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March 28, 2016

To: Supervisor Hilda L. Solis, Chair
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From: Sachi A. Hamai
Chief Executive Officer

ANALYSIS OF THE COUNTY'S JUVENILE INDIGENT DEFENSE SYSTEM

Attached is the final report on the Juvenile Indigent Defense System. On February 11, 2014, the Board directed the Chief Executive Officer, in collaboration with the Auditor-Controller, to hire an outside consultant to conduct an analysis of the County's juvenile indigent defense system in an effort to improve the current system and report on the findings for consideration by the Board. The Warren Institute on Law and Social Policy at UC Berkeley School of Law (Consultant) was selected to perform the analysis.

Summary of Findings

The County's juvenile indigent defense system was created over twenty years ago. Since that time, juvenile defense has evolved; defense attorney's roles have expanded; and attorneys are required to serve their client not only during all phases of the delinquency process, but including representation of the juvenile once his/her case has concluded. Defense attorneys are now expected to provide post-disposition representation which ensures the youth receives services ordered by the court, such as educational, medical and psychological; representation at post-disposition meetings; assisting with the sealing or expunging of records; and appealing of cases. Unfortunately, the County's system has not changed nor kept up-to-date with these new and expanding defense requirements. The aforementioned concerns and other system improvements are discussed in more detailed below and in the attached consultant's report.

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Juvenile Indigent Defense System Overview

Pursuant to California Government Code Section 27706, the County of Los Angeles is required to provide complete legal defense services for all indigent juvenile defendants when the Los Angeles County Public Defender and the Alternate Public Defender are unavailable or declare a conflict of interest. To ensure this obligation is met, the Chief Executive Office contracts with 8 panel attorneys to provide qualified representation to indigent youth in juvenile delinquency proceedings in 8 Superior Court locations as follows: Eastlake, Pasadena, Sylmar, Pomona, Compton, Inglewood, Los Padrinos (Downey), and Long Beach. The panel attorneys are paid a one-time flat fee per petition. The panel contract system was created in the mid-1990s.

Filing Trends and Total Cost of Juvenile Defense

There has been a steady decline in the number of juvenile delinquency petitions filed in Los Angeles for over a decade. From 2010 to 2014, new petitions in Los Angeles dropped by almost half. Distribution of the petitions has remained static over the years with 67% being assigned to the public defender and 28% assigned to the panel attorneys.

From 2010 to 2014, the County expended, on average, approximately \$19.5 million on indigent defense services which includes costs for the Juvenile Division (\$16.3 million) of the Public Defender's Office and the costs for the panel attorneys (\$3.2 million).

Public Defender and Panel Resources

The County's Public Defender's Office has on-staff social workers, investigators, resource attorneys, appellate attorneys, an immigration attorney, and administrative support. The panel attorneys, on the other hand, must either pay for these resources from the per petition flat fee they receive or seek access to social workers and other 730 experts via the Court.

Comparative Rate of Resource Use

The report found that the County Public Defender's Office uses more resources (i.e., investigators, social workers, doctors and/or experts and education attorneys) than panel counsel. Rate of resource use is detailed bellows:

- Investigators: PD 26%; Panel Counsel 9%
- Social Workers: PD 32%; Panel Counsel 1%
- Doctors and Experts: PD 20%; Panel Counsel 9%
- Education Attorneys: PD 2%; Panel Counsel less than 1%

Per-Case Costs Borne by Counsel

The panel counsel must bear a number of costs from the per petition flat fee, such as training, investigators and other costs associated with representing their clients. Public Defender's Office provide training, social workers, investigators and other resources to all of deputy public defenders assigned to the Juvenile Division.

Neither panel counsel nor public defenders bear the cost of 730 experts paid through the County's Professional Appointee Court Expenditures (PACE) System. Social workers, therefore, can be obtained by panel counsel at no cost. Data was not available to quantify the actual per-case costs for either the Public Defender or panel counsel. However, the report determined, for comparison purposes only, that by measuring the annual costs against the number of new petitions or the number of dispositions that on average the Public Defender expended \$2,912 per disposition; while the panel counsel expended, on average, \$751 per disposition.

Transfer Cases

The report found that indigent juveniles facing transfer to adult court are more often assigned to a panel counsel. Over the past five years, panel counsel was assigned 71% of the fitness motions and public defenders were assigned 29%. Panel counsel clients were more likely to be found unfit and transferred to adult court. Over the past five years, 25% of panel clients were found unfit and transferred to adult court, but only 15% of public defenders clients were found unfit and transferred to adult court. It was also determined that panel counsel consulted less often with experts, provided less documentation to support client and filed fewer motions. Panel counsel also resolved these unfit cases faster than public defenders – the average was 9.4 months for public defenders, but only 4.9 months for panel counsel.

National Standards

National and State standards state that the:

- County should provide investigators to panel counsel;
- County should ensure that training is available without cost to all counsel for indigent defendants;
- County should establish a qualified oversight body for panel counsel to ensure that substantive oversight, supervision and quality control are provided to the panels.
- Flat-fee contracts are strongly criticized in California and that at least since 2006 the State Bar has stated that they should not be used.

The report determined after surveying other counties:

- Los Angeles is the only county that does not pay for investigators for their panel counsel.
- Los Angeles is the only county that has no centralized mechanism for quality control nor has an experienced attorney or committee that provides supervision or oversight to panel attorneys.
- Los Angeles is the only county that compensates panel counsel with a per petition flat-fee rate. In other counties, panel attorneys are compensated by salary, on an hourly basis or via an event-based flat fee structure that provides different flat fees for different activities for different types of cases.

Recommendations from County Guidelines

The consultant found that the Public Defender objected to the draft Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court and the final Guidelines (issued in 2014) were not endorsed by the Public Defender. Many of the objections arose from differences in opinion regarding the scope of the Public Defender's role, not from a lack of funding. Thus, not all objections would be resolved even if the County fully funded the Public Defender's identified costs to implement the Guidelines.

Conclusion

The report findings were shared and discussed with the Public Defender, Alternate Public Defender and Panel Attorneys. The Chief Executive Office, as always, is ready to work with the impacted County departments to resolve/address the findings identified in the report. Our office is committed to ensuring that excellence in juvenile defense is achieved and justice for juveniles is promoted through zealous and well-resourced legal representation.

If you have any questions, please contact me, or your staff may contact Sheila Williams at (213) 974-1155.

SAH:JJ:SW:cc

Attachment

c: Executive Office, Board of Supervisors
County Counsel
Public Defender
Alternate Public Defender

Los Angeles County Juvenile Indigent Defense System

Report to the Los Angeles County CEO and
Los Angeles County Auditor/Controller
March 1, 2016
Final

Prepared by the Warren Institute on Law and Social Policy, UC Berkeley School of Law

MARCH 1, 2016
WARREN INSTITUTE ON LAW AND SOCIAL POLICY
UC BERKELEY SCHOOL OF LAW

FINAL

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Introduction

On February 11, 2014, the Los Angeles County Board of Supervisors passed a motion directing the Chief Executive Officer to review the County's juvenile indigent defense system.¹ The County is considering major reforms to its juvenile indigent defense system and was interested in a comprehensive review by an independent, neutral consultant to review the current structure and to provide recommendations for system improvements. The Chief Justice Earl Warren Institute on Law and Social Policy at UC Berkeley School of Law was chosen to perform the analysis.

One of the questions underlying the Board motion – that is, the relative benefits and drawbacks of institutional public defenders and court-appointed private panel counsel -- has long been debated in jurisdictions across the country.² This report does not resolve that much-debated question, nor does it determine whether public defenders or panel counsel in Los Angeles are doing a "better" or "worse" job for their clients. Criminal cases, especially those involving juveniles, can be complicated and a full outcome analysis that appropriately accounted for the vast variety of cases, the differing prior histories of each juvenile, and the fact that the benefits of high quality representation can be felt years after the representation ceases, was well beyond the scope of this review. This report looks at the Los Angeles County juvenile indigent defense system, as it exists now. The report identifies strengths and weaknesses in Los Angeles' existing indigent defense system based on data, stakeholder input, national and local standards, and comparisons with other California counties. It is hoped that the report provides the Board with a relevant and timely assessment as it considers a variety of changes to the current juvenile indigent defense system in Los Angeles County.

In the course of conducting this assessment, two threshold issues became clear. First, although the County uses contracts to compensate panel counsel, contracts for panel counsel should not be examined as if they were contracts for other goods or services. The obligation to provide effective counsel for indigent criminal defendants is rooted in the Constitution, and the contours of the obligation should be guided by the Constitution and by national and state laws and standards regardless of the means by

¹ Statement of Proceeding for the Regular Meeting of the Board of Supervisors of the County of Los Angeles, February 11, 2014.

² See, e.g., Pauline Houlden and Steven Balkin, "Quality and Cost Comparisons of Private Bar Indigent Defense Systems: Contract vs. Ordered Assigned Counsel," 76 *J. Crim. L. & Criminology* 176 (1985); Roy Flemming, "Client Games: Defense Attorney Perspectives on Their Relations with Criminal Clients," *American Bar Foundation Research Journal* 253 (1986); and Norman Lefsein, "Criminal Defense Services for the Poor," Chicago: American Bar Association Standing Committee on Legal Aid and Indigent Defense (1982).

which counsel is compensated. As noted most recently in a September 2015 bill signed by Governor Brown, “competent legal representation by defense attorneys is needed to preserve the integrity of the juvenile justice system, prevent wrongful judgments, reduce unnecessary incarceration, and help ensure that minors receive the care, treatment, and guidance upon which the juvenile justice system is premised.”³ The County should ensure that indigent juveniles are provided with competent and effective attorneys whether those attorneys are working within a public defender office or operating by contract; the quality of a defendant’s representation should not be a function of random attorney assignment. The question is thus not what the current contract allows, but rather whether the County’s indigent defense structure enables high-quality and effective representation for indigent juveniles no matter which attorney is assigned. Among other things this means that the issue is not the CEO’s administrative oversight of the contract, which has been quite capable, but whether having the CEO responsible for ensuring effective counsel is the best way to meet the County’s obligation.

Second, it became clear while conducting interviews and outreach for this report that most of the attorneys representing indigent youth in the County do so because they care about their clients, whether those attorneys are public defenders or contracted panel counsel. To allege otherwise does a disservice to many hardworking and committed professionals. At the same time, however, juvenile defense is not like adult defense because juvenile defenders, unlike adult defense attorneys, fulfill a dual role: juvenile attorneys must defend their clients against the allegations just as all criminal defense attorneys must, *and* they must advocate for their clients’ broader “care, treatment, and guidance” both before and after disposition of the criminal charges.⁴ This expanded scope includes “the thorough mental health, substance abuse, educational and developmental evaluations and services and treatment necessary in the modern era of proper Juvenile Delinquency Court administration.”⁵ Such extended representation is not only modern – and both ethically and legally required – it is smart, as research shows that youth receiving more comprehensive wraparound

³ AB703, signed into law by Governor Brown on September 30, 2015.

⁴ “Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court”, Superior Court of California County of Los Angeles, Juvenile Division, p. 2 citing to Rule 5.663 of the California Rules of Court, adopted by the California Judicial Council in 2004. Section 5.663(d)(1-2) further clarifies that juvenile counsel is not required to “assume the responsibilities of a probation officer, social worker, parent or guardian,” or otherwise provide non-legal services to the child. Section 5.663(d)(3) limits the scope of representation to those proceedings pertaining to the juvenile delinquency matters. See also AB 703, signed on September 30, 2015, which requires that attorneys provide post-dispositional representation.

⁵ State Bar of California, Guidelines on Indigent Defense Services Delivery Systems, p.22 (2006). Communication with the State Bar on July 10, 2015 confirmed that the Guidelines are still an active publication of the California State Bar. www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

representation have better outcomes in areas including emotional and behavioral health, family functioning, educational outcomes, delinquency, and police contact.⁶ Providing expanded representation is thus not only better for the youth who come before the Court, but can also lower the County's long term cost if those children and adolescents are able to break the cycle of crime and incarceration.

The County set up its juvenile indigent defense system more than twenty years ago and the basic structure remains unchanged today. Although the expanded scope discussed above is no longer new, it came about almost a decade after the County's current system was established. Termed a "revolution" at the time, it is now the standard of practice.⁷ The question for the County is whether the current system continues to serve its youth. It is hoped that this report can assist the County in answering that question.

⁶ See Wilson, Kate, "Literature Review: Wraparound Services for Juvenile and Adult Offender Populations. A Report Prepared for: California Department of Corrections and Rehabilitation." Center for Public Policy Research, University of California Davis (2008); Carney, M. M., and Buttell, F., "Reducing Juvenile Recidivism: Evaluating the Wraparound Services Model," *Research on Social Work Practice*, 13, 551-568 (2003); and Pullmann, M. D., Kerbs, J., Koroloff, N., Veach-White, E., Gaylor, R., and Sieler, D., "Juvenile Offenders with Mental Health Needs: Reducing Recidivism Using Wraparound." *Crime and Delinquency*, 52, 375-397 (2006).

⁷ State Bar of California, Guidelines on Indigent Defense Services Delivery Systems, p.3 (2006). <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=fwTzyTmupEY%3D&tabid=2326>

Methodology

Methodology

Information in this report was compiled from a variety of sources, both quantitative and qualitative. Efforts have been made to be inclusive of various stakeholder groups including the Office of the Public Defender, the Alternate Public Defender, panel heads, panel counsel, and judges. Stakeholder input was obtained through numerous one-on-one interviews, group meetings, email communications, and two on-line surveys. In addition, the Office of the Public Defender, the Alternate Public Defender, and panel heads provided the Warren Institute with extensive written information.

