinquency and the dependency court systems. This section focuses on the specific role of the attorneys in both court systems and the implementation of dual status programs in California courts. Part II looks to other states' attempts to remedy the disconnection between the juvenile justice and child welfare systems when implementing dual status programs. Additionally, Part II asserts that California juvenile courts hearing dual jurisdiction cases should adopt a standard of cooperation under which all parties involved must abide. Unique from other proposed practices, this standard is designed to enhance collaborative principals already in place and create one uniform standard to be employed by delinquency and dependency attorneys, judges, and agencies. Lastly, Part III delves into the implementation of the proposed standard of cooperation

¹¹ Herz, *supra* note 3.

¹² *Id.* (emphasis added).

¹³ See Deana A. Piazza, *Dual-Status Children: Protocols for Implementing Assembly Bill 129*, COURTS.CA.GOV (Oct. 2008), <http://www.courts.ca.gov/documents/AB129ResearchUpdate-Protocols.pdf>.

through the use of existing groups and initiatives and lays out guidelines for effective implementation.

I. Overview of the Juvenile Court Systems

In theory, the goals of the delinquency and dependency court systems are interrelated, with both systems seeking to assist a young person in need. The philosophical goal of the delinquency courts is to provide minors with the “education, treatment, and services they need to move past their crimes, reunite with their families, and become productive citizens.”¹⁴ This goal of the juvenile justice system should pair nicely with the dependency court system’s purpose to improve the “safety, permanence, and well-being of children and families involved in the child welfare system through a collaboration with the families and their community.”¹⁵ However, the reality of the California juvenile justice system falls short of its noble objectives. Delinquency courts in California tend to view a young person in the system solely as a perpetrator, which has shifted the juvenile justice system away from assisting a minor to move past his or her crime and instead has created a system that perpetuates crime in youth, as seen in James’ story.¹⁶

Although the two court systems seem to be at odds in their objectives—with the delinquency courts looking to remediate, or punish, a youth’s wrongful behavior, and the dependency system striving to protect a youth from a third party’s abusive and wrongful behavior—the two court systems are inevitably linked together. This section first focuses on the operation of the California delinquency court system and the role of an attorney representing a minor in delinquency court, paying close attention to the National Juvenile Defense Standards. Next, this section turns to the California dependency court system’s function and what the role of

¹⁴ SHOUSE LAW GROUP, *supra* note 4.

¹⁵ CHILD WELFARE SERVICES, <http://www.okdhs.org/programsandservices/cws/> (last visited Jan. 1, 2014).

¹⁶ *See Estren, supra* note 2.

an attorney looks like when representing a dependent minor. Finally, this section concentrates on dual status programs in California and the push to foster communication and collaboration between the delinquency and dependency systems.

A. The Reality of California's Delinquency Court System

California designed its juvenile justice system to rehabilitate minor offenders, yet the system's seventy-four percent recidivism rate is one of the highest in the country.¹⁷ In fact, the National Juvenile Defense Standards specifically state that rehabilitation has become "more punitive."¹⁸ Moreover, many of California's juvenile detention centers fail to meet minimum legal standards, including international human rights standards, and/or applicable court decrees.¹⁹ "Young people incarcerated in [California's juvenile justice prison system] regularly suffer violence, abuse, and neglect."²⁰ This reality regarding the operation of the juvenile justice system in California underscores the system's view of offending minors as perpetrators—as a risk to society.

In 2003, in *Farrell v. Allen*, California's juvenile prison system was sued for deplorable conditions, including: excessive use of force; making minors attend school while locked in cages; confining children to a cell for twenty-three hours per day; and failing to provide children

¹⁷ SHOUSE LAW GROUP, *supra* note 4; *Still Broken: California's Failing Youth Prison System, Four Years after Farrell v. Allen*, CCOSO.ORG, available at http://www.ccoso.org/library%20articles/djj_report_cards.pdf.

¹⁸ *National Juvenile Defense Standards*, NATIONAL JUVENILE DEFENDER CENTER (2012), <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>; *People v. Austin M.*, 975 N.E.2d 22, 40 (Ill. 2012); *see also* Inkoo Kang, 'Kids for Cash' documentary examines Mark Ciavarella, LOS ANGELES TIMES (Mar. 6, 2014, 1:00pm), <http://www.latimes.com/entertainment/movies/movieworld/la-et-mn-kids-for-cash-review-20140307,0,57784505.story#axzz2wBD2TbYQ> (discussing that in the state of Pennsylvania, "outrageously disproportionate sentencing" for delinquent minors was finally brought to light through the documentary "Kids for Cash," which exposes one judge's acceptance of a one million dollar kickback for assigning harsher sentences to minors).

¹⁹ *Still Broken: California's Failing Youth Prison System, Four Years after Farrell v. Allen*, CCOSO.ORG, available at http://www.ccoso.org/library%20articles/djj_report_cards.pdf.

²⁰ *Id.*

with adequate medical and mental health services.²¹ Thankfully, *Farrell* brought forth some positive changes in California's juvenile correctional facilities,²² but facilities such as the Ventura Youth Correctional Facility in Camarillo, California indicate little decline in the use of violence and fear.²³ For example, 958 minors were put in isolation or restrictive housing at the Ventura County facility in the first six months of 2011.²⁴ Moreover, the cost per offender in California's youth correctional facilities is exorbitant: 225,000 dollars a year for each child.²⁵ This extremely high cost to California's taxpayers is compounded by the fact that minors exiting the juvenile justice system will earn less income as young adults and are more than twice as likely to be treated for a serious mental illness.²⁶ Although a favorable alternative to incarceration is home supervision or probation, children with a case pending in the dependency court system often do not have a home to return to, nor parents willing to comply with such intensive supervision.²⁷ For dual status youths, the solution is all too often for the minor to remain incarcerated in a detention center, such as the above-mentioned Ventura County facility.

²¹ SHOUSE LAW GROUP, *supra* note 4; *see Farrell v. Allen*, No. RG 03079344 (Cal. Superior Ct. argued Nov. 2, 2004).

²² *See California Counties Struggle to Take Over Juvenile Justice*, THE CALIFORNIA REPORT (Mar. 23, 2011), <http://www.californiareport.org/archive/R201103230850/a> (discussing that county governments are starting to take the role of rehabilitating delinquent minors more seriously).

²³ *Ventura Youth Correctional Facility*, JUVENILE IN JUSTICE BLOG (Dec. 31, 2013), <http://www.juvenile-in-justice.com/venturayouthcorrectionalfacility>.

²⁴ *Id.*

²⁵ *California Counties Struggle to Take Over Juvenile Justice*, THE CALIFORNIA REPORT (Mar. 23, 2011), <http://www.californiareport.org/archive/R201103230850/a>.

²⁶ John Kelly, *Dual Involvement in Child Welfare, Juvenile Justice Creates Major Struggles in Adulthood*, CALIFORNIA FOSTER CARE NEWS (Nov. 9, 2011), <http://californiafostercarenews.blogspot.com/2011/11/dual-involvement-in-child-welfare.html>.

²⁷ Barry Krisberg et al., *A New Era in California Juvenile Justice: Downsizing the State Youth Corrections System*, BERKELEY CENTER FOR CRIMINAL JUSTICE (Oct. 2010), http://www.law.berkeley.edu/files/bccj/New_Era.pdf.

The role of the attorney representing a minor in delinquency court further emphasizes the system's focus on the youth's wrongful actions, downplaying the goal of rehabilitation.²⁸ "First and foremost, the child's counsel defends the child against the charged allegations, evaluating the allegations and possible defenses and vigorously presenting a defense."²⁹ This vigorous defense is coupled with the fact that the attorney is bound to advocate the expressed interests of the minor.³⁰ However, advocating for the child's expressed interests will often contradict with what is objectively in the child's best interest—for example, not releasing the minor back into an unsafe environment, or providing the minor with counseling services. Nonetheless, the National Juvenile Defense Standards specifically state that "[t]he role of counsel is not to represent what he or she thinks to be in the best interests of the client, but rather argue for the client's expressed interests. . . ."³¹ Although counsel is required to provide the minor with information to assist the child in understanding potentially detrimental outcomes of his or her expressed interests, the Defense Standards go on to state that, "if the client is not persuaded, counsel must continue to act in accordance with the client's expressed interests throughout the course of the case."³² As a result, child advocacy is seen only as a secondary responsibility of a minor's defense attorney in a delinquency court proceeding.³³

B. Operation of California's Dependency Court System

²⁸ See Alberto Bernabe, *The Right to Counsel Denied: Confusing the Roles of Lawyers and Guardians*, 43 LOY. U. CHI. L. J. 833, 833 (2012) (explaining that attorneys for delinquent youths must take on a different role from attorneys for dependent youths because of the adversarial nature of delinquency proceedings).

²⁹ *National Juvenile Defense Standards*, NATIONAL JUVENILE DEFENDER CENTER, <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf> (last visited Mar. 14, 2014); *Effective Representation of Children in Juvenile Delinquency Court*, COURTS.CA.GOV, <http://www.courts.ca.gov/documents/EffRepChildrenBro.pdf> (last visited Mar. 14, 2014).

³⁰ *Role of Defense Counsel in Juvenile Delinquency Proceedings*, NORTH CAROLINA OFFICE OF THE JUVENILE DEFENDER, <http://www.courts.ca.gov/documents/EffRepChildrenBro.pdf> (last visited Mar. 14, 2014).

³¹ NATIONAL JUVENILE DEFENDER CENTER, *supra* note 29.

³² *Id.*

³³ *Effective Representation of Children in Juvenile Delinquency Court*, COURTS.CA.GOV, <http://www.courts.ca.gov/documents/EffRepChildrenBro.pdf> (last visited Mar. 14, 2014).

The California child welfare system's main objective is to protect children that have been, or are at risk of being, abused, neglected, or abandoned.³⁴ During a dependency hearing, attorneys for social services, the minor, and both parents come together in front of a judge to determine what living situation and services would best provide for the child and family's specific needs.³⁵ Unlike delinquency proceedings, which focus entirely on the adjudication of the minor,³⁶ dependency proceedings revolve around the reunification of families, when it is safe to do so.³⁷ Along with the goal of family reunification, the child welfare system seeks to provide services to both the child and the family. Such services are set forth in a comprehensive case plan, which is the "central unifying tool in child welfare services."³⁸ Each case plan is founded on an assessment of the circumstances that required court involvement and identifies specific goals that the services are designed to help the family attain.³⁹ Further, a status review hearing takes place every six months, giving the court an opportunity to evaluate the effectiveness of the family's case plan, as well as the child's current placement.⁴⁰ As a result, dependency court proceedings provide a "wrap-around" type of support for not only the child, but also everyone directly involved in the minor's life.

The role of an attorney representing a dependent minor is one of an advocate, protecting the child's best interests. In contrast to arguing for the child's expressed interests, an attorney

³⁴ LOS ANGELES SUPERIOR COURT, <http://www.lasuperiorcourt.org/juvenile/ui/> (last visited Jan. 1, 2014).

³⁵ See JUDICIAL COUNCIL OF CALIFORNIA, <http://www.courts.ca.gov/documents/caregivers.pdf> (last visited Mar. 6, 2014).

³⁶ See *supra* Part I.A.

³⁷ CAL. WELF. & INST. CODE § 361.5 (West Supp. 2014); see also 42 U.S.C.A. § 5106g (2013) (defining child abuse as "[a]ny recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act which presents an imminent risk of serious harm.").

³⁸ *The Legal Process*, DEPARTMENT OF CHILDREN & FAMILY SERVICES, <http://www.dcf.s.co.la.ca.us/.../LegalProcessChapter1%20Final%20Version.doc> (last visited Mar. 14, 2014).

³⁹ *Id.*

⁴⁰ *Id.*

representing a dependent youth looks to the situation at hand to gain a clear understanding of the child's needs, and from this understanding makes a recommendation to the court concerning the best interests of the child.⁴¹ The governing best interest standard allows the attorney to take into consideration all of the different issues related to the child's circumstances, "with the child's ultimate safety and well-being the paramount concern."⁴² When considering the child's wishes under the best interest standard, the court considers "whether the child is of an age and level of maturity to express a reasonable preference," rather than solely advocating in accordance with the minor's expressed interests.⁴³ In the child welfare system, a dependency attorney has the capability to assess a child's situation as a whole, looking to factors such as the health, safety, protection, and treatment of the minor.⁴⁴

Despite the differences in both treatment and representation of minors in delinquency courts versus dependency courts, there is an unavoidable link between the two systems. Minors who lack protective factors, such as a supportive and safe home environment and adequate health care, are more likely to cross over from the child welfare system to the juvenile justice system and vice versa.⁴⁵ Abuse and neglect increase a youth's overall likelihood for arrest by fifty-nine percent, when compared with minors who do not suffer from abuse and/or neglect.⁴⁶ Further, children abused and/or neglected at a young age have an increased risk of arrest as a juvenile by

⁴¹ *Representation of Children in Child Abuse and Neglect Proceedings*, CHILD WELFARE INFORMATION GATEWAY (May 2012), https://www.childwelfare.gov/systemwide/laws_policies/statutes/represent.pdf.

⁴² *Determining the Best Interests of the Child*, CHILD WELFARE INFORMATION GATEWAY (Nov. 2012), https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf#Page=2&view=Fit.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Teija Sudol, *Juvenile Justice and Child Welfare Information Packet*, NATIONAL RESOURCE CENTER FOR FAMILY-CENTERED PRACTICE AND PERMANENCY PLANNING (June 2009),

http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/Sudol_Info%20Pack_JuvenileJustice_June09.pdf.