Although community members and juveniles involved in the delinquency system are undoubtedly stakeholders and their input is extremely valuable, obtaining their input was beyond the scope of the Warren Institute's review. It is strongly recommended that the County seek contributions from community members, families, and juveniles as it considers changes to the current system.

Stakeholder input in this report reflects:

- Multiple interviews, emails, and conversations with representatives from the Public Defender;
- Multiple interviews, emails, and conversations with representatives from the Alternate Public Defender;
- Multiple interviews, emails, and conversations with the eight panel heads;
- Multiple interviews, emails, and conversations with various court entities, including judges, court staff knowledgeable about JAI, and PACE system managers;
- An on-line survey that was distributed to all panel attorneys asking about resources, training, and expenses, among other topics. Seventy-five percent (34 of 45 panel counsel) answered some or all of the questions, representing all eight courthouse branches with contracted panel counsel;
- An on-line survey that was distributed to the delinquency court judges asking about attorney performance and potential system improvements. Over three-quarters (78%, or 18 of 23 judges) completed the survey (see Appendix A for selected highlights from the survey of judges);
- Information provided by the Office of the Public Defender including staffing levels, budget, caseloads, policies and procedures, training, and referrals;

Methodology

- Information provided by the Alternate Public Defender including staffing levels, budget, caseloads, policies and procedures, training, and referrals; and
- Interviews and emails with representatives of juvenile indigent defense systems in ten selected California counties.

Multiple site visits to Los Angeles County were conducted by the Warren Institute team for in-person meetings with the Office of the Public Defender, the Alternate Public Defender, judges, panel heads, court staff, and other stakeholders.

In addition to input and information from stakeholders, relevant data was extracted from the County's JAI system, the County's PACE system, and the panel counsel invoicing and payment system when possible.

JAI System. The Juvenile Automated Index (JAI) system is a computerized record-keeping system used by many agencies in Los Angeles including law enforcement, Probation, Superior Court-Juvenile, the District Attorney, the Public Defender, and the Department of Children and Family Services. For Juvenile Delinquency Court, the JAI system serves as a calendaring system based on minute orders associated with particular court appearances. JAI was not designed to be used as a data tracking and analysis system and the reliability of some of the data elements is questionable. However, data from the system can generally be utilized to compare the distribution of types of events. For example, the absolute number of new juvenile petitions per year might be inaccurate but the percentages of new petitions that are assigned to panel counsel as compared to public defenders are generally reliable. For the purposes of this study, JAI data was used as one source to examine petitions, dispositions, transfer cases, first-time camp commitments, and DJJ commitments.⁸

PACE System. The Professional Appointee Court Expenditure (PACE) system is used to process court payments. For the purposes of this evaluation, it provided information about rate of use of doctors, expert witnesses, exam experts, and social workers. The PACE system categorizes the available resources and experts into a few broad, ambiguous categories. The County does not maintain definitions regarding what types of experts fall into which categories, and interviews confirmed that experts obtained

⁸ Because it is a calendaring system, JAI codes as "disposition" any event that ends part or all of an issue before the court, sometimes including disposition of the petition, dispositions of motions, disposition of any violations, and conclusion of the case. Creating a file of dispositions to use in this report therefore required some manipulation of the data in a way that was not required for other files. For this report, disposition data were associated with court appearances during which the original 601 or 602 petition would be resolved (starting with arraignment and proceeding through adjudication and disposition), using only one disposition for each petition and using the latest event in that range. Events that normally occur after disposition of the initial petition, such as 777 violation hearings, were not included in the count of dispositions for this report, even if JAI coded them as "disposition."

Methodology

through PACE (called 730 experts) use different methods to determine their category type.⁹ Therefore, PACE cannot provide reliable data regarding the specific *types* of 730 experts used by public defenders or panel counsel or the rate of use. However, data was available for PACE requests as a whole, and some estimates can be made by narrowing the PACE categories.

Panel Counsel Billing and Payment. The CEO provided the Warren Institute with copies of detailed quarterly panel counsel invoices covering a three-year period from February 2012 through January 2015, as well as data on payments made by the County panel counsel for the five-year period February 2010 through January 2015.¹⁰

Fitness Case Files. An in-person review of case files in which a fitness motion had been filed was conducted. The review was conducted for cases in which the fitness motion was filed, whether or not the youth was ultimately transferred to adult court.

What is a “case”?

In delinquency court, juveniles are assigned a unique case number at the time of their initial contact with the court. The allegations against the child are contained in a petition that is tracked by its filing date. Multiple petitions can be filed over time if the juvenile is alleged to have committed new delinquent acts, but the case number will stay the same. This is different than adult court, where a new case number is assigned when new charges are filed. Whereas multiple cases against a particular defendant in adult court would have multiple case numbers, in juvenile delinquency court the case number would remain the same but new petition filing dates would be added. The delinquency court therefore tracks not only the case numbers, but also the petition filing dates for the juveniles appearing before it.

For purposes of this report, a “case” was considered to be the combination of the juvenile’s unique case number and the unique petition as recorded by the petition filing date. Thus a statement in this report about “50 cases” will refer to 50 different proceedings, some of which will have the same case number if the same juvenile was involved.

⁹ The categories are: Attorney-Conflict, Attorney-No PD, Attorney-Other, Investigator, Doctor, Expert Witness, Laboratory, Interpreter, Translator, Examination Expert, Court Reporter, and Legal Runner.

¹⁰ Differences in a billing year (November through October) for panel counsel and a fiscal year for the PD (July through June) and a calendar year means that in some places in this report the 12 –months included in a year are out of sync.

Executive Summary

Executive Summary

The summary below documents the highlights from each section of the report, organized around the questions posed by the Board of Supervisors. The findings in this report are complex, and readers are encouraged to read these highlights in conjunction with the background, context, and explanations provided in the body of the report.

REPORT HIGHLIGHTS

System Overview

The County has eight different contracts with eight different groups of private panel lawyers, in eight of the nine juvenile delinquency branches. These panel lawyers represent youth if the Public Defender has a conflict. The contracts provide for a one-time flat fee of \$340 to \$360 per petition.

In the ninth branch, the Alternate Public Defender represents the youth if the Public Defender has a conflict.

The panel contract system was created in the mid-1990s and has not substantively changed since then. The panel attorneys who bid on the contracts twenty years ago are still working as juvenile delinquency panel lawyers in the County, and very few new attorneys have been added.

Each branch contract is signed by a panel head on behalf of the group of attorneys in that branch. The panel heads take a percentage or per-petition amount from each quarterly payment from the County, which reduces the per-petition amount paid to the other panel lawyers in that branch.

Although the County's contracts are with groups or associations, there are no formal associations and there are no written agreements between the attorneys in each branch. Other than the attorneys who sign the contracts, therefore, it appears that the County's panel lawyers may be acting without written agreements with the County.

In one branch, the attorney signing the contract no longer represents youth in delinquency court, and has not done so for at least three years. That attorney continues to sign the contract, but a different panel head manages the attorneys in that branch.

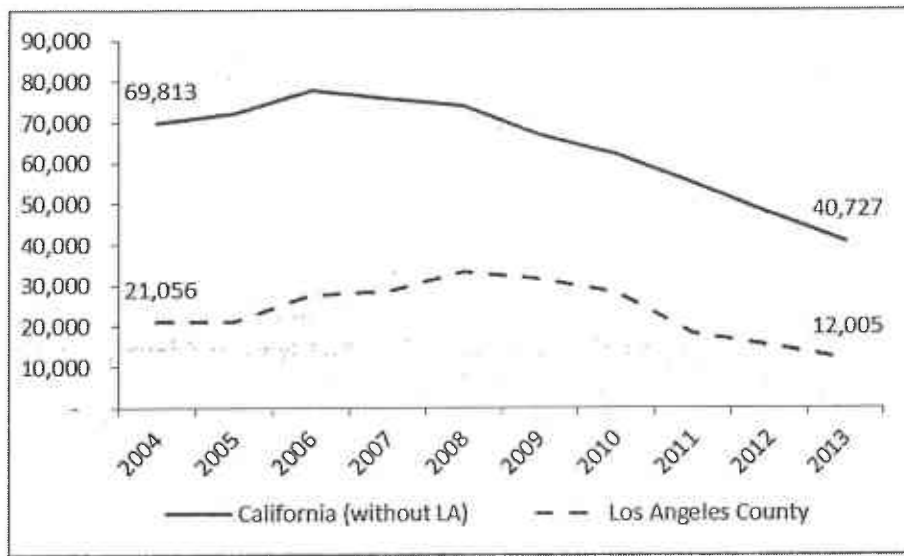
Executive Summary

Panel attorneys invoice for each new 601 and 602 petition (new alleged offenses), but they also invoice for 777 petitions (post-disposition violations), 778 petitions (changes in status), witness appearances, and AB12/212 matters. Some of these matters can be resolved quickly but the flat fee is the same; panel lawyers use the income from these smaller matters to subsidize their more complex cases.

Filing Trends and Total Cost of Juvenile Defense

Juvenile delinquency petitions have been dropping in Los Angeles as well as in the rest of the state for the past decade (see figure below).

Juvenile Delinquency Petitions, Los Angeles County vs. California, FY 2004 - FY 2013



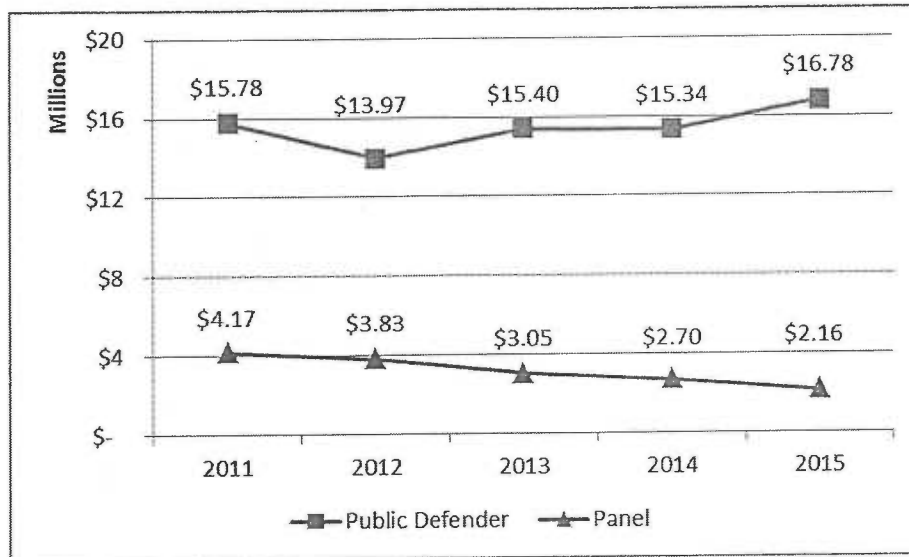
From 2010 to 2014, new petitions in Los Angeles dropped by almost half. Distribution of those petitions has remained roughly the same over the five years, with about 67% initially assigned to public defenders and about 28% initially assigned to panel counsel.

The total number of dispositions has also dropped but the distribution has changed. The share of dispositions handled by public defenders rose from 49% to 56% between 2010 and 2014; panel counsel's share of dispositions dropped from 43% to 36%.

From FY 2010-11 to FY 2014-15 the actual costs of the Juvenile Division of the Public Defender rose from \$15.8 million to \$16.8 million. The amount paid to contracted panel counsel in the eight branches with panel contracts dropped from \$4.2 million to \$2.2 million.

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Public Defender Actual Costs and Payments to Panel, FY 2011-2015



Public Defender and Panel Resources

Public defenders have on-staff social workers, investigators, resource attorneys, appellate attorneys, an immigration attorney, and administrative support. The County does not provide these resources free of charge to panel attorneys, who must instead pay for these resources from their flat fee or rely on parents, Probation, other County agencies, or community organizations.

For example, if a Public Defender client needs an IEP, Public Defender social workers and resource attorneys work with parents, help prepare for the hearing, and attend the hearing with the parent. In contrast, most panel attorneys give the client's parents a form letter for the school; the obligation is on the parents to follow through and most panel attorneys do not attend the hearing with the parents.

Panel heads state that they do not need the same resources as public defenders because their experience provides them with sufficient knowledge about community resources to which they can connect their clients.

Under the current contract, the County does not pay for investigators for panel attorneys and panel attorneys are not permitted to utilize the court-paid investigators otherwise available to attorneys for indigent clients. The cost of investigators must

Executive Summary

come from the flat fee paid to panel attorneys or the panel attorneys must find an investigator to work free of charge.

Seven of the eight panel heads maintain a pooled fund that attorneys in their branch can use to hire an investigator. However, the pooled fund comes out of the flat fees paid to panel counsel, thus reducing attorney compensation.

Other than investigators, public defenders and panel attorneys have equal access to 730 experts/resources, including social workers.

Comparative Rate of Resource Use

Although both public defenders and panel counsel have access to court-paid social workers, panel counsel utilization is so low that many judges are unaware that panel counsel have access to social workers.