⁴⁶ *Id.*

fifty-five percent, and an increased risk of a violent crime arrest as a juvenile by *ninety-six percent*.⁴⁷

C. The Introduction of Dual Status Programs in California

Upon the enactment of California's AB 129 in 2005, special programs, known as dual status programs, designed to hear a minor's open dependency and delinquency cases simultaneously began to emerge. Since 2005, twelve of California's fifty-eight counties have set up some type of a formal dual status program.⁴⁸ This dual jurisdiction approach fosters informed decision-making and strives to provide a youth with the most appropriate and effective services possible.⁴⁹ Dual status programs are traditionally set up with one court system taking lead on the minor's dual cases—either dependency or delinquency.⁵⁰ Dual status programs may also be designed in more of a hybrid manner to fit the needs of the youth and court systems, such as allowing each court to be responsible for different aspects of a youth's cases.⁵¹ With the creation of dual status programs, there has been a huge push to facilitate collaboration and effective communication across the court systems, and much has been written on maximizing information sharing, emphasizing joint planning, and establishing ongoing coordinating groups.⁵²

⁴⁷ Denise Herz & Joseph Ryan, *Building Multisystem Approaches in Child Welfare and Juvenile Justice*, GEORGETOWN.EDU, available at <http://cjjr.georgetown.edu/pdfs/wingspreadpart3.pdf> (last visited Mar. 14, 2014) (emphasis added).

⁴⁸ Judge Michael Nash & Shay Bilchik, *Child Welfare and Juvenile Justice – Two Sides of the Same Coin, Part II*, JUVENILE AND FAMILY JUSTICE TODAY (Dec. 2009), http://cjjr.georgetown.edu/pdfs/Winter09_CrossoverPartII.pdf.

⁴⁹ SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES, <http://www.cwla.org/programs/juvenilejustice/jjlaab129protocol.pdf> (last visited Jan. 1, 2014).

⁵⁰ *Id.*

⁵¹ COURTS.CA.GOV, http://www.courts.ca.gov/documents/AB_129_Summaries_by_County.pdf (last visited Jan. 1, 2014).

⁵² *AB 129 Protocol*, SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES, <http://www.cwla.org/programs/juvenilejustice/jjlaab129protocol.pdf> (last visited Jan. 1, 2014); see also *infra* notes 66-76 and accompanying text.

However, AB 129 does not provide clear implementation guidelines for counties that choose to exercise dual status programming.⁵³ For this reason, dual status programs tend to encourage an influx of parties with conflicting goals and missions, which create “dueling case plans” and contradictory orders.⁵⁴ Moreover, each court system and the agencies involved have responsibilities to independently uphold.⁵⁵ This creates an atmosphere within the system that any time and effort taken to engage in collaboration detracts from the primary responsibilities required of the court systems and agencies.⁵⁶ With such roadblocks hindering the effectiveness of dual status programs, these programs cannot be completely successful without first establishing a standard of cooperation between the dependency and delinquency court systems.

The California juvenile justice system has become more and more focused on taking punitive actions against delinquent youth,⁵⁷ with court sentences to confinement in detention centers a common remedial measure.⁵⁸ In the delinquency system, a juvenile defense attorney argues for a child’s expressed interests, even if the child’s interests are detrimental to him- or herself.⁵⁹ On the other hand, the child welfare system protects children from abuse and neglect

⁵³ Schaumleffel, *supra* note 7, at 85.

⁵⁴ Gene Siegel & Rachael Lord, *When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases*, TECHNICAL ASSISTANCE TO THE JUVENILE COURT (June 2004), <http://www.ncjj.org/PDF/dualjurisdiction.pdf>.

⁵⁵ *Juvenile Justice and Child Welfare Integration*, CASEY FAMILY PROGRAMS BREAKTHROUGH SERIES COLLABORATIVE (Dec. 2010), http://www.casey.org/Resources/Publications/pdf/BreakthroughSeries_JuvenileJustice.pdf.

⁵⁶ *Id.*

⁵⁷ See *supra* note 18 and accompanying text.

⁵⁸ See SHOUSE LAW GROUP, *supra* note 3 (asserting that in 2009, 102, 348 minors were arrested and charged with a crime, and of those, California placed 60,891 juveniles in detention facilities—over half of the youths charged).

⁵⁹ See discussion *supra* at pp. 14-15; see also Robin Walker Sterling, *Role of Juvenile Defense Counsel in Delinquency Court*, NATIONAL JUVENILE DEFENDER CENTER (Spring 2009), http://www.njdc.info/pdf/role_of_juvenile_defense_counsel.pdf (stating that “[a]t each stage of the case, juvenile defense counsel acts as the client’s voice in the proceedings, advocating for the client’s expressed interests, not the client’s ‘best interest’ as determined by counsel, the client’s parents or guardian, the probation officer, the prosecutor, or the judge.”).

while providing services to reunify the family.⁶⁰ In the dependency system, an attorney for dependent minors seeks to protect the youth's best interests. A dually involved child, with cases pending in both courts, is caught between the systems, with two attorneys attempting to reach two differing end goals. Since the rise of dual status programs, there has been a push in providing dual status children with unified help and services. However, the conflicting viewpoints of the juvenile court systems remain. Because abused and/or neglected young children are ninety-six percent more likely to be arrested for a violent crime,⁶¹ it is imperative that the delinquency and dependency court systems find reconciliation through the adoption of a standard of cooperation.

II. Finding Reconciliation

Dual status youth are often unnecessarily placed on “trajectories further into the juvenile justice system” because both the dependency and the delinquency court systems fail to look carefully at how they can best serve these minors, using the assets of both court systems.⁶² Moreover, advocates for a dually involved youth are not required to work together, which often creates an information void—information that could drastically shape each case's outcome.⁶³ In the face of this lack of communication, jurisdictions with dual status programs, along with researchers, have begun to remedy the disconnection between the juvenile justice and child welfare systems.

A dually involved child's circumstances must not be looked at in segmented fragments, but rather the courts must assess the child's situation as a whole to gain the truth: too often the child's victim status creates the child's perpetrator status out of necessity, as in James' situation,

⁶⁰ See *supra* note 38 and accompanying text.

⁶¹ Herz, *supra* note 47.

⁶² Herz, *supra* note 3.

⁶³ *Id.*

supra.⁶⁴ This section first looks to best practice principals set forth by various researchers attempting to bridge the communication gap between delinquency and dependency courts. The second part of this section then turns to other states' attempts to implement best practices and the successes and challenges jurisdictions face with implementation. Finally, this section sets forth a proposed standard of cooperation to be adopted by California's dual status programs.

A. Best Practices and Principals

In an attempt to enhance communication and collaboration efforts between the delinquency and dependency court systems, researchers Gene Siegel and Rachael Lord⁶⁵ set forth five widely cited categories of best practices in their article *When Systems Collide: Improving Practices and Programs in Dual Jurisdiction Cases*.⁶⁶ First, a screening and assessment strategy must be implemented to promptly identify dual status youths. This can be accomplished through an automated system, or through a coordinated manual system, and will ensure dual status youths are quickly identified so their special needs can be properly assessed.⁶⁷ Further, it is important that screening policies are implemented in both court systems because these minors are typically in the dependency system approximately seven years prior to becoming involved with the delinquency system.⁶⁸ Second, case assignment presents a critical step in processing a dual status youth's case—the goal is to consolidate court processing so that a minor's dependency and delinquency cases are handled simultaneously and are supervised by attorneys familiar with both systems.⁶⁹

⁶⁴ See Estren, *supra* note 2.