Public defenders use more resources than panel counsel. As a percentage of their 2014 dispositions:

- Investigator use: PD 26%, panel counsel 9%¹¹
- Social worker use: PD 32%, panel counsel 1%
- 730/PACE doctors and experts: PD 20%, panel counsel 9%
- 317(e) education attorneys: PD 2%, panel counsel less than 1%

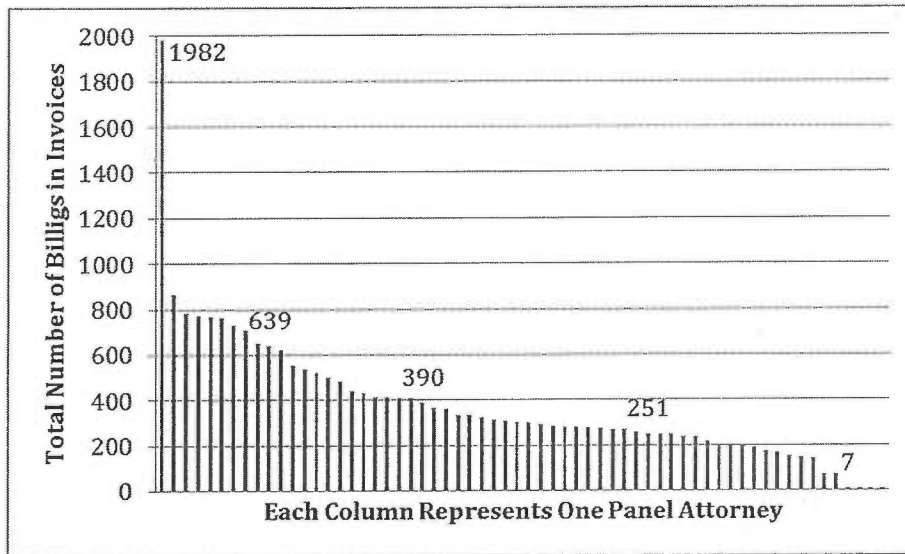
Resource use appears to differ greatly amongst the individual panel lawyers. For example, over a three-year period one panel attorney resolved 15% of his/her new 601 and 602 petitions within the same billing quarter, while another resolved 80% of his/her new 601 and 602 petitions within the same billing quarter. Resource use is likely much higher for the attorney who is taking longer to resolve cases.

Resource use may also be reflected in caseloads. Over three years, for example, one panel attorney billed for 1,982 petitions, or about 661 a year. This would be about two new matters a day, every work day of the year, for three years. Resource use would be expected to be quite low for an attorney handling this large of a caseload. The next highest three-year total was 867, and the average for all panel counsel was 289.

¹¹ No objective data was available regarding panel counsel use of investigators. The number above is based on panel counsel self-generated estimates about frequency of investigator use.

Executive Summary

Individual Panel Attorneys' Total Number of Billings, 2012-2014



Public defenders handled 49% of the felony dispositions from 2010 to 2014, but were responsible for only 23% of the DJJ commitments and only 29% of the camp commitments. Panel counsel handled 43% of the felony dispositions from 2010 to 2014, but were responsible for 54% of the DJJ commitments and 63% of the camp commitments. The full meaning of this disproportionality is unknown. It is possible that the difference in outcomes is a result of different resource use and attorney practices. It is also possible, however, that the difference in outcomes is a result of different types of clients; in other words, panel counsel may have more clients sentenced to DJJ and camp because panel counsel have more clients facing the possibility of DJJ and camp. It is also possible that the difference in outcomes is a result of both attorney practices and the types of clients.

Per-Case Costs Borne by Counsel

Panel counsel bear a number of costs that are not borne by individual public defenders, including the costs of their own training, the costs of investigators, and other costs associated with representation of their clients.

The Office of the Public Defender provides training, social workers, investigators, and other resources for all deputy public defenders.

Executive Summary

Neither panel counsel nor public defenders bear the cost of 730 experts paid through the County's PACE system. Social workers, therefore, can be obtained by panel counsel without cost.

Data was not available to quantify the actual per-case costs for either the Public Defender or panel counsel.

Measuring annual actual costs against the number of new petitions or the number of dispositions does not provide a per-case cost. However, as a means of comparison over the past five years, annual actual costs measured against number of dispositions shows an average of \$2,912 per disposition for the Public Defender and an average of \$751 per disposition for panel counsel. This is a means of comparison only; it is not the per-case cost.

Transfer Cases

Indigent juveniles facing possible transfer to adult court are more often assigned panel counsel. Over the past five years, as between panel and public defenders, panel counsel were assigned to 71% of the fitness motions and public defenders were assigned to 29% (for all fitness motions 56% were assigned to panel and 21% to public defenders; the remainder were mostly retained counsel).

Panel counsel clients are more likely to be found unfit and transferred to adult court. Over the past five years, 26% of panel clients were found unfit and transferred to adult court, but only 13% of public defender clients were found unfit and transferred to adult court. This is a statistically significant difference.

The youth are presumed to be similarly situated because they all have pending fitness motions. The differences in outcomes could therefore be a result of different attorney types. However, a causal relationship cannot be definitively determined because information about other potential causes is unknown.

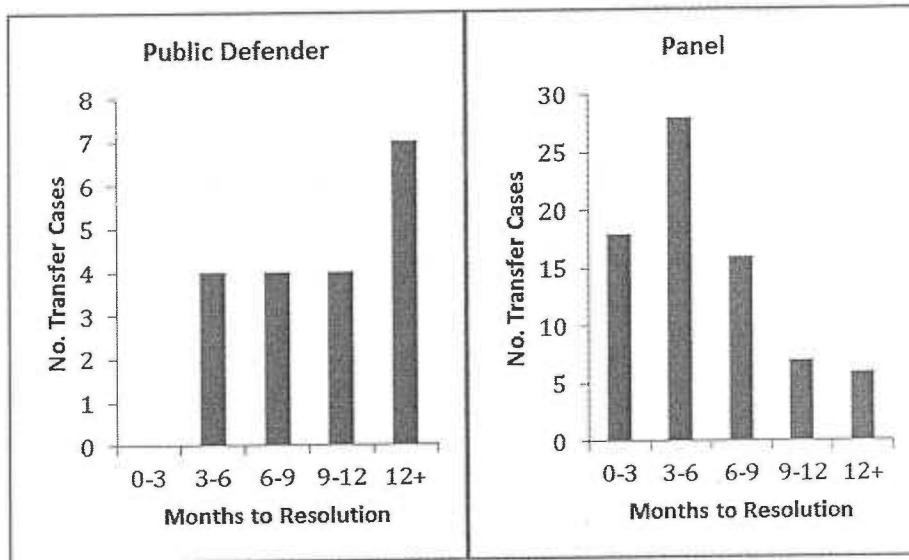
Out of 114 fitness cases examined in detail, four were resolved in less than one month, and all four resulted in a finding of unfitness and transfer to adult court. Three of the four were panel cases and one was retained counsel.

For cases examined in detail that resulted in transfer to adult court (66 in total), panel counsel consulted less often with experts, provided less documentation to support the client, and filed fewer motions. Panel counsel also resolved these unfit cases faster than public defenders – the average was 9.4 months for public defenders but only 4.9 months for panel counsel.

Executive Summary

Twenty percent of the panel attorneys responding to the survey indicated that conceding unfitness occasionally, sometimes, or often makes sense for the client.

Time to Resolution for Fitness Motions Examined in Sample, by Attorney Type



National Standards and County Methods for Specialized Training and Continuing Legal Education; Evaluation, Supervision, Mentoring and Support; Accountability and Quality Assurance; and Compensation and Incentives

The County's current contract with panel counsel does not allow panel counsel to access court-paid investigators; panel counsel must pay for investigators from their flat fee or they must find an investigator to work pro bono. National and state standards state that the County should provide investigators for panel counsel.

Both panel attorneys and public defenders have annual training, but panel attorneys are required to organize and pay for their training out of pocket. Standards state that the County should ensure that training is available without cost to all counsel for indigent defendants.

Because the County has not established a qualified oversight body for panel counsel, substantive oversight, supervision, and quality control have been provided, if at all, by the panel heads. This leads to inconsistency and an inability of the County to ensure quality. It is also inconsistent with standards. In at least two instances, panel attorneys have been constitutionally ineffective and either the County was not informed, or the

Executive Summary

County was informed but had no structure that allowed for a response.

Relying on the judges to provide oversight of panel counsel is problematic, lacks consistency, and is not recommended.

Flat-fee contracts such as those used in Los Angeles are strongly criticized in California and even barred by law in other states; since at least 2006 the State Bar has stated that they should not be used.

Compensation Models and Systems in Other California Counties

Among the counties surveyed:

Los Angeles is the only county that does not make county-paid investigators available to panel counsel.

Los Angeles is the only county that has no centralized mechanism for quality control. It is the only county that contracts directly with private attorneys and does not fund a qualified office or agency to monitor quality.

Los Angeles is the only county in which no experienced attorney or committee provides supervision and oversight of panel counsel.

Los Angeles is the only county that compensates panel counsel with a uniform per-case flat fee. In other counties, panel counsel are compensated by salary, on an hourly basis, or via an event-based flat fee structure that provides for different flat fees for different activities and different types of cases.

Recommendations from County Guidelines and Public Defender Cost to Implement

The Public Defender objected to the draft Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court, and the final Guidelines (issued in 2014) were not endorsed by the Public Defender. Many of the objections arose from differences of opinion regarding the scope of the Public Defender's role, not from a lack of funding. Thus, not all objections will be resolved even if the County fully funds the Public Defender to implement the Guidelines.

Executive Summary

There are some areas where the Public Defender could come closer to full compliance with increased funding, in particular by expanding the CARE program which provides social workers and resource attorneys for Public Defender clients. The Public Defender believes that expansion of the CARE program would require a very substantial increase in funding. No further specification was provided, on the grounds that to do so would be speculative.

The remainder of this report discusses each section in detail. The report begins with a brief overview of the Los Angeles County juvenile indigent defense system and an examination of the existing contracts between the County and panel counsel. The report is organized around the specific items identified in the Board's February 2014 motion, including filing trends, resource availability and rate of use, costs, training, compensation, quality assurance, and comparison with other California counties. The report concludes with a short discussion of the Public Defender's position regarding the Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court, promulgated by the Los Angeles County Superior Court in 2014.

PART I: System Overview

Highlights

The County has eight different contracts with eight different groups of private panel lawyers, in eight of the nine juvenile delinquency branches. These panel lawyers represent youth if the Public Defender has a conflict. The contracts provide for a one-time flat fee of \$340 to \$360 per petition.

In the ninth branch, the Alternate Public Defender represents the youth if the Public Defender has a conflict.

The panel contract system was created in the mid-1990s and has not substantively changed since then. The panel attorneys who bid on the contracts twenty years ago are still working as juvenile delinquency panel lawyers in the County, and very few new attorneys have been added.

Each branch contract is signed by a panel head on behalf of the group of attorneys in that branch. The panel heads take a percentage or per-petition amount from each quarterly payment from the County, which reduces the per-petition amount paid to the other panel lawyers in that branch.

Although the County's contracts are with groups or associations, there are no formal associations and there are no written agreements between the attorneys in each branch. Other than the attorneys who sign the contracts, therefore, it appears that the County's panel lawyers may be acting without written agreements with the County.

In one branch, the attorney signing the contract no longer represents youth in delinquency court, and has not done so for at least three years. That attorney continues to sign the contract, but a different panel head manages the attorneys in that branch.

Panel attorneys invoice for each new 601 and 602 petition (new alleged offenses), but they also invoice for 777 petitions (post-disposition violations), 778 petitions (changes in status), witness appearances, and AB12/212 matters. Some of these matters can be resolved quickly but the flat fee is the same; panel lawyers use the income from these smaller matters to subsidize their more complex cases.

Part I: System Overview

Los Angeles County has nine branch courthouses handling juvenile delinquency cases: Eastlake, Pasadena, Sylmar, Pomona, Compton, Inglewood, Los Padrinos (Downey), Long Beach, and Lancaster.¹² There are 23 judges and courtrooms spread amongst those nine branches. Youth who are detained while their cases are pending are confined in one of three juvenile halls, located in Eastlake, Sylmar, and Los Padrinos.

In general, proceedings are initiated against a child or adolescent through the filing of a 601 petition or a 602 petition, named for California's Welfare and Institutions Code Sections 601 or 602. The petition alleges that the youth has committed a particular offense. A youth may have one or more petitions pending against him or her at a time; each petition will contain allegations regarding conduct on a particular date or in a particular set of circumstances, and each petition is tracked separately in the County's JAI data system. Terminology and the legal ramifications are different than in adult court: In juvenile delinquency court the youth are "adjudicated delinquent" (rather than "found guilty"), and the case is resolved through "disposition" rather than "sentencing." More critically, unlike in adult court, the obligations of the child's attorney extend beyond defending against the charges in the petition, and representation does not cease when the petition reaches disposition. Instead, the attorney is obligated to advocate for his or her client in areas such as education, mental health, substance abuse, and developmental needs, and this obligation can extend well beyond adjudication and disposition.¹³

Office of the Public Defender

In all nine branches, the Juvenile Division of the Office of the Public Defender represents indigent youth who appear in delinquency court. The Public Defender is a County agency and its attorneys and staff are salaried County employees.

Deputy public defenders working in the Juvenile Division are assigned to a particular branch and supervised by a Deputy-In-Charge (DIC) in that branch. The deputy public defenders in the Juvenile Division tend to be less experienced attorneys; they cannot begin in the Juvenile Division but they can transfer to the Juvenile Division usually after two to three years of practice in adult misdemeanor court. Deputy public defenders generally cycle through the Juvenile Division in 18 to 36 month rotations, although some are permitted to stay within the Juvenile Division if they request it, if their performance

¹² A tenth branch, Kenyon, closed in mid-2013.

¹³ "Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court", Superior Court of California County of Los Angeles, Juvenile Division, p. 2 citing to Rule 5.663 of the California Rules of Court, adopted by the California Judicial Counsel in 200; State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 22. www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

Part I: System Overview

is acceptable, and if staffing needs allow for it. The DICs remain in the same branch for an extended period of time; they are intended to be consistent points of contact for parents as well as for the court, district attorneys, probation officers, and panel counsel. The DICs are responsible for daily mentoring, training, and supervision of the deputy public defenders. In addition, two Head Deputies in the downtown office are responsible for supervising all deputy public defenders in the Juvenile Division.

As of March 2015, the Juvenile Division had 49 full-time deputy public defender positions and nine DICs representing clients in the nine branches. The Office also has a number of attorneys and other staff providing services for their clients; these resources are described in the section on resources below.

Conflict of Interest

An indigent juvenile who comes before the court will be assigned an attorney from the Office of the Public Defender unless the Office has a conflict of interest that could affect the child's right to effective representation.¹⁴ This might happen, for example, if multiple youth are arrested together or if one youth might be a witness against another. If one attorney within the Office has a conflict, that conflict applies to all attorneys in the Office.

Currently, the Public Defender's policy states that, if the juvenile's public defender is pursuing post-dispositional advocacy, then the juvenile is considered a currently-represented client and the Office will declare a conflict¹⁵ (see Appendix B for a copy of the conflict policy). If the attorney is not pursuing post-dispositional advocacy but the juvenile is still subject to court supervision, the Office may or may not declare a conflict for that juvenile. It is also the Public Defender's policy that the juvenile, if committed to the Department of Juvenile Justice (DJJ), remains in the status of currently-represented client until he or she is discharged from physical custody of the DJJ. In addition, when an adult is arrested along with a minor, the Public Defender will ordinarily represent the adult (in the absence of other bases for a conflict regarding that adult) and will declare a conflict as to the minor. Finally, the Office's policy states that "[o]ther conventions and

¹⁴ The threshold for conflict or potential conflict is a record that supports "an informed speculation" that the defendant's right to effective representation could be prejudicially affected. Proof of an "actual conflict" is not required. The same principles apply when counsel represents clients whose interest may be adverse even when they are not co-defendants in the same trial (*People v. Mroczko* (1983) 35 Cal. 3d 86, 105). The Los Angeles County Public Defender will not represent more than one defendant in any multiple-defendant case, absent extraordinary circumstances. Los Angeles County Public Defender Policies and Procedures; Conflicts of Interest in Representation (2010).

¹⁵ Los Angeles County Public Defender Policies and Procedures; Conflicts of Interest in Representation § F (2010).

Part I: System Overview

protocols regarding conflict unique to juvenile court practice are not included within this policy.”¹⁶

Alternate Public Defender

In the Lancaster branch only, the Alternate Public Defender (APD) represents juveniles when the Public Defender has a conflict. Like the Public Defender, the APD is a County agency and APD attorneys and staff are County employees.

The APD has two experienced attorneys working full time in the Lancaster juvenile court, as well as one full-time attorney at the mental health court in Eastlake. The APD incorporates its juvenile attorneys in its overall supervision and training regime, and provides the same in-house administrative, legal, and investigative support that it provides for its attorneys working in adult court. Except for the Eastlake mental health court, the APD does not represent juveniles in any branch other than Lancaster.

If both the Public Defender and the APD are conflicted from a case in Lancaster, the court will appoint a private attorney from a roster of three attorneys. These attorneys are paid directly by the court as if they were outside experts or consultants appointed by the court. They are paid a flat fee of \$250 per case.¹⁷ In this report, the term “panel counsel” does not include these three Lancaster attorneys and is intended to refer only to the panel counsel in the other eight branches, described below.

Panel Counsel

In all branches except Lancaster, a private panel attorney will represent the juvenile when the Public Defender has a conflict.¹⁸ The panel attorneys are private attorneys who usually operate as sole practitioners. Because the panel attorneys are independent practitioners, there should not be a conflict from one panel attorney to another, unlike with the Public Defender’s Office.

¹⁶ Los Angeles County Public Defender Policies and Procedures; Conflicts of Interest in Representation (2010).

¹⁷ In special circumstances, the court can raise the amount paid to the panel attorneys in Lancaster. In three instances the court approved flat fees of \$1000 per case. Confirmation was never received about the time period covering these \$1000 payments.

¹⁸ Recollections were different regarding the reason why Lancaster is different. Most people recalled that a Request for Proposals (RFP) was issued in Lancaster for the conflict cases, but the bids were considered to be too high so the APD was asked to take the Lancaster conflict cases. Others did not recall an RFP being issued. Whatever the reason, this current system has been in place since the late 1990s.

Part I: System Overview

The panel attorneys within each branch stay in that branch; they do not usually move from branch to branch. Other than natural attrition, there has been virtually no turnover among panel counsel over the past 25 years. The current panel attorneys have many years of experience: they have been representing juveniles in delinquency court for an average of 24 years, including many years prior to the time they became panel counsel, ranging from a low of eight to a high of 40 years.¹⁹ For much or all of that time, these attorneys have been paid by the County to represent youth in delinquency court, either through the current contract, or on an hourly basis prior to the current contract system.

The panel structure in these eight branches has been the same since the mid-1990s. Each branch has a panel head, who is him- or herself a member of the panel and who represents youth in that branch along with the other panel members. Each panel head signs a contract with the County. The panel contracts provide for a per-petition flat fee that is paid on a quarterly basis upon receipt of the petition. The flat fees are different in each branch. They have risen slightly since the contracts were originally signed; these increases have tracked cost of living increases given to County employees. As of 2015, these flat fees ranged from \$340 to \$360 per petition; there is no provision for the panel attorney to receive additional funding no matter how much work is required on a particular case including any post disposition work or services, and there are no further transactions between the County and the panel attorneys once the flat fee is paid.²⁰

What is a "Petition?"

The panel contracts refer to the number of "cases" per attorney, but the panel attorneys bill the County for each "petition." The word "petition" is not defined in the contract. Billing invoices indicate that panel attorneys bill for each new 601 or 602 petition, as well as for each new 777 (probation violation) or 778 (change of status) petition.²¹ They also bill for AB 12/212 cases when appointed by the court to represent youth in those proceedings, for drug court, and for witness cases when panel counsel is appointed to represent a witness at an adjudication. Approximately 34% of annual billings are for 777 and 778 petitions.

There is some lack of consistency amongst panel heads about billing. One panel head, for example, bills for every 778 petition regardless of the time involved. Others do not bill for 778s if the matter is resolved quickly in a one-time court appearance without any out-of-court work.

¹⁹ Based on survey responses.

²⁰ As of 2015 the contracts provide for the following per-petition flat fees: Compton: \$340, Eastlake: \$347, Inglewood: \$347, Long Beach: \$360, Los Padrinos: \$347, Pasadena: \$360, Pomona: \$345, Sylmar: \$347.

²¹ 602 petitions are the charging documents that initiate a case against a juvenile if the juvenile is alleged to have done something that would be a crime if the juvenile were an adult. 601 petitions are the charging documents that initiate a case against a juvenile if the juvenile is alleged to have committed status offenses such as truancy or curfew violations.

Part I: System Overview

The ability of panel counsel to bill for these other matters means that the oft-quoted "\$340 per case" is not entirely accurate, as the billings in these other matters (some of which can be resolved quickly) generate income that can be used to compensate attorneys for additional time needed on more substantive matters. However, as noted in the section on comparison counties below, panel counsel in Los Angeles are still paid less than panel counsel in other counties.

Each quarter, the panel heads submit invoices to a Principal Analyst within the County CEO listing the number of new petitions in each branch for that quarter.²² The Analyst reviews the invoices for billing inaccuracies and then processes the payment. All of the panel heads take either a percentage of each quarterly payment or a flat fee from each petition,²³ then distribute the remainder of the quarterly revenue to the other panel attorneys in that branch.²⁴

Each branch has between three and 11 panel attorneys.²⁵ As of the beginning of 2015, there were 45 different panel attorneys receiving conflict cases in the eight branches; three of them billed in more than one branch during that billing quarter so the invoices submitted reflected 48 attorneys. Almost all supplement their juvenile delinquency panel cases with juvenile delinquency retained cases, adult panel cases, adult retained cases, and/or civil cases. A few of the current panel attorneys work only on juvenile delinquency panel cases.

Panel Contracts

The panel contracts originated after the County issued a series of Requests for Proposals (RFPs) in the mid-1990s. Groups of private lawyers came together to submit bids in response to the RFPs. Compton was first with a combined juvenile/adult contract which later became a juvenile delinquency contract in approximately 1995. Pasadena was signed in 1993, the next two (Eastlake and Sylmar) in 1996, and the remaining four were

²² One panel head submits invoices when the case reaches disposition, not when panel counsel are appointed.

²³ Not all panel heads agreed to disclose how much they take from each quarterly invoice. The ones who answered take between 5 and 10% of each quarterly payment, or a flat fee of \$25 - \$30 per petition.

²⁴ In seven of the eight branches, the money is distributed on a per petition basis; in other words, each attorney receives an amount reflecting the number of petitions that the particular attorney handled in the quarter. In one branch, the panel head attempts to maintain a consistently equal distribution of cases amongst the panel attorneys throughout the year, then divides each quarterly payment equally between the attorneys.

²⁵ Panel heads reported the following number of attorneys in each branch as of the end of 2014 and early 2015: Compton 4; Eastlake 6; Inglewood 6; Long Beach 6; Los Padrinos 11; Pasadena 5; Pomona 3; Sylmar 7. Three attorneys are counted twice because they each work in more than one branch.

Part I: System Overview

signed in 1998. The contracts have been renewed every year or every two years since then with no major changes.²⁶ The panel heads state that they were the most qualified bids; some also stated that they believe they may have been the lowest or the only bidders at the time (see Appendix C for a sample contract).

Notably, all eight contracts are between a group or association and the County CEO, and the County's checks are made out to these group entities. However, although the panel heads sign their contracts on behalf of the group and the panel heads maintain bank accounts in the names of the groups, in fact there are no formal associations and there are no written agreements between the panel attorneys who constitute the group in each branch. Only one contract – the Compton contract – contains the names of the attorneys in the branch, and those names have not been updated in the contract since 1998. None of the other seven contracts identify any attorneys by name. The panel heads state that they identified all the attorneys in their groups in their bids in response to the RFPs, but those names are not incorporated into the contract and the other attorneys do not sign the contract. Other than the panel heads, therefore, it appears that some of the attorneys representing youth in delinquency court on behalf of the County have been doing so without any written legal agreement with the County.²⁷

The panel contracts have been marked by a remarkable degree of informality and autonomy on the part of the panel heads. Attorneys not identified in the original RFP bids have represented panel clients over the past twenty years, sometimes on a permanent basis and sometimes to temporarily pitch in when the existing attorneys were unavailable. Although it does not appear that there have been many new attorneys, panel heads have notified the CEO about new attorneys in their branches inconsistently and notification, when it occurred, was often after-the-fact and informal.

The high degree of informality extends to the signatories to the contracts. In six of the eight branches, the original person who signed the contract on behalf of the group in the 1990s is still the person signing the contract. In one of those six, however, the person signing the contract no longer represents clients in delinquency court and has not done so for at least three years. Although he still signs the contract, he appears to play no role in the panel. Instead, a panel head from a different branch manages the panel and submits the invoices to the CEO.

²⁶ All of the updated contracts added an updated termination agreement that prohibits the County from terminating for convenience in the first year but permits termination at any time in the second year. The updated contracts also streamlined payment to attorneys.

²⁷ The original contracts were with: Pomona Juvenile Defenders, Rene Ramos Attorney at Law, South Central Indigent Juvenile Panel, Long Beach Juvenile Defenders, Antonio Govea and Associates, Inglewood Juvenile Defense Association, Juvenile Delinquency Defense Association, and Los Padrinos Juvenile Defense Association.

Part I: System Overview

In the seventh branch, the original signatory is now the panel head in a different branch, and a different attorney now signs the current amendments on behalf of the group. The panel heads state that the attorney currently signing the contracts was identified in the original bid for the RFP so changing the signatory is not a problem.

In the eighth branch, the original panel head left the panel in approximately 2011, and an entirely new person (who had not been identified in the RFP bid) began signing the contract. They sent the County an after-the-fact email at the time of the switch, but the County did not notice until the end of 2014, when the CEO asked each branch to identify their panel members. It is the County's position that the informal email was not the appropriate way to notify the County that a new person was taking over the contract in that branch.

The eight contracts have some similarities and some differences. All of the contracts include lengthy and similar provisions regarding the County's lack of liability, insurance coverage requirements, the fact that the attorneys are not eligible for benefits, and billing processes. Although minimum qualifications were set out in the original RFPs, none of the signed contracts mention necessary qualifications and training for the panel attorneys, nor do they detail performance requirements other than the fact that the contractors (the panel heads) are to uphold the same services as a public defender, and the fact that the panel heads "are responsible for complying with all applicable professional standards and shall be responsible for the internal monitoring of his/her employees' work."²⁸ The panel heads have been clear that the other panel members are not their employees so the meaning of this clause is murky.

As noted above, the contracts differ in the amounts paid for each petition, which is a result of the fact that the bids submitted in response to the RFPs proposed different payment rates. The contracts also differ in the enforceability of oversight in the case of a performance violation. Five of the contracts allow the County to require changes and impose penalties in the case of a violation. In these five (Pasadena, Compton, Los Padrinos, Inglewood and Long Beach):

"The county or its agent will evaluate contractor's performance under this agreement on not less than an annual basis. Evaluation includes assessing contractor's compliance with all contract terms and performance standards. Monitoring may include, but is not limited to, verifying that the program is operating in accordance with the project specifications and regulations, the law, and applicable professional standards.