⁶⁵ Siegel and Lord are employed with the research department of the National Center for Juvenile Justice.

⁶⁶ See Siegel, *supra* note 54.

⁶⁷ *Id.*

⁶⁸ CASEY FAMILY PROGRAMS BREAKTHROUGH SERIES COLLABORATIVE, *supra* note 55.

⁶⁹ Siegel, *supra* note 54; Herz, *supra* note 47.

Siegel and Lord's third category of best practices requires streamlining information and improving coordinated case management.⁷⁰ Requiring joint pre-hearing conferences, court orders, court reports, and case plans help to successfully create efficient case flow management.⁷¹ Similarly, the fourth category of case planning and supervision looks to improving case management by creating one case plan document, which incorporates all of the information of the minor's delinquency and the dependency cases into one file.⁷² However, any confidentiality concerns must be addressed in advance with the court if an issue arises in sharing certain information between child welfare and juvenile justice representatives.⁷³ Finally, interagency collaboration is an important component of building partnerships across the juvenile court systems. A formal, written memorandum of understanding clearly outlining the roles of each party or agency involved helps sustain collaboration between the systems.⁷⁴

Casey Family Programs⁷⁵ and Georgetown University Center further developed Siegel and Lord's five areas of best practices for Juvenile Justice Reform. These research centers set forth six components for improving dual jurisdiction cases, with the goal of improving case outcomes for crossover youth.⁷⁶ Following closely the five above-mentioned principals, the six components are: (1) measureable systems of agency, court, and community accountability; (2) active engagement of family and youth in planning and decision making; (3) an integrated

⁷⁰ Siegel, *supra* note 54.

⁷¹ Herz, *supra* note 47.

⁷² Siegel, *supra* note 54.

⁷³ *Id.*; see also ROBERT F. KENNEDY NATIONAL RESOURCE CENTER FOR JUVENILE JUSTICE, <http://www.jmijustice.org/assets/publications/HEKelleyJTuellDualStatusYouth.pdf> (last visited Mar. 17, 2014) (asserting that it is "critical to the effective practice" of the juvenile court systems to ensure that all parties follow the legal channels of data sharing so as to protect against unauthorized disclosure).

⁷⁴ Herz, *supra* note 47.

⁷⁵ Casey Family Programs is the largest operating foundation in the United States focused entirely on improving the child welfare system. This foundation provides extensive research focused on enhancing law and policy-making efforts to better the lives of foster youth and youth at risk of entering the system. CASEY FAMILY PROGRAMS, <http://www.casey.org/AboutUs/> (last visited Mar. 4, 2014).

⁷⁶ CASEY FAMILY PROGRAMS BREAKTHROUGH SERIES COLLABORATIVE, *supra* note 55.

system of information sharing; (4) shared approach to prevention, identification, assessment, and case plan development within and across systems; (5) shared case management, decision making, and community service utilization; and (6) effective use of blended resources.⁷⁷

In reviewing the above best practices, it becomes clear that research here-to-date has mainly focused on helping the delinquency and dependency systems bridge communication gaps and embrace the need for information sharing. Although communication is vital to creating successful dual status programs, the conducted research does not address the need for a standard of cooperation between the court systems when jointly evaluating a dual jurisdiction child. In assessing the above research, it is apparent there is still a piece of the collaborative puzzle missing.

B. Other Jurisdictions' Attempts of Reconciliation

Jurisdictions in states around the country have been working toward more successful and efficient dual status programs through the implementation of various approaches, using the strategies of the above-described research. For example, New York City's juvenile justice system created a "coordinated notification system" where a screener searches the child welfare system database upon admission of a minor to a New York City juvenile detention facility.⁷⁸ If the minor is identified as a foster child, the appropriate child welfare system representatives are immediately contacted.⁷⁹ New York City additionally uses this program for court conferencing to bring together all necessary caseworkers, attorneys, probation officers, and other key officials for effective communication throughout the dual jurisdiction process.⁸⁰ New York City's system

⁷⁷ *Id.*

⁷⁸ Siegel, *supra* note 54.

⁷⁹ *Id.*

⁸⁰ *Id.*

model reduces “unnecessary detention of foster children and [increases] communication and cooperation of front-line staff.”⁸¹

In addition to a notification system and court conferencing, maintaining consistency in judges and attorneys improves outcomes in dual status programs. For example jurisdictions that employ a “one family/one judge approach” include: Allegheny County, Pennsylvania; Bernalillo County, New Mexico; Maricopa County, Arizona; Jefferson County, Alabama; and Palm Beach County, Florida.⁸² This approach requires the same judge hear the child’s delinquency *and* dependency matters at all stages, until both cases are closed.⁸³ Using the one family/one judge approach improves case planning, communication between the court systems, and ensures that everyone involved is held accountable.⁸⁴ However, the challenge in using this approach is found in “knowing the expectations of two different systems” and in effectively communicating across the court systems.⁸⁵ To overcome these challenges, jurisdictions sometimes require continuity of counsel for both the dependency and the delinquency case.⁸⁶ This consolidation to one attorney often successfully improves judge-attorney communications and creates more effective information sharing.

Finally, with recent massive state and local budget cuts and losses of other private grant opportunities, shared funding is an excellent way to facilitate collaboration across the juvenile court systems. Hamilton County, Ohio has been highlighted for its innovative efforts to increase

⁸¹ Similarly, Sacramento’s probation department utilizes an evaluation tool known as IMPACT (Integrated Model for Placement Case Management and Treatment) to situate the minor in a placement that best addresses the youth’s assessed needs. *See id.*

⁸² Herz, *supra* note 47.

⁸³ For example, In Jefferson County, Alabama, “the judge assigned to the initial dependency case for a dual system juvenile retains that case in the event of a subsequent delinquency matter. If the delinquency [case] precedes the dependency [case], the judge retains the case when a subsequent dependency occurs.” *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

funding for dual status programs by creating “pooled, de-categorized funding”.⁸⁷ Originally, five specific agencies in Hamilton County funded dual status programming: the Juvenile Court, the Board of Mental Retardation and Developmental Disabilities, Community Mental Health Board, and the Alcohol and Drug Addiction Services Board.⁸⁸ Funding depended upon a youth’s involvement with the controlling agencies.⁸⁹ By 2005, dual status programs were officially de-categorized, allowing funding to be based solely on the child’s need, “regardless of the youth’s involvement with any one or a combination of agencies.”⁹⁰

But, despite the communication and collaborative efforts jurisdictions across the country are making to improve dual status programs and the outcome for youth, crossover cases nationwide are often inconsistently handled.⁹¹ In fact, a 2006 survey found that only fifty-one percent of respondents could identify expectations and procedures for handling dual status cases.⁹² Without an understanding between the court systems, “the likelihood of building effective multisystem approaches remains tenuous.”⁹³ California’s dual status court programs must implement a standard of cooperation to end the systemic lack of coordinated vision and to ensure collaboration occurs in a “consistent and sustainable way.”⁹⁴

C. Proposed Standard of Cooperation

California’s juvenile courts hearing dual jurisdiction cases should adopt a standard of cooperation under which all parties involved must abide. In forming guidelines to bring the two

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

courts together, the applied standard will marry the viewpoints of the delinquency system with the dependency system.