²⁸ Agreement for Defense Services at \$16 for Pasadena, Compton, Los Padrinos, Inglewood, and Long Beach and \$15 for Pomona, Sylmar-San Fernando, and East Lake.

Part I: System Overview

Improvements are suggested and if not followed then termination of agreement or penalties may be imposed.”²⁹ (Emphasis added)

In the other three, the County does not appear to have the authority to require any modification. In these three (Pomona, Sylmar, and Eastlake):

“County through its project director shall monitor the progress and effectiveness of contractor’s performance under this contract. Monitoring may include but not limited to, verifying that the program is operating in accordance with the project specifications and regulations, the law, and applicable professional standards. County may hire someone to monitor the work but this personnel has no authority over the work of the contractor.”³⁰ (Emphasis added)

The difference between the contracts may not be material, however, as it does not appear that the County has monitored the substantive performance of the panel heads or panel attorneys since 2006. This issue is discussed more fully in the section on quality assurance and accountability below.

Comparison with the Los Angeles Adult Criminal Panel

Los Angeles County is unusual in that the juvenile indigent defense structure bears no resemblance to its adult indigent defense structure. While the juvenile indigent defense structure in Los Angeles is unlike anything reviewed in other counties, the adult indigent defense structure is consistent with much of the rest of the state.

For indigent adults charged with a crime in Los Angeles, as in many other counties, the APD represents the defendant when the Public Defender has a conflict. This is true across all adult court branches in the County. Also as in many other counties, a panel attorney is appointed if there is a further conflict beyond the Public Defender and the APD.

Adult panel attorneys in Los Angeles are not paid a contractual flat fee as they are in juvenile delinquency court, and the panel attorneys do not oversee themselves. Instead, as in many other counties, Los Angeles delegates management and oversight of the adult panel to the County Bar Association, which runs the Indigent Criminal Defense Appointments Program (ICDA). ICDA has about 330 panel lawyers who handled 16,000 cases in 2012 (about 48 cases per attorney, per year). ICDA is operated by an administrator and five full-time program assistants, and is supervised by a full-time directing attorney with experience in criminal defense. The directing attorney, in conjunction with an executive committee, handles member qualifications, discipline, financial audits, rules and procedures, new member

²⁹ Agreement for Defense Services Contract 1993 – 1998 at §22 for the court houses of Pasadena, Compton, Los Padrinos, Inglewood, Long Beach.

³⁰ Agreement for Defense Services Contract 1993 – 1998 §21 for the court houses of Pomona, Sylmar-San Fernando, and Eastlake.

Part I: System Overview

trainings, and CLE seminars. Panel attorneys are classified into six grades (misdemeanors and felonies grade I (minor cases) through grade V (murder with special circumstances)). They are compensated on a graduated hourly rate: \$74 an hour for misdemeanors, \$80 an hour grade I, \$86 an hour grade II, \$93 an hour grade III, and \$106 an hour grade IV. Grade V cases (death penalty) are handled by a smaller, separate group of attorneys and paid on a specialized flat fee contract.³¹

³¹ Information obtained from the Los Angeles County Bar Association website, last accessed October 28, 2015. <http://www.lacba.org/showpage.cfm?pageid=24>

Part II: Filing Trends

PART II: Filing Trends and Total Cost of Juvenile Defense

Response to Supervisor Antonovich's friendly amendment:

"...include what the trend of the filings [has] been in the last 5 years and its impact on the County's cost of defense for juveniles for the Public Defender, the Alternate Public Defender and the Panel Attorneys."

Highlights

Juvenile delinquency petitions have been dropping in Los Angeles as well as in the rest of the state for the past decade.

From 2010 to 2014, new petitions in Los Angeles dropped by almost half. Distribution of those petitions has remained roughly the same over the five years, with about 67% initially assigned to public defenders and about 28% initially assigned to panel counsel.

The total number of dispositions has also dropped but the distribution has changed. The share of dispositions handled by public defenders rose from 49% to 56% between 2010 and 2014; panel counsel's share of dispositions dropped from 43% to 36%.

From FY 2010-11 to FY 2014-15 the actual costs of the Juvenile Division of the Public Defender rose from \$15.8 million to \$16.8 million. The amount paid to contracted panel counsel in the eight branches with contracts dropped from \$4.2 million to \$2.2 million.

Filing Trends

Total Number of Petitions

Juvenile delinquency petitions have dropped significantly over the past decade nationally, in California, and in Los Angeles.

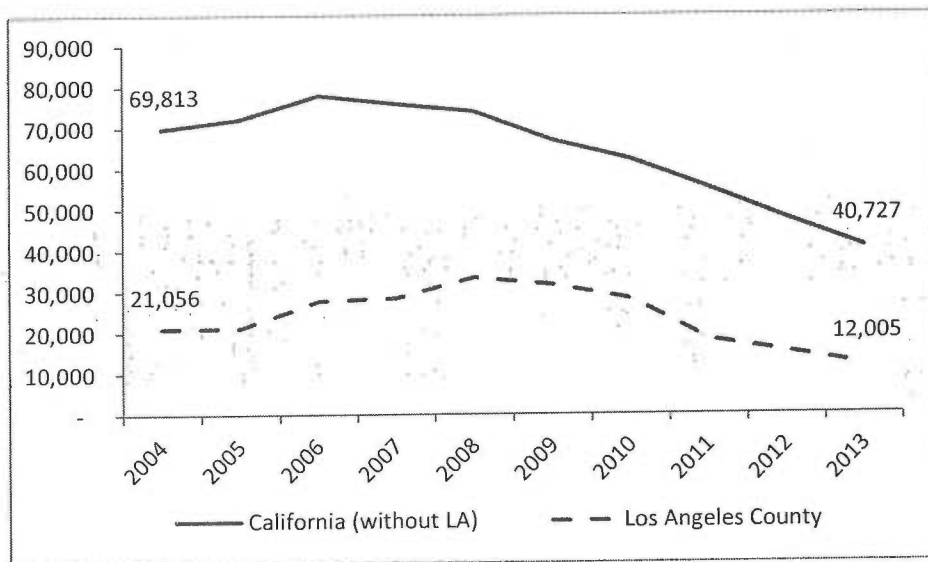
As shown in Figure 1, between FY 2004 and FY 2013 total juvenile delinquency petitions declined by 43% in Los Angeles (from 21,056 to 12,005) and by 42% in the rest of the

Part II: Filing Trends

state (from 69,813 to 40,727). Nationally, the juvenile commitment rate dropped 53% from 2001 to 2013.³²

Data was not available to determine whether the decrease in juvenile petitions in Los Angeles was uniform across all types of crime. It is possible that in Los Angeles, as in some other jurisdictions, the drop in juvenile petitions has not been distributed equally across crime types. A reduction in number of cases, in other words, does not shed light on the seriousness of caseloads or the workload of each attorney. If the drop in petitions was mainly a drop in petitions for minor or status crimes such as truancy, for example, each attorney's caseload dedicated to violent crime may have stayed flat even while the total number of cases dropped, and the workload of each attorney may not have changed significantly.

Figure 1. Juvenile Delinquency Petitions, Los Angeles County vs. Rest of California, FY 2004 - FY 2013³³



In the past five years, from 2010 to 2014, the annual number of 601 and 602 petitions in Los Angeles dropped by almost half from 16,036 to 8,245.³⁴ The downward trend has

³² Pew Charitable Trusts, November 9, 2015: <http://www.pewtrusts.org/en/multimedia/data-visualizations/2015/juvenile-commitment-rate-drops-53-percent>

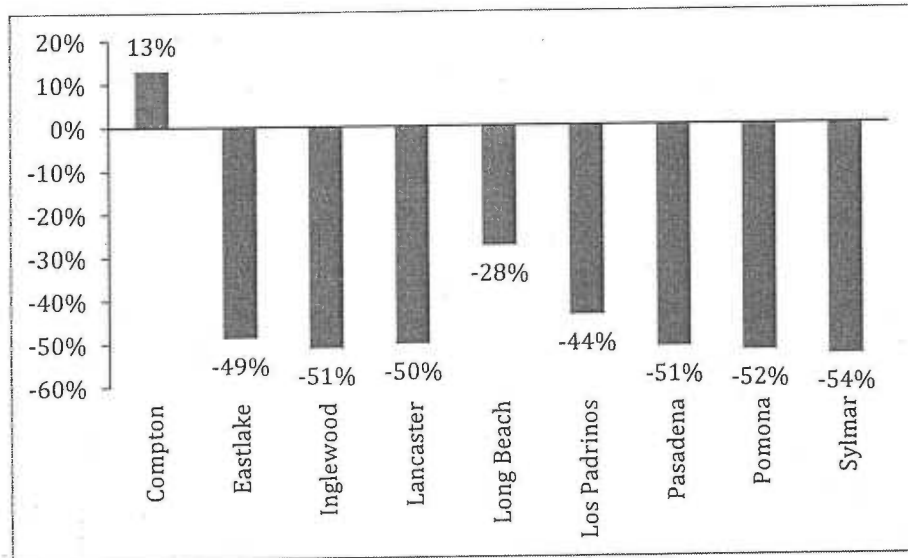
³³ Data from annual Court Statistics Report (CSR) published by the Judicial Council of California. Juvenile Delinquency Petitions include original and subsequent filings. Reports are available at: <http://www.courts.ca.gov/13421.htm>.

³⁴ 602 petitions are the charging documents that initiate a case against a juvenile if the juvenile is alleged to have done something that would be a crime if the juvenile were an adult. 601 petitions are the charging documents that initiate a case against a juvenile if the juvenile is alleged to have committed

Part II: Filing Trends

been seen in eight of the nine branches, as shown in Figure 2. The increase in the ninth branch (Compton) is likely due to the closure of the Kenyon branch in 2013, as many cases that were previously in Kenyon were brought instead to Compton after the closure. Figure 3 shows the distribution of new petitions across courthouses in 2014, which ranges from a low of seven percent in Pasadena to a high of 15% in Eastlake.

Figure 2. Percent Change in # of New Petitions by Branch, 2010-2014



status offenses such as truancy or curfew violations. The County counts only 601 and 602 petitions as new petitions. The total number of new petitions counts both first-time petitions (i.e., the first time a juvenile has a petition filed against him or her), as well as subsequent petitions (i.e., a new petition alleging new conduct, for a juvenile who had a previous petition filed against him or her for different conduct).

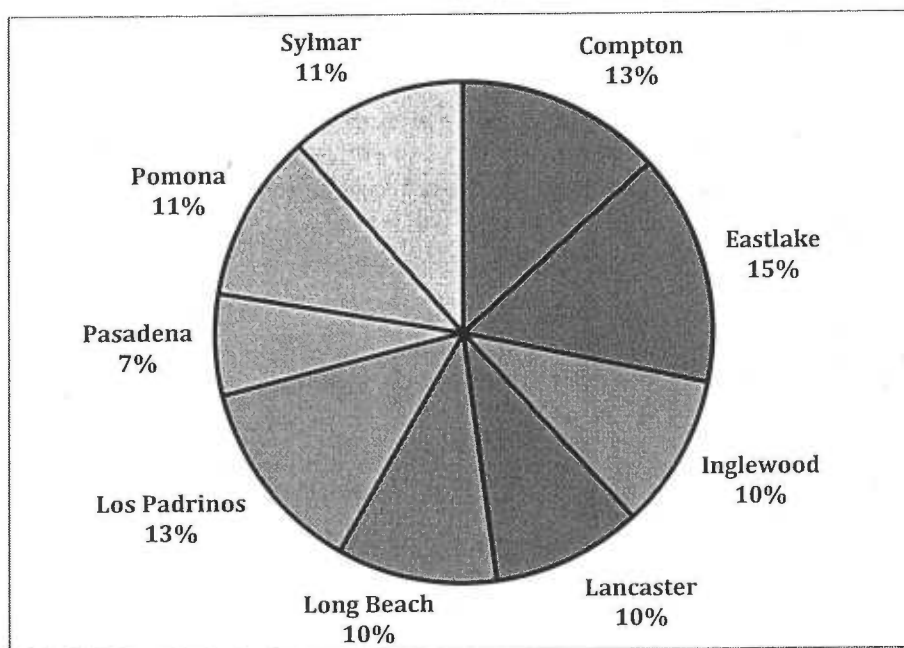
MARCH 1, 2016

WARREN INSTITUTE ON LAW AND SOCIAL POLICY, UC BERKELEY SCHOOL OF LAW
REPORT TO THE LOS ANGELES CEO AND AUDITOR/CONTROLLER ON JUVENILE INDIGENT DEFENSE

FINAL

Part II: Filing Trends

Figure 3. Distribution of New Petitions by Courthouse, 2014



Distribution by Attorney Type

Although the total number of new petitions has dropped, the distribution of those petitions among juvenile indigent defense attorneys in Los Angeles has remained roughly the same. Between 2010 and 2014, 67% to 69% of the new petitions each year were assigned to public defenders at arraignment or initial assignment, 27% to 29% to panel counsel, and about 2% to other attorneys – APD and private counsel (see Figures 4 and 5).

Part II: Filing Trends

Figure 4. New Petitions by Attorney Type at Initial Assignment, 2010-2014

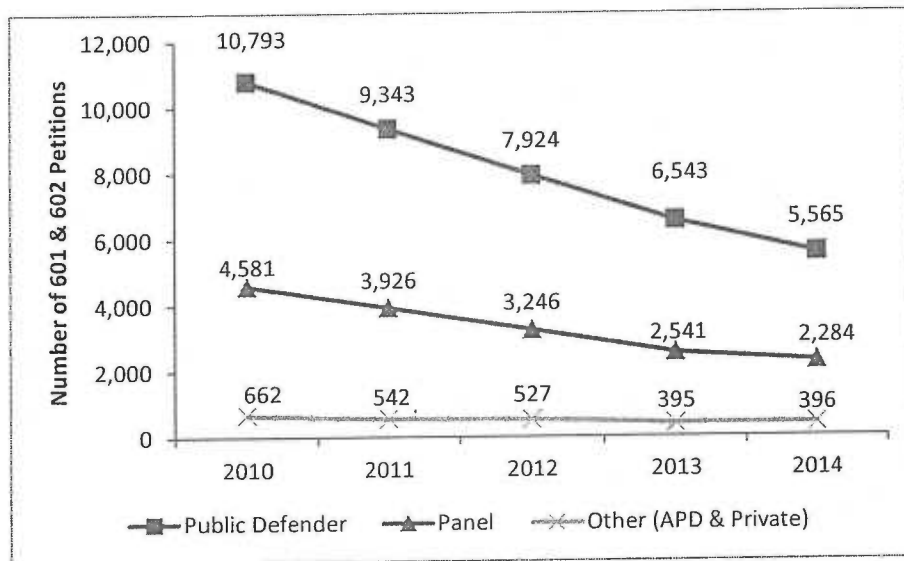
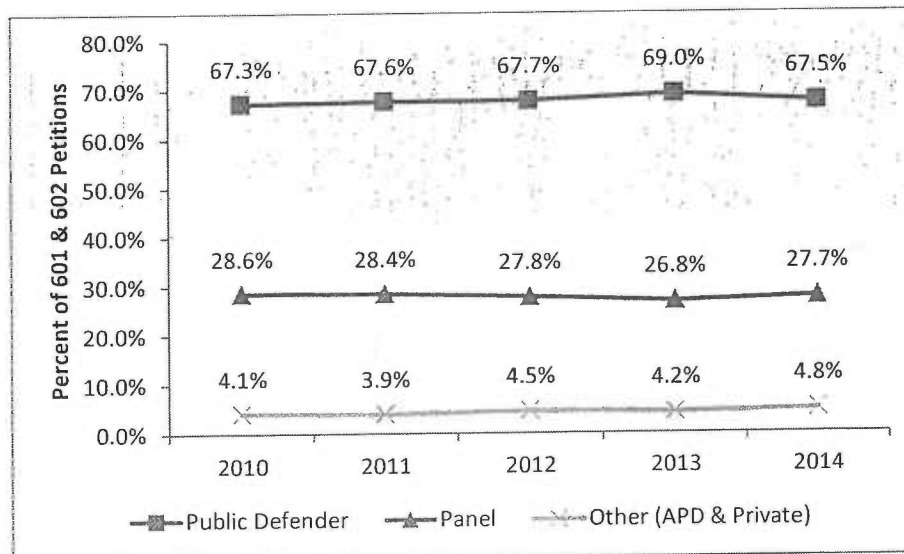


Figure 5. Distribution of New Petitions by Attorney Type at Initial Assignment, 2010-2014



The total number of dispositions has also dropped over the last five years, from 12,399 in 2010 to 8,672 in 2014. However, during that time the share of dispositions handled by public defenders rose from 49% in 2010 to 56% in 2014. The share of dispositions

Part II: Filing Trends

handled by panel counsel dropped from 43% in 2010 to 36% in 2014.³⁵ The share of dispositions handled by other attorneys (APD, private counsel, and unknown) stayed at around 8% (see Figures 6 and 7).

Figure 6. Total Dispositions by Attorney Type, 2010-2014

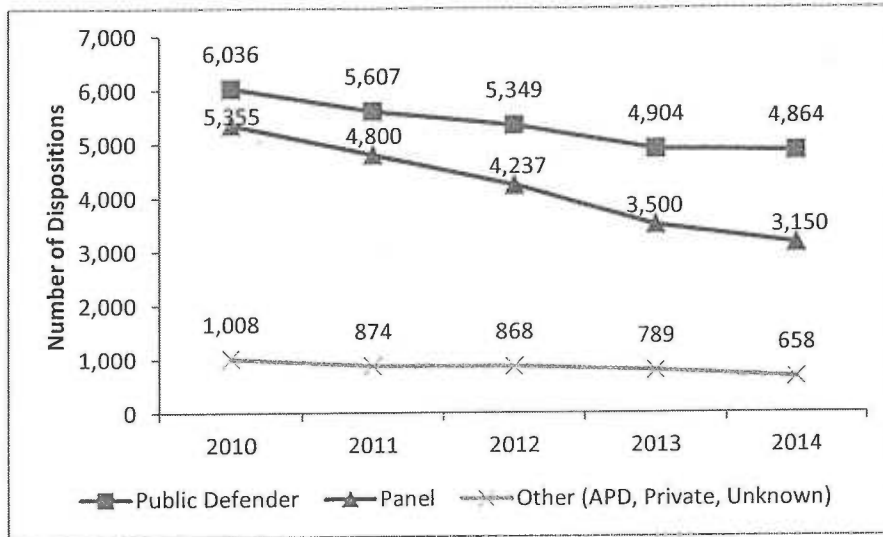
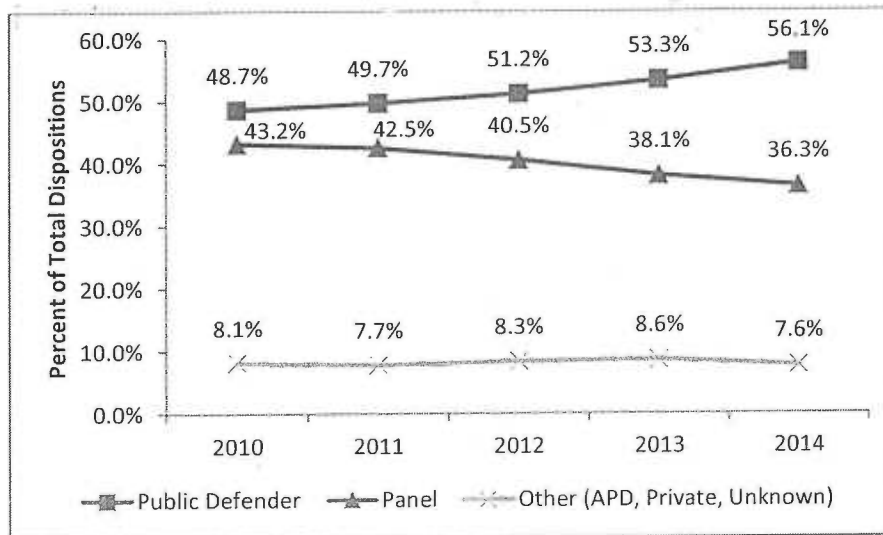


Figure 7. Distribution of Dispositions by Attorney Type, 2010-2014



³⁵ Much of the data in this report was pulled from the County's JAI system, which is a calendaring system. As noted in the methodology section, data received regarding dispositions, unlike data received in other areas, was not usable without manipulation because the JAI system codes multiple events as "disposition." The data can be considered reliable as it relates to proportion and distribution, but the raw numbers should be considered a close approximation.

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Examining only new petitions as recorded by JAI leaves out a significant portion of the work performed by juvenile defense attorneys, in large part because JAI does not count probation violations (777 petitions) or changes in status (778 petitions) as new petitions. However, both the Public Defender and panel counsel consider 777s and 778s to be new petitions, and both record their own numbers of 777 and 778 petitions. Based on this data, the number of 777 and 778 petitions has also been dropping over the past five years. For public defenders, 777 and 778 petitions dropped from 5,750 in 2010 to 3,416 in 2014. For panel counsel, 777 and 778 petitions dropped from 3,058 in 2012 to 2,209 in 2014.³⁶

Time to Disposition

While the number of new petitions has dropped, the average time from petition date to disposition date for felonies has risen. This has been seen across all attorney types. For public defenders, it was 2.7 months in 2010 and 6.7 months in 2014. For panel counsel, it was 2.1 months in 2010 and 6.2 months in 2014. This could indicate that all attorneys are carrying more serious caseloads, that attorneys now have time to adequately represent their clients, that the entire system is moving more slowly (including Probation, the District Attorney and the Court), or it could be a reflection of a change in the way the branch clerks are calendaring disposition dates. Further clarity would require additional research.

County Cost

From FY 2010-11 to FY 2014-15, the actual cost for the Juvenile Division of the Public Defender rose from \$15.8 million in FY 2010-11 to \$16.8 million in FY 2014-15 (see Figure 8).

The County does not determine a budget solely for contracted panel counsel in each fiscal year.³⁷ Rather, panel counsel submit quarterly invoices that are paid by the County upon receipt. From 2010 to 2014, the total payments made to panel counsel, as calculated by these invoices, dropped from \$4.2 million in 2010, to \$2.2 million in 2014.³⁸ The County carries additional costs related to panel counsel (in particular, the

³⁶ Data was not obtained for 777s and 778s from panel counsel in 2010 and 2011.

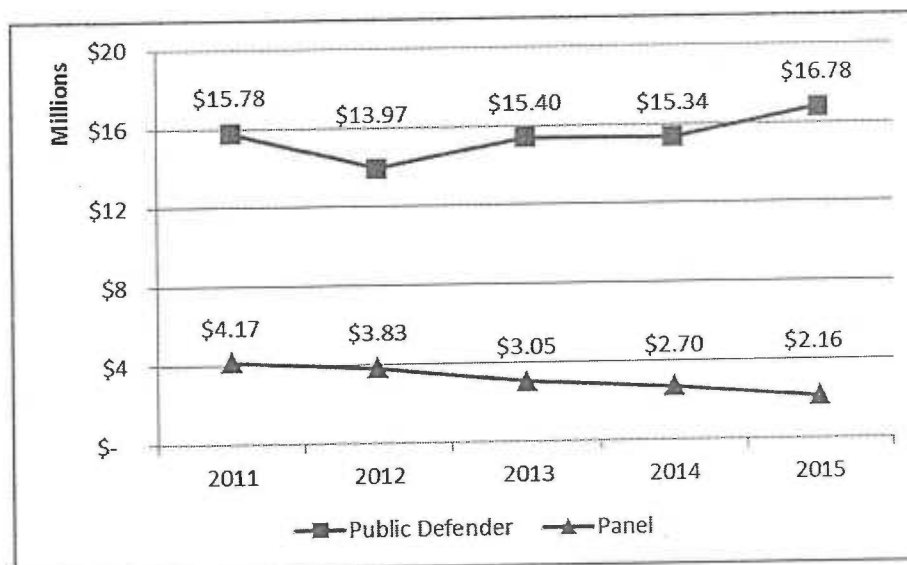
³⁷ The annual budget for contracted panel counsel is included within the Trial Courts Indigent Defense Budget in the amount of \$4.8 million. However, this includes Lancaster Court and the budget for Lancaster Court cannot be disaggregated from the budget for contracted panel counsel.

³⁸ Totals reflect closest approximation of PD fiscal year (July 1 – June 31) to panel billing year (November 1 - October 31). A more accurate comparison to PD was impossible because payment data for panel counsel was provided by panel billing year and the PD maintains data by fiscal year.

Part II: Filing Trends

cost of a Principal Analyst in the Office of the CEO to oversee the panel invoices and payments, as well as a portion of a supervisor); those additional costs are not reflected here.

Figure 8. Public Defender Actual Costs and Payments to Panel, FY 2011-2015



To some extent, the differences in Public Defender and panel counsel actual costs reflect the different caseloads, different resources available, and the different services provided by public defenders and panel counsel.³⁹ Those differences are discussed in the next sections.

³⁹ Between 2010 and 2014, the Public Defender added the SB 9 unit, the SB 260 unit, and a full-time trainer.

PART III: Public Defender and Panel Resources

Responses to items 1) a. in the motion:

“A summary of the resources available to attorneys in the Los Angeles County Public Defender and court appointed indigent defense attorneys to assist them in representing juvenile clients (including, but not limited to, Attorneys, Social Workers, Resource Attorneys, Deputies in Charge, Investigators, Administrative Support, Welfare and Institutions Code (WIC) 730 Evaluators, and WIC 317(e) Education Attorneys).”

Highlights

Public defenders have on-staff social workers, investigators, resource attorneys, appellate attorneys, an immigration attorney, and administrative support. The County does not provide these resources free of charge to panel attorneys, who instead must pay for these resources from their flat fee or rely on parents, Probation, other County agencies, or community organizations.

For example, if a Public Defender client needs an IEP, Public Defender social workers and resource attorneys work with parents, help prepare for the hearing, and attend the hearing with the parent. In contrast, most panel attorneys give the client's parents a form letter for the school; the obligation is on the parents to follow through and most panel attorneys do not attend the hearing with the parents.

Panel heads state that they do not need the same resources as public defenders because their experience provides them with sufficient knowledge about community resources to which they can connect their clients.

Under the current contract, the County does not pay for investigators for panel attorneys and panel attorneys are not permitted to utilize the court-paid investigators otherwise available to attorneys for indigent clients. The cost of investigators must come from the flat fee paid to panel attorneys or the panel attorneys must find an investigator to work free of charge.

Seven of the eight panel heads maintain a pooled fund that attorneys in their branch can use to hire an investigator. However, the pooled fund comes out of the flat fees paid to panel counsel, thus reducing attorney compensation.

Part III: Public Defender and Panel Resources

Other than investigators, public defenders and panel attorneys have equal access to court-paid 730 experts/resources, including social workers.