The foundation of this proposed standard will be the best interest of the child. This is preferred for dual status programs over the expressed interest standard of the delinquency system because of the abuse and/or neglect present in a dual status minor's life.⁹⁵ More specifically, the best interest standard looks to the "deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of the child."⁹⁶ In assessing the best interest standard under this definition, the objectives of both court systems can be easily met, as the dual status program will take into consideration all appropriate actions necessary in the minor's dual cases along with the necessary services and living situation. For example, a minor with a violent criminal record will likely remain in a detention facility while receiving therapeutic care and counseling services. In this example, the best interest standard must incorporate the minor's need for rehabilitation in a secure environment. Objectively taking into consideration *all* of a youth's circumstances when determining his or her placement and services is vital to successful case plan completion. For this reason, the best interest standard does not unduly weigh in favor of the dependency system to the detriment of the delinquency system's purpose, but rather ensures every need of the child is being appropriately met.

⁹⁵ The best interest standard used here parallels a best interest standard for crime victims in general, as dual jurisdiction minors are victims of wrongful conduct in the form of neglect or abuse—or both. This point emphasizes the importance of using the best interest of the child standard over the expressed interest standard. *See Annie E. Casey Foundation Forum on Crime Victims' Rights and Juvenile Justice Reform*, NATIONAL CENTER FOR VICTIMS (Jan. 8, 2013), <http://www.victimsofcrime.org/docs/anne-e-casey/anne-e-casey-meeting-report.pdf?sfvrsn=0> (stating that courts should promote the best interests of crime victims by safeguarding their rights to request restitution and protection—these rights apply to *all* victims, not just the "innocent" victims without a criminal background).

⁹⁶ Child Welfare Information Gateway, *Determining the best interests of the child*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CHILDREN'S BUREAU (Nov. 2012), https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.cfm.

As the above paragraph alludes, cases involving dual jurisdiction youth are extremely fact intensive and outcomes differ based upon the different facts of each case.⁹⁷ For this reason, the best interest of the child standard for dual status programs must look to balancing factors in the totality of the child's circumstances. Although some overlap will be found in the California Family Code,⁹⁸ determining acceptable factors to base the outcome of dual jurisdiction cases will in some ways be unique because of the youth's criminal background.

When assessing a child's delinquency and dependency cases simultaneously in a dual status program, the judge, attorneys, and all agencies involved should look to the following factors: (1) the youth's exposure to abuse and/or neglect, taking into account (a) presence of domestic violence and/or substance abuse in the home, and (b) the capacity of the minor's parent(s) or guardian to provide a safe home with adequate food, clothing, and medical care; (2) the mental and emotional needs of the child; (3) the mental and emotional needs of the child's parent(s); (4) the expressed interests of the youth; and (5) the gravity of the crime committed.

The above proposed factors of assessing the best interests of a dual status minor encourages the expansion of a juvenile defense attorney's role—creating a push toward adopting the theoretical goal of the juvenile justice system as reality.⁹⁹ The California Rule of Court section 5.663, responsibilities of children's counsel in delinquency proceedings, states that

⁹⁷ For example, the outcome in the hypothetical mentioned in the preceding paragraph involving a youth with a violent criminal arrest record would almost certainly differ from the outcome of James' case of shoplifting a candy bar, if assessed under this proposed standard. *See Estren, supra*, note 2.

⁹⁸ Hon. Thomas Trent Lewis, *Introduction to the 'Best Interest of the Child' Standard*, DAILY JOURNAL, <https://www.dailyjournal.com/cle.cfm?show=CLEDisplayArticle&qVersionID=377&eid=922855&evid=1&qtypeid=8> (last visited Jan. 4, 2014); *see also* CAL. FAM. CODE § 3020 (West Supp. 2014).

⁹⁹ The philosophical goal of the juvenile delinquency court system is to provide a minor with the "education, treatment, and services they need to move past their crimes, reunite with their families, and become productive citizens." *See supra* note 14 and accompanying text; Los Angeles County District Attorney Adenale Oduye further expressed that the juvenile justice system in Los Angeles County is moving toward this "philosophical goal" of rehabilitation in offering minors appropriate services to overcome their specific challenges that brought them into the system. Interview with Adenale Oduye, DA, Los Angeles County District Attorney, Cal. (Feb. 18, 2014).

counsel will advocate for the child to “receive care, treatment, and guidance consistent with his or her *best interest*.”¹⁰⁰ Jo Kaplan, a Los Angeles juvenile defense lawyer and juvenile court commissioner, stated in an interview with the *Los Angeles Daily Journal* that section 5.663 gives “emphasis to a new and important way to start representing [delinquent] kids.”¹⁰¹ Kaplan further states, “If you don’t advocate for [youths] to get treatment and services, they’re never going to get better.”¹⁰²

Although jurisdictions with dual status programs have improved inter-court communication and collaboration through the use of screening and assessment strategies, coordinated case management and assignment, and planning and supervision, there still remains a disconnection between the dependency and delinquency court systems’ overall goals. To ensure successful outcomes for children deemed both a dependent of the court and a delinquent, the court systems must work together to create a united case plan for the youth. California dual status programs must adopt a standard of cooperation comprised of factors designed to assess the facts of each child’s situation while focusing on the best interest of the minor.¹⁰³ Initial training and education regarding the need for such a specific standard to existing groups and agencies, including attorneys and judges, will aid in effective implementation of the proposed standard.

III. Implementing the Proposed Standard of Cooperation

One of the largest discrepancies between the delinquency and dependency court systems is the way each system views the minor—either as a victim who needs nurturing, or as a perpetrator who needs punishment.¹⁰⁴ Because society generally views victims and perpetrators

¹⁰⁰ CAL. ST. FAM. JUV. RULE § 5.663 (West Supp. 2014) (emphasis added).

¹⁰¹ Blair Clarkson, *Role of Delinquency Attorneys will Expand*, LOS ANGELES DAILY JOURNAL (Nov. 2, 2004), <http://www.spitalaw.com/articles/role-of-delinquency-attorney-will-expand/>.

¹⁰² *Id.*

¹⁰³ See discussion *supra* pp. 32-34.

¹⁰⁴ See discussion *supra* pp. 6-7.

as requiring completely different treatments, it follows that our delinquency and dependency court systems were designed with two different end results in mind. But, when the systems must deal with an expanding number of youth who are dually involved in both courts at the same time,¹⁰⁵ the California juvenile court system must adopt a solution that effectively evaluates all of the circumstances a child is facing. The California juvenile court system through dual status programs now must drop the labels “victim” and “perpetrator”¹⁰⁶ and assess a minor’s entire situation through the proposed multi-factor standard of cooperation.¹⁰⁷

Section III first details each of the factors set forth in the proposed standard of cooperation. The factors focus case assessment on the key facts of the child’s situation, with the overall goal of creating a case plan that will be of maximum benefit to the minor. Next, this section turns to implementing the proposed standard. Mindful of ever-shrinking budgets, existing groups and initiatives, such as Los Angeles County’s Multi-Disciplinary Teams,¹⁰⁸ are ideal venues for effective implementation. Additionally, general implementation and cost-saving strategies are discussed.

A. Accurate Youth Assessment Using the Proposed Factors

First and foremost, a minor’s exposure to abuse and/or neglect must factor into the outcome of dual status cases. This factor will specifically look to: (a) the presence of domestic

¹⁰⁵ See *Los Angeles County Board of Supervisors, Crossover Youth Board Motion*, LACOUNTY.GOV (Nov. 5, 2012), <http://file.lacounty.gov/bos/supdocs/72609.pdf> (stating that “there are approximately 100 youth who crossover each month [in Los Angeles County].”); see also Schaumleffel, *supra* note 7, at 97 (asserting that one out of five foster children in the United States live in California).

¹⁰⁶ The case of Jamie M. demonstrates the frustrations labels impose. The California child welfare system labeled Jamie a dependent when she was ten months old. By age fifteen, she had been placed in seventeen different homes. After continued instability, she attempted to escape from her placement by stealing keys and attacking an attendant. This resulted in Jamie’s arrest, changing Jamie’s label permanently from “dependent” to “delinquent.” See *In re Jamie M.*, 104 Cal. Rptr. 2d 425, 426-28 (Ct. App. 2001).

¹⁰⁷ See Schaumleffel, *supra* note 7, at 98 (stating that “[i]nstead of focusing on a status or label for [crossover] children, attorneys, judges, probation officers, and social workers should be focused on the child’s strengths, weaknesses, and needs.”).

¹⁰⁸ See *infra* pp. 46-47.

violence and/or substance abuse in the home, and (b) the capacity of the child's parent(s) or guardian to provide a safe home with adequate food, clothing, and medical care.¹⁰⁹ For example, seventy-two percent of crossover minors in Los Angeles County have at least one parent with a history of substance abuse; twenty-five percent have a least one parent with mental health problems; and thirty-six percent have a family history of criminal behavior.¹¹⁰ These statistics are extremely indicative of a minor's delinquent acts because being abused or neglected as a child increases the likelihood of arrest by fifty-nine percent.¹¹¹ Studies consistently show that abuse or neglect is related to delinquency, drug use, and other behavioral problems in minors between the ages of fourteen and eighteen years old.¹¹²

The next factor assesses the mental and emotional needs of the child. Minors with a background in the child welfare system are ten percent more likely to be detained in juvenile detention facilities than non-crossover youth—even when race, age, and prior offenses are taken into consideration.¹¹³ “Harsher court outcomes reduce the likelihood that crossover youths will receive appropriate treatment.”¹¹⁴ Lack of appropriate treatment at this stage leads to the fact that crossover minors are *twice as likely* as juvenile justice-only youths to recidivate.¹¹⁵ It is not surprising, then, that without appropriate treatment children involved in both juvenile court systems are more likely to have health problems and persistent drug addiction.¹¹⁶ A recent study

¹⁰⁹ *Determining the Best Interests of the Child*, CHILD WELFARE INFORMATION GATEWAY (Nov. 2012), https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf#Page=2&view=Fit.

¹¹⁰ Shay Bilchik & Judge Michael Nash, *Two Sides of the Same Coin*, JUVENILE AND FAMILY JUSTICE TODAY (Fall 2008), <http://cjjr.georgetown.edu/pdfs/Fall%2008%20NCJFCJ%20Today%20feature.pdf>.

¹¹¹ *Impact of Child Abuse and Maltreatment on Delinquency, Arrest and Victimization*, NATIONAL INSTITUTE OF JUSTICE (Mar. 14, 2011), <http://www.nij.gov/topics/crime/child-abuse/Pages/impact-on-arrest-victimization.aspx>.

¹¹² Jennifer E. Lansford et al., *Early Physical Abuse and Later Violent Delinquency: A Prospective Longitudinal Study*, NATIONAL INSTITUTES OF HEALTH (Aug. 2007), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2771618/>.

¹¹³ Bilchik, *supra* note 110.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

showed that eighty-three percent of crossover youths in California exhibit substance abuse and/or mental health problems.¹¹⁷ The healthy development of crossover minors depends on the system's correct assessment of their treatment needs. Evaluation of a crossover youth's mental and emotional health is a crucial step. "Inadequate provision of services for this vulnerable population transforms from an issue of systemic inefficiency to personal tragedy when crossover youths engage in violent behavior."¹¹⁸

The third factor evaluates the mental and emotional needs of a crossover youth's parent(s). Generally an assessment that takes place in dependency court, but not in delinquency court, this factor is important for dual status programs to evaluate because of the overall goal of family reunification.¹¹⁹ This goal equally applies to delinquency courts because often family reunification is the child's expressed interest: something that delinquency courts take into consideration and the minor's defense attorney advocates. Parents with a child in the juvenile court systems are very often battling substance abuse and put their own addictions ahead of the welfare of their children.¹²⁰ At the same time, however, these parents often suffer from untreated mental health problems.¹²¹ Without any ability to seek treatment and services, the parents of our crossover youth are unable to maintain employment or provide a stable and nurturing home environment for their children.¹²² Although it does "take a village" to create positive change in a minor's life, without familial support any court-induced positive changes in the child will be short-lived upon his or her return home.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ CAL. WELF. & INST. CODE § 361.5 (West Supp. 2014).

¹²⁰ *Family Dependency Treatment Courts: Addressing Child Abuse and Neglect Cases Using the Drug Court Model*, BUREAU OF JUSTICE ASSISTANCE (Dec. 2004), available at <https://www.ncjrs.gov/pdffiles1/bja/206809.pdf>.

¹²¹ *Id.*

¹²² *Id.*

Taking into consideration the views of the juvenile justice system and juvenile defense attorneys, the fourth factor in this proposed standard of cooperation weighs the expressed interest of the child—but this factor is not dispositive. This factor seeks to ensure the child’s voice is heard during the proceedings, as well as to help harmonize the two juvenile court systems’ approaches. Allowing the child to be heard during his or her court cases empowers the minor within the system.¹²³ After all, the delinquency and dependency cases will almost certainly have a life-altering affect on this child, and a minor should feel part of the decision-making process of his or her life. Allowing the child’s expressed interest to be the foundation of the proposed standard would be misguided, as young children cannot meaningfully direct their litigation, and older children often misdirect their litigation.¹²⁴ In basing this standard on the best interest of the child, a court has the autonomy to take into consideration every circumstance in the minor’s life, including the minor’s expressed interests.