Public Defender Resources

The Juvenile Division of the Office of the Public Defender has 49 deputy public defenders positions spread amongst the nine branch courthouses, a supervising attorney called a Deputy in Charge (DIC) in each branch, and two Head Deputies who oversee all juvenile public defenders in the County. To help its attorneys provide the expanded representation required for juveniles, the Office of the Public Defender has on-staff social workers, resources attorneys, investigators, appellate attorneys, an immigration attorney, and administrative support and paralegals (see Figure 9). These resources are available to all deputy public defenders and DICs. In addition to the trial attorneys and DICs working in the branch courthouses, the Office also has specially assigned staff including one attorney and one paralegal in the DJJ unit in Inglewood, an attorney and social worker in the juvenile mental health court in Eastlake, an attorney in the STAR court in Compton, and three attorneys and a social worker in the SB9 and SB260 units. The roles and responsibilities of the various types of staff members are summarized below.

Figure 9. Summary of Juvenile Division Resources, as of March 2015

- Attorneys: 49
- Social Workers: 13 in courts, 2 supervising
- Resource Attorneys: 7
- Deputies in Charge: 9 at the 9 courthouses plus 1 who is the Collaborative Justice DIC
- Head Deputies: 2
- Appellate Attorneys: 2
- Appellate Immigration Attorney: 1
- Investigators: Roster of public defender investigators, 9 investigators in charge
- Administrative Support: 16 administrative support, 4 paralegals, 1 supervising paralegal
- WIC 730 Evaluators
- WIC 317(e) Education Attorneys
- DJJ Unit: 1 attorney, 1 paralegal
- SB 9 and SB 260 Units: 3 attorneys, 1 social worker

Part III: Public Defender and Panel Resources

Attorneys, Deputies in Charge, Head Deputies

The deputy public defenders in the Juvenile Division tend to be less experienced attorneys; they cannot start in the Juvenile Division but can transfer after two to three years of practice in adult misdemeanor court.⁴⁰ The DICs have an average of 15 years of experience in criminal defense. They assign cases, monitor workloads, observe the attorneys in court and consult on cases; they also carry a reduced caseload. The Head Deputies evaluate each attorney's performance annually, looking at courtroom advocacy, motion practice, and use of social workers, resource attorneys, investigators, and outside experts.

Investigators

All attorneys in the Juvenile Division have access to on-staff investigators. Each juvenile branch refers its investigation requests to an investigator-in-charge who distributes them to the team of investigators who work for the Office as a whole (adult and juvenile). The investigators work on all types of cases, from minor misdemeanors to homicides. The investigators locate witnesses, visit crime scenes, prepare reports, take photographs or other evidence that may be useful in defending the case, serve subpoenas, and testify in court. They analyze and develop additional evidence.

Social Workers and Resource Attorneys

Both the psychiatric social workers and the resource attorneys working with the Public Defender identify, interview and assess clients' needs; obtain and analyze past psychiatric, medical, education and dependency court records; identify services that will allow the juvenile to remain in the community if possible; connect the juvenile and his or her family to services; and make recommendations to ensure that any out of home recommendations made in the juvenile delinquency courts are narrowly tailored to meet the clients' specific needs.

Thirteen social workers provide services in all nine branches. They conduct psychosocial assessments to identify mental health issues and cognitive impairment, including suicidal ideation and other mental health issues. They evaluate psychiatric, medical, education, dependency, and DCFS⁴¹ records. They schedule and attend IEP⁴² hearings at

⁴⁰ Public Defender data show that the average criminal defense experience for the deputy public defenders, including resource attorneys, is 10.7 years, with an average of 3.4 years juvenile criminal defense experience. These averages include both trial attorneys and resources attorneys, however, and because those resource attorneys generally have significantly more experience than the 49 deputy public defenders, these averages cannot be used to calculate the experience of the deputy public defenders only.

⁴¹ Department of Children and Family Services

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schools or in juvenile halls to advocate for the juveniles. They assist in Regional Center referrals and appointments.⁴² They develop individual treatment and disposition recommendations, and they refer clients and their families to community-based services.

Seven resource attorneys within the Public Defender's Office work in all nine courthouses although they are physically located in only seven of the nine. None are located in Pasadena or Lancaster but the other resource attorneys are available for cases in both. Resource attorneys specialize in community entitlement. They review psychological reports, medical records, and educational records to determine whether a child may be developmentally disabled or require special education services. They schedule and attend IEP hearings at schools and juvenile halls, where they appear with the juvenile and help the family advocate for their child's rights. For juveniles who are developmentally disabled, the resource attorneys assist in connecting those families with the Regional Centers. They attend the Regional Center intake appointments along with the juvenile and his or her caretakers. They obtain and present special education, mental health, and regional center alternatives to the court and courtroom participants, including Probation.

Public Defender clients receive a social worker or a resource attorney if the deputy public defender makes a referral. To determine when a referral is necessary, deputy public defenders are trained to look for a history of child abuse and neglect, developmental disabilities including intellectual disabilities, serious learning disabilities, significant mental health diagnoses, psychiatric hospitalization, suicide attempts, and addiction. Clients who receive a referral are generally clients with serious mental health problems, school failures, or traumatic family histories. The deputy public defender can refer the case to a psychiatric social worker, a resource attorney, or both depending on the need.

⁴² Individualized Education Program. The IEP defines the child's disability and establishes the educational objectives for that child; it is tailored to each child's need.

⁴³ Regional Centers serve individuals with developmental disabilities and their families.

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Individualized Education Program (IEP)

When a child has an educational disability, the Individuals with Disabilities Education Act (IDEA) gives parents the right to review education records, request independent evaluations, participate in decisions about their children's education placement, and make complaints to the school district about education concerns.⁴⁴ The IDEA mandates that a collaborative team of teachers, parents, school administrators, psychologists, and other professionals work together to determine appropriate educational services for the child, and that the plan be memorialized in an Individualized Education Program (IEP).⁴⁵ Although the law brings parents and education professionals together to determine child's educational services, it does not give them guidance on how they are to work together to determine the terms of an appropriate education. When disagreements arise and the parent believes that the school is not providing appropriate services, the parent has a right to a due process hearing.⁴⁶ Although parents may proceed to a hearing without an attorney or advocate for the child's needs, the likelihood of success is usually not high for parents who are inhibited by low levels of education, limited language proficiency, and limited knowledge of the law.⁴⁷

Parents often need assistance in navigating the complex system. They do not necessarily know their rights and may not know that they can challenge decisions made by the school's IEP committee.⁴⁸ The school is responsible for communicating to parents their legal rights, including by providing understandable documents.⁴⁹ However, schools do not always make these documents accessible to parents, especially when the parents have little formal education, often because the readability levels in the documents are too high or because the documents use acronyms that make them difficult to read.⁵⁰ In addition, parents can feel intimidated and may not feel competent to be equal team members in an IEP meeting.⁵¹ Parents are outnumbered in the meeting, and they may not trust the school.⁵² In a survey of parent-administrator interactions, many parents described themselves as "terrified and

⁴⁴ Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, § 1 (1975) (current version at 20 U.S.C. § 1400 (2000 & Supp. IV 2004)), Section 615 (b)(1) (1975).

⁴⁵ 20 U.S.C. §1414 (d)(2), §1414 (d)(2), §1414 (a)(5) (2000 & Supp. IV 2004).

⁴⁶ David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference*, 1991 Duke L.J. 166, 188 (1991).

⁴⁷ *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 127 S. Ct. 1994, 2007 (2007); Stefan R. Hanson, Buckhannon, *Special Education Disputes and Attorneys' Fees; Time for a Congressional Response Again*, 2003 BYU EDUC.C. & L.J. 548-49.

⁴⁸ Patricia A. Massey & Stephen A. Rosenbaum, *Disability Matters: Toward a Law School Clinical Model for Serving Youth with Special Education Needs*, 11 Clinical L. Rev. 271, 278 (2005).

⁴⁹ Advocacy Institute, *Schools Not Communicating with Parents about Special Education Legal Rights*, Advocacy in Action, Sept. 2006 at 1, 5.

⁵⁰ *Id.* at 2-3.

⁵¹ Stephen A. Rosenbaum, *When it's not Apparent: Some Modest Advice to Parent Advocates for Students with Disabilities*, 5 U.C. Davis J. Juv. L & Policy 159, 166 (2001).

⁵² *Id.* at 194.

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inarticulate” when addressing school administrators, and felt disempowered by the process rather than respected and influential.⁵³ In addition, they often felt ill-qualified to make educational decisions for their children and instead deferred to the school.⁵⁴

As a result, some research has shown that parents in high-poverty majority minority communities are not exercising their rights to enforce the provisions of the IDEA, while parents in wealthy, white majority school districts use special education laws to gain additional resources, accommodations, and assistance for their children with disabilities.⁵⁵ It is not known if this is an issue in Los Angeles County.

Appellate Lawyers

The Public Defender has two designated juvenile appellate lawyers who are available as a resource to all public defenders. The appellate attorneys assist deputy public defenders and DICs in brainstorming and researching legal issues, preparing motions, and preparing trial defenses. The appellate lawyers also research, draft, and file writs and habeas petitions. In addition, they review every case in which a client has been found unfit by the juvenile court, to determine if there are grounds to file a writ. This is a critical step, as a finding of unfitness cannot be subsequently appealed so the writ is the only avenue by which to preserve the client’s rights. The juvenile appellate lawyers also participate in the training of every new public defender coming into the Juvenile Division.

Appellate Immigration Lawyer

The attorneys in the Juvenile Division have access to an appellate immigration lawyer who is housed within the Adult Division of the Public Defender's Office. The immigration attorney conducts in-depth training on the additional issues faced by undocumented youth, focusing not only on the legal issues but also on legal services that may be available. The immigration attorney and the Juvenile Division work collaboratively with immigration advocacy organizations and legal aid offices in Los Angeles, including the Immigrant Legal Resource Center, Public Counsel, Southwestern Law School, and other nonprofit organizations.

⁵³ Id. at 166.

⁵⁴ Id.

⁵⁵ Robert S. Garda, *Untangling Eligibility Requirements Under the Individuals with Disabilities Education Act*, 69 Mo. L. Rev. note 28, at 1084 (2004)(Citing: Comm. on Minority Representation in Special Education of the National Research Council, *Minority Students in Special and Gifted Education 1-2*, 18 (2002)); Daniel J. Losen & Kevin G. Welner, *Disabling Discrimination in our Public Schools: Comprehensive Legal Challenges to Inappropriate and Inadequate Special Education Services for Minority Children*, 36 Harv. C.R.-C.L.L.Rev. 407.408 (2011).

Part III: Public Defender and Panel Resources

SB 9 and SB 260 Units

The Public Defender has two specialized units serving incarcerated adults who were juveniles at the time of the offense. The SB 9 unit was established in December 2013 after a new law, Senate Bill 9, permitted the filing of requests for resentencing under Penal Code 1170(d)(2) for incarcerated adults who had been sentenced to life without the possibility of parole for crimes that were committed before the defendant was 18. The unit files SB 9 petitions and also petitions for writs of habeas corpus based on *Miller v. Alabama*. SB 260, which went into effect on January 1, 2014, allows for a different parole process for individuals who were under 18 at the time of the offense, in recognition of the different cognitive processes and abilities of teenagers. SB 261, signed by Governor Brown in 2015, raises the age to 23.

There are three lawyers and a dedicated social worker in the SB 9 and SB 260 units. They reconstruct cases that can be over 20 years old, collect court records, transcripts, and interviews, and piece together missing case files. They obtain medical, educational, and other background information to present a complete picture of the juvenile as of the time of the original sentencing. They also present demonstrated rehabilitation to the court and assist the court in understanding how juvenile offenders are different from adults.

DJJ Unit

The DJJ Unit, comprised of one attorney and one paralegal, was established following the implementation of SB 459 in 2004.⁵⁶ SB 459 expanded the role of juvenile defense attorneys beyond disposition; juvenile defense attorneys are now required to monitor their clients in DJJ, determine whether they are receiving intended programs and services, and advocate for clients who are not getting what they need. As of the writing of this report there are 46 Public Defender clients committed to DJJ.⁵⁷ The DJJ Unit monitors and advocates for the Public Defender clients currently committed to DJJ. They remain updated on the status of the consent decree, inspector general reports, special master reports, and related legislation pertaining to DJJ; they visit clients in DJJ at least once a year and clients housed in the Ventura facility are visited approximately three times a year. They advocate for the clients' educational and mental health treatment, and they file petitions in juvenile court on behalf of clients who are not receiving adequate treatment. They can also file motions in the sentencing court arguing for the

⁵⁶ See California Welfare and Institutions Code Section 731 et. seq.

⁵⁷ As of the end of 2014, the DJJ population that was committed from Los Angeles County was 210. Public Defender clients thus accounted for about 20% of all the DJJ commitments from the County. http://www.cdcr.ca.gov/Reports_Research/docs/research/Characteristics/12_2014_Characteristics.pdf.

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removal of clients from DJJ due to lack of rehabilitation, or request that the court order DJJ to provide services. The Unit consults on cases where a DJJ disposition is being sought by the District Attorney, helps with preparations for contested dispositions, educates attorneys on conditions and programs available at DJJ, negotiates fitness withdrawals for DJJ, and advises on legal issues relating to DJJ commitments.

For youth who are leaving DJJ, the DJJ Unit prepares them for reentry while they are still in the institution, represents the youth in the DJJ reentry court in Eastlake, and represents the youth once they have been released. They serve approximately 25 youth a year who leave DJJ and return to the County under supervision. The DJJ attorneys continue to represent the youth at all court appearances including progress reports and probation violation hearings, and they advocate for necessary services such as housing, transportation, and other needs.