Finally, the fifth factor assesses the gravity of the crime the minor committed. The facts surrounding the commission should be evaluated when considering the type of remediation the child should receive. For example, if the minor commits petty theft of stealing a candy bar, such as in James’ case,¹²⁵ the attorney should focus on the fact that the child was hungry and did not have access to food at home. In this type of situation, the attorney should concentrate more on the primary child welfare issues and less on the secondary issue of the crime. On the other hand, if a minor commits a violent crime, such as armed robbery or assault with a deadly weapon, the court should consider a stricter remediation sentence. From a public safety perspective, effectively addressing the issues behind the youth’s propensity for violent crime as soon as it

¹²³ *NACC Recommendations for Representation of Children in Abuse and Neglect Cases*, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, at 13, available at www.naccchildlaw.org/resource/.../nacc_standards_and_recommend.pdf.

¹²⁴ *Id.*

¹²⁵ *See supra* Estren, note 2.

presents itself is vital.¹²⁶ It is also important to note that this factor goes hand-in-hand with assessing the child's mental and emotional needs, as the crime committed is likely the result of the youth's need for treatment.¹²⁷

B. Implementation Through the Help of Existing Groups and Initiatives

Upon the enactment of California Welfare and Institutions Code section 241.1 and AB 129,¹²⁸ Los Angeles County created a Multidisciplinary Team (MDT) to help support "enhanced case assessment" of children eligible for dual status programs.¹²⁹ An MDT is comprised of a children's social worker, a probation officer, a Department of Mental Health psychiatric social worker, and an education consultant.¹³⁰ The overall responsibilities of an MDT include: preparing the joint assessment report from information provided by social services and probation; using this joint assessment to make recommendations to the court regarding the appropriate legal status and case services for the minor; connecting the minor to necessary services; following the youth's progress through his or her participation in services; and reporting to the court.¹³¹ In adhering to such responsibilities, an MDT convenes pre-disposition and post-disposition with the youth and the youth's caregiver to discuss implementation of case services.¹³² Having such comprehensive duties, an MDT plays a crucial role in dual status youth assessment and holds a good deal of power when making recommendations to the court

¹²⁶ This point parallels the discussion about the monetary cost to society of juvenile offenders. Ensuring that a crossover youth who commits a crime (especially one that is violent) has the appropriate services necessary to assist in rehabilitation will be less costly in the long run than housing the youth indefinitely in detention facilities, will help this young person be a more stable and productive member of society, and—most importantly—will help to save lives. *See supra* note 25 and accompanying text.

¹²⁷ *See supra* note 115 and accompanying text.

¹²⁸ *See discussion supra* pp. 5–6 (discussing joint assessment of a dual status child by the court systems and the adoption of dual status programs).

¹²⁹ LACOUNTY.GOV, *supra* note 105.

¹³⁰ *Id.*

¹³¹ *MHSA Annual Report Update, 241.1 Crossover Youth Program*, COUNTY OF LOS ANGELES, DEPT. OF MENTAL HEALTH (2012-2013), http://file.lacounty.gov/dmh/cms1_187836.pdf.

¹³² LACOUNTY.GOV, *supra* note 105.

regarding whether a child would benefit from dual jurisdiction. For this reason, compounded by the fact that an MDT is made up of four individuals all coming from different perspectives,¹³³ implementing the standard of cooperation in MDT best practices would aid in holistic (or all-encompassing) decision-making that best benefits the child.

Placer County, California, provides an additional example of how the proposed standard of cooperation is designed to enhance understanding within existing dual status programming. In an effort to improve collaboration between agency workers, Placer County introduced Family Team Meetings (FTMs) in conjunction with dual status programs.¹³⁴ Similar to an MDT, FTMs seek to strengthen collaboration between dual status parties and are comprised of a social worker, a probation officer, the minor, and the minor's parent(s) or guardian.¹³⁵ Although Family Team members initially reported difficulties in working together, a social worker involved with FTMs reported that after establishing regular team meetings, things began to run more smoothly.¹³⁶ However, Family Team members further reported that more direction for agency workers would be helpful, and one team member noted they are "hungry for structure."¹³⁷ This is a perfect example of the proposed standard of cooperation providing an easy solution for structure.

By implementing this standard through an MDT, FTMs, and other, similar existing programs throughout California, counties are quickly supplied with a cost-effective¹³⁸ tool

¹³³ See *supra* notes 91-93 and accompanying text (asserting that dual status cases are often inconsistently handled: a 2006 survey found that only fifty-one percent of respondents could identify expectations and procedures for handling dual status cases).

¹³⁴ *Dual-Status Children: Protocols for Implementing Assembly Bill 129, A Report to the California Legislature*, ADMINISTRATIVE OFFICE OF THE COURTS (Nov. 2007), <http://www.courts.ca.gov/documents/AB129REPORT113007-edited.pdf>.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See *infra* pp. 51-52 and note 146.

providing guidance for youth assessment. This standard brings clarity and organization to dual status parties struggling with how to assess a dual jurisdiction youth correctly and in a way that considers both juvenile court systems' goals.

C. Effective Implementation Strategies

Some pushback is expected when introducing new information. However, this section identifies several strategies designed to minimize negative reactions during implementation of the proposed standard, as well as to enhance the overall effectiveness of dual status programming.

First, joint training sessions involving agencies from both court systems provide parties with a complete overview of the unique challenges dual status youths face, along with knowledge of the specific goals sought by the two juvenile systems.¹³⁹ The purpose of joint trainings is to break down misconceptions and ensure all parties gain an understanding of the goals of both juvenile court systems immediately. This eliminates the initial confusion and disconnect of which many dual jurisdiction programs complain. Such trainings require a lead person, and the most effective leadership comes from the top. Here, judicial leadership is key to smooth implementation of the standard of cooperation.¹⁴⁰ Judicial leadership could come in the form of a judge, an attorney, or a specific, judicially appointed individual. In fact, many dual status programs exclude attorneys from joint meetings.¹⁴¹ Including attorneys as point people brings forth further clarity because a child's attorney is extremely influential to the outcome of the child's case.

¹³⁹ ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 134.

¹⁴⁰ *See id.*

¹⁴¹ For example, neither the FTMs nor an MDT include the child's attorneys during their collaborative assessments and recommendations. *See discussion supra*, pp. 46-48.

Second, in conjunction with joint training sessions, assigning one judge and one attorney to handle a minor's dependency and delinquency cases allows for continuity in implementing the standard of cooperation.¹⁴² The "one judge" method enables a judge to have a more complete picture of the child when assigning services to a dual status youth and requires appointment of a judge who is familiar with both the delinquency and dependency court systems.¹⁴³ Moreover, assigning a child one attorney ensures a dual jurisdiction minor has "holistic and continuous representation"¹⁴⁴—aligning perfectly with the goal of the standard proposed here. For example, California's Orange County Office of the Public Defender represents all children in dependency and delinquency cases.¹⁴⁵ Also, because California courts require counsel be appointed for children in dependency and delinquency proceedings, a single attorney approach is more cost effective than appointing two attorneys for one child.¹⁴⁶

Third, in addition to following the "one judge, one attorney" approach above, continuity is enhanced by establishing a specialized dual status calendar. This of type calendar organization ensures that all dual status cases are heard within the same day (or several days), and a minor's delinquency and dependency cases take place within the same hearing, if possible.¹⁴⁷ Structuring when dual status cases are heard helps facilitate the appearance of all parties who have an interest in the child's cases.¹⁴⁸ Moreover, establishing this type of calendar will likely have a cost-effective impact on the court. Just as the appointment of one attorney per dual status youth promotes cost savings, structuring dual status cases to be heard within the same hearing creates

¹⁴² See Schaumleffel, *supra* note 7, at 99; see also *supra* note 82 (discussing jurisdictions that successfully implemented the "one judge" approach in dual status programming).

¹⁴³ See *id.*

¹⁴⁴ See *id.*

¹⁴⁵ COUNTY OF ORANGE, OFFICES OF THE PUBLIC DEFENDER, <http://www.pubdef.ocgov.com/> (last visited Feb. 17, 2014).

¹⁴⁶ Schaumleffel, *supra* note 7, at 100.

¹⁴⁷ See ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 134.

¹⁴⁸ *Id.*

fewer proceedings. A separate dual status calendar could also reduce overall trial times and effectively lighten court loads—all leading to monetary savings.

Fourth, responsibilities within a minor's case plan should be delegated clearly to each court system. For example, Los Angeles County's delinquency system, through probation, assumes responsibility for "monitoring community service, substance abuse counseling or treatment, collection of restitution, [and] other conditions of probation ordered by the Delinquency Court," while the dependency system, through social services, assumes responsibility for "medical care, mental health services, dental care, visitation between the child and family, education services, emancipation planning, placement services, [and] investigation of child abuse allegations."¹⁴⁹

Finally, compiling feedback on how the standard is working ensures problems are quickly identified and solutions developed.¹⁵⁰ With today's modern technology, a jurisdiction can easily establish a forum for feedback by setting up a website designed to accept parties' comments; sending out a survey periodically to all dual status program parties through the use of Survey Monkey,¹⁵¹ or feedback can be collected via email. By choosing one or two particular point persons to handle all feedback compilation, gathering such information should impose only a minimal time commitment. Additionally, feedback should be addressed during the aforementioned joint trainings.¹⁵²

Dual status youths are generally evaluated through two different lenses: dependency court's view of the minor as a victim and delinquency court's view of the youth as a perpetrator.

¹⁴⁹ Judge Michael Nash, MEMORANDUM OF UNDERSTANDING ON DUAL SUPERVISION CASES (Jul. 9, 1999), <http://ican4kids.org/documents/CANProtocol/ap13.DualSupervision.pdf>.

¹⁵⁰ ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 134.

¹⁵¹ *See* SURVEY MONKEY, <https://www.surveymonkey.com> (last visited Mar. 9, 2014).

¹⁵² *See* discussion *supra* pp. 49-50; *see also* ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 134 (asserting that when assessing any protocol feedback, all levels of agency staff, including supervisors and line staff, should be included in the conversation).

However, when both court systems assess a dual status youth under the same standard, these differing viewpoints melt away and the courts reach a united conclusion. Jurisdictions can effectively break down misconceptions and eliminate the systematic lack of understanding that comes from a one-sided view of a dual status minor's circumstances by implementing this standard of cooperation through existing California dual status program initiatives.

IV. Conclusion

The reality of a minor suffering from some type of abuse and/or neglect committing a crime is undeniable when faced with the daunting statistics: an abused and/or neglected young child has an increased risk of a violent crime arrest as a juvenile by ninety-six percent.¹⁵³ Thus, the correlation between children in the dependency system and the delinquency system should come as no surprise. Yet California has only recently taken action in recognition of the crossover between youth in the juvenile court systems by enacting AB 129 in 2005,¹⁵⁴ which finally allows courts to hear a youth's open dependency and delinquency cases simultaneously through dual status programs. But along with the emergence of dual status programs comes a lack of understanding and communication between the parties of the two different juvenile court systems.

To this end, California's dual status programs need to adopt a standard of cooperation, bridging the gap between the delinquency court's focus on remediating a youth's wrongful actions and the dependency court's focus on protecting a minor from third-party abuse and/or neglect. This proposed standard will be based upon the best interest of the child and look to the totality of the dual status youth's circumstances, assessed under the factors enumerated earlier.¹⁵⁵

¹⁵³ Herz, *supra* note 47.

¹⁵⁴ See ASSEMB. B. 129 (Ca. 2004), available at <http://www.courts.ca.gov/documents/AB129bill-chaptered.pdf>.

¹⁵⁵ See discussion *supra* pp. 35-36.

This standard is designed to improve California dual status programs' effectiveness when evaluating a minor's circumstances, while also enhancing agency collaborative principals already in place, such as Los Angeles County's Multidisciplinary Team and Placer County's Family Team Meetings.

Implementing this proposed standard will also have a positive impact on society. The current trend in California is harsher court outcomes for dually involved youth.¹⁵⁶ Harsher sentences often lead to a lack of appropriate treatment, which in turn causes dual status minors to be twice as likely to recidivate and remain in the system when compared with juveniles involved only in the delinquency court system.¹⁵⁷ This comment's proposed standard provides an ability to stop this destructive trend and creates an avenue for California's juvenile court systems to work together to ensure crossover youths receive necessary services and treatment—an avenue that will likely reduce recidivism among this population. Given that each minor housed in a California juvenile correctional facility costs taxpayers almost one-quarter of a million dollars per year,¹⁵⁸ reducing the number of our children in detention facilities will free up a considerable amount of money and release funding that can be allocated to other programs. Further, when more dual status youths receive appropriate rehabilitation services, they are less likely to pass on this systemic cycle of crime and violence to the next generation.

¹⁵⁶ Bilchik, *supra* note 110; see also Amanda K. Packel, *Juvenile Justice and the Punishment of Recidivists under California's Three Strikes Law*, 90 CALIF. L. REV. 1157, 1157 (2002) (discussing California's inclusion of juvenile adjudications as prior strikes under the state's Three Strikes law, which emphasizes the punitive intent of the juvenile justice system over any remaining rehabilitative purposes).

¹⁵⁷ See Bilchik, *supra* note 110.

¹⁵⁸ See *California Counties Struggle to Take Over Juvenile Justice*, THE CALIFORNIA REPORT (Mar. 23, 2011), <http://www.californiareport.org/archive/R201103230850/a>.

Through the use of this proposed standard of cooperation, the labels “dependent” and “delinquent” that are used so often in the juvenile court systems, as seen in Jamie’s case,¹⁵⁹ are dropped. A child can now be viewed simply for who he or she is: a kid with a chance.

¹⁵⁹ See *supra* note 106.