730 Evaluators and Experts

Public defenders have access to court-paid 730 evaluators and experts just as panel attorneys, APDs, and private attorneys do.⁵⁸ Requests for 730 resources are made to the court any time the attorney needs an expert or resource. The list of individuals available for juvenile defense attorneys includes experts for disputed trial issues such as eyewitness identification and video enhancement, as well as psychologists, psychiatrists, doctors, and social workers covering topics such as substance abuse, mental health, placement issues, psychotropic medication, competency, special education, gang affiliation, developmental disabilities, fitness, psychosocial assessments, competency, fitness, and LGBTQ issues. 730 evaluators and experts are paid through the court's PACE system.

317(e) Education Attorneys

Youth with particular education needs may be eligible to have a 317(e) education attorney appointed by the Court. These appointments are handled by the Presiding Judge, not by the individual judge assigned to the youth's case. Any attorney representing a youth in juvenile delinquency court can request a 317(e) education attorney, and all counsel (public defenders, panel counsel, alternate public defenders, and private counsel) have done so. Requests can also be made by attorneys in dependency court, but those dependency court requests are not addressed here.

⁵⁸ 730 refers the Welfare and Institutions Code 730; most attorneys and the Court use the shorthand "730" to refer to the various evaluators and experts that can be obtained upon request to the Court.

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Alternative Courts

The Los Angeles County delinquency court has some additional resources for certain juveniles. Chief among these are the mental health court, the STAR court, and the drug court. The scope of this report did not include an outcome analysis of these three alternative courts, but it is worth noting that counsel, the judges, and advocates were uniform in their praise of these courts and commented only on the restricted capacity and their desire to expand the services provided.

The mental health court in particular follows a best practices model by focusing holistic and intensive resources on youth who have been identified as having significant mental health challenges. Youth from all nine branches can be referred to the mental health court, which is located in Eastlake. The Public Defender staffs the mental health court with one experienced resource attorney and one psychiatric social worker. If the Public Defender has a conflict, youth are represented by a dedicated attorney with the Alternate Public Defender. For the most part, panel attorneys do not represent clients in mental health court unless both the Public Defender and the Alternate Public Defender have a conflict.

Another notable model is the STAR (Succeed Through Achievement and Resilience) Court located in Compton. STAR provides wraparound services and specially trained social workers, mentors, advocates, and probation officers for underage girls who have been the victims of sex trafficking. Girls from all nine branches can be referred to the STAR court. It is staffed by a senior deputy public defender and, if the Public Defender has a conflict, by the Compton panel head or another panel member.

The County also has three drug courts, located in Sylmar, Eastlake, and Inglewood. Youth in these courts are represented by the Public Defender or, if the Public Defender has a conflict, by the panel attorneys in that branch.

Los Angeles County also has a relationship with Loyola Law School's Juvenile Justice Clinic (JJC) and the Juvenile Innocence & Fair Sentencing Clinic (JIFS). The JJC provide *pro bono* holistic representation for about 30 youth a year in the delinquency courts. All delinquency clients are assigned a social worker and education advocate. The JIFS represents about 40 post-disposition clients in SB 9, *Miller*, and SB 260 matters; these clients were generally represented by panel counsel in their original disposition but panel counsel do not continue their representation for SB 9, *Miller*, and SB 260 matters. Clients are represented by a law student and a supervising attorney; supervising attorneys are professors and experienced attorneys. Clients are referred to JJC and JIFS by community organizations, not by the Public Defender.

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Panel Counsel Resources

Attorneys

In general, because they are sole practitioners who operate independently, panel attorneys do not have any on-staff resources, including social workers, appellate attorneys, investigators, resource attorneys, or immigration attorneys. Instead, panel counsel often depend upon others. In interviews and survey responses, panel counsel indicated a reliance on probation officers, school systems, county agencies, and parents to support their representation of their clients. Panel heads state that they meet their clients' needs at no cost by using these resources in addition to the 730 experts.

For example, when asked in the survey how they obtain school records in cases in which the records are needed, the most frequent responses by panel attorneys were that they ask the Probation Department or parents to provide them. Only a few panel attorneys indicated that they obtain the records themselves by contacting the school directly. Similarly, when asked about general practice when a client needs an IEP, most panel attorneys indicated that they provide the client or parent/guardian with a form letter to take to the school. Panel attorneys rely on the parents to go through the process and provide the information back to the attorney. Only one panel attorney responded that they participate in the IEP process with the client and/or parent/guardian.

Appellate and Immigration Attorneys

For specialized knowledge such as appellate issues and immigration issues, panel heads contend that their experience makes them aware of when these issues arise. For immigration questions in particular, panel heads stated that they often have the knowledge they need but they seek outside guidance from pro bono or unpaid immigration attorneys when necessary. Guidance is usually sought from Public Counsel and/or the Southwestern Law School immigration clinic. In addition, one panel head explained that two of the panel attorneys specialize in immigration and appellate work, and that all panel attorneys can consult with these two attorneys.

Investigators

Although the Los Angeles Superior Court has a list of investigators who are available as court-paid 730 experts, the existing panel contracts prohibit panel members from using those investigators. Panel heads have repeatedly requested that they be permitted to access court- or county-paid investigators. The CEO's position has been that this would be a change to the contract requiring that the contracts go back out to bid. Panel heads have chosen to renew the existing contracts rather than send the contracts back out to

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bid; panel heads also dispute the CEO's assertion that providing investigators would require a new contract.

All eight panel heads take a percentage or a per-petition amount from each quarterly payment; they put this money into a fund that they use for their own expenses as well as some expenses for the attorneys in their branch. Seven of the eight allow the attorneys in their branch to use the pooled fund for investigators.

In the survey 80% of panel counsel reported using the shared pool of funds for an investigator. However, in interviews at least two panel heads also described situations in which they personally took pictures or otherwise investigated a case for their client because they did not have investigator access and they did not want to pay for an investigator. This could create a problem if their client chose to litigate the case, because the attorney could not be both the advocate for and the witness for their client.⁵⁹ In addition, although panel attorneys insist that they investigate their cases when needed, it is worth noting that the County's structure creates a financial disincentive to investigate, and "the failure to investigate can amount to ineffective assistance of counsel, even when counsel may believe his or her client will confess or plead guilty short of trial."⁶⁰

Social Workers and Resource Attorneys

Panel heads contend that they do not need resource attorneys because they are aware of the resources in their area. They state that their experience qualifies them to determine when a client needs a service such as a referral to the Resource Center, and that they know where those Resource Centers are as well as other services. They also state that, for the most part, they do not pull together the records for the intake interview and they do not attend the intake interview with the family. Half of the panel attorneys who responded to the survey question about the Resource Center said they make these referrals about once a month, and an additional 30% reported making referrals every other month.

Social workers are considered 730 experts and have been available to panel attorneys through PACE since 2013.

⁵⁹ The National Juvenile Defense Center strongly criticizes exactly this practice: "It is important for counsel to be aware of the limitations on his or her role with regard to the ability to independently investigate a crime. Because, in most jurisdictions, counsel is not able to testify on behalf of his or her client, it will be necessary to have another person conduct or at least accompany counsel on investigations so that person will be able to testify at trial." National Juvenile Defense Center Standards, p. 69. <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

⁶⁰ National Juvenile Defense Center Standards, p. 69. <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

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730 Evaluators and Experts

With the explicit exception of investigators, panel attorneys have access to court-paid 730 evaluators and experts just as public defenders do.

Administrative

Seventy percent of survey respondents indicated that they pay for a secretary, law clerk, or paralegal (most of those pay for a secretary only), while 30% indicated that they do not pay for secretary, paralegal or law clerk.

Specialized Units

Panel attorneys do not represent SB 9, SB 260, or *Miller* clients in parole or resentencing proceedings, but instead refer clients to a legal clinic or other County-based, university-based, or non-profit source of pro bono assistance.⁶¹ It should be noted that these resources generally receive more referrals than they can handle.

Regarding DJJ, most of the panel heads could not recall how many of their clients were currently in DJJ, and none visit their DJJ clients unless they are notified of a need to do so. As of the end of 2014 there were 210 youth from Los Angeles in DJJ.⁶² Panel counsel are responsible for about 50% of all DJJ commitments from the County. This could mean that panel counsel collectively have about 105 clients in DJJ, which would be roughly two or three DJJ clients per panel attorney.

Panel heads state that, if requested by the court or if notified of an issue by Probation, they would fully represent their clients in DJJ despite the fact that they would not receive any additional compensation for that work.

⁶¹ Senate Bill 9, Senate Bill 260, and the Supreme Court case of *Miller v. Alabama* all address parole hearings and eligibility for currently incarcerated adults who committed crimes as juveniles and were sentenced to state prison, including those who were sentenced to life or life without parole. The new laws and precedent require that these individuals be either resentenced or granted a parole hearing, if certain conditions are met. Without advocacy, these individuals may remain in custody when they could have been released.

⁶² As of the end of 2014, the DJJ population that was committed from Los Angeles County was 210. http://www.cdcr.ca.gov/Reports_Research/docs/research/Characteristics/12_2014_Characteristics.pdf.

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317(e) Education Attorneys

Panel attorneys, like public defenders and any other attorney representing a juvenile in delinquency court, can seek the appointment of a 317(e) education attorney through a request to the Presiding Judge.

Alternate Public Defender Resources

The APD as a whole includes investigators, supervisors, paralegals, and administrative support. Staff devoted to juvenile delinquency cases include three full-time attorneys (two in Lancaster and one at the mental health court in Eastlake), a portion of an appellate attorney, a portion of the division chief, a portion of the on-site supervisor in Lancaster, investigators as needed, and one full-time paralegal.

As with the Public Defender, the Juvenile Division of the APD benefits from an on-staff APD appellate attorney. This attorney is particularly involved when a juvenile has been transferred to adult court after a finding of unfitness. In Los Angeles, the APD Adult Division represents juveniles who have been transferred to adult court after being represented by panel counsel in juvenile court. The APD adult attorneys look for cases in which the panel attorney submitted or stipulated to unfitness, the attorney waived fitness, the attorney did not call any witnesses or experts, or there were no social workers. If issues are found, the APD appellate attorney researches the unfit case and files a writ or a habeas petition as needed. This level of review is critical, as a finding of unfitness is not appealable at a later date, so this writ or habeas petition can be the client's only avenue to contest inadequate representation by the juvenile panel attorney.

Part IV: Comparative Rate of Resource Use

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Responses to item 1) b. in the motion:

“A summary of the rate at which Public Defenders and panel attorneys utilize the resources identified in section (a).”

Highlights

Although both public defenders and panel counsel have access to court-paid social workers, panel counsel utilization is so low that many judges are unaware that panel counsel have access to social workers.

Public defenders use more resources than panel counsel. As a percentage of their 2014 dispositions:

- Investigator use: PD 26%, panel counsel 9%
- Social worker use: PD 32%, panel counsel 1%
- 730/PACE doctors and experts: PD 20%, panel counsel 9%
- 317(e) education attorneys: PD 2%, panel counsel less than 1%

Resource use appears to differ greatly amongst the individual panel lawyers. For example, over a three-year period one panel attorney resolved 15% of his/her new 601 and 602 petitions within the same billing quarter, while another resolved 80% of his/her new 601 and 602 petitions within the same billing quarter. Resource use is likely much higher for the attorney who is taking longer to resolve cases.

Resource use may also be reflected in caseloads. Over three years, for example, one panel attorney billed for 1,982 petitions, or about 661 a year. This would be about two new matters a day, every work day of the year, for three years. Resource use would be expected to be quite low for an attorney handling this large of a caseload. The next highest three-year total was 867, and the average for all panel counsel was 289.

Public defenders handled 49% of the felony dispositions from 2010 to 2014, but were responsible for only 23% of the DJJ commitments and only 29% of the camp commitments. Panel counsel handled 43% of the felony dispositions from 2010 to 2014, but were responsible for 54% of the DJJ commitments and 63% of the camp commitments. The full meaning of this disproportionality is unknown. It is possible

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that the difference in outcomes is a result of different resource use and attorney practices. It is also possible, however, that the difference in outcomes is a result of different types of clients; in other words, panel counsel may have more clients sentenced to DJJ and camp because panel counsel have more clients facing the possibility of DJJ and camp. It is also possible that the difference in outcomes is a result of both attorney practices and the types of clients.

Comparison between Public Defender and panel counsel resource use is difficult, as the two sets of attorneys do not have the same resources and, even where similar resources are used, most of the data comes from different sources. The Public Defender maintains internal contemporaneous data tracking systems. Panel counsel do not have any such system, so most information about panel counsel resource use was gleaned from survey responses and, because it is self-reported, cannot be verified.⁶³

⁶³ For example, one of the survey questions asked about AB 12/212 billings. Nineteen panel attorneys said they had counted work with AB 12/212 clients as new petitions in their invoices to the CEO in the past year. They were asked how many AB 12/212 clients they had in the past year; 24 panel attorneys gave an answer between 1 and 15, and the total was 123 clients. A review of the panel invoices submitted in 2014, however, showed only nine panel attorneys billing for AB12/212 in 2014, for a total of 37 petitions. It is possible that panel attorneys were not consistently recording their AB 12/212 billings on the invoices or were not identifying AB 12/212 matters on the invoices, so the discrepancy may be a result of unclear billing practices rather than over-estimation in the survey.

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Figure 10. Summary of Public Defender Juvenile Division Resource Use

	FY 2011-2012	FY 2012-2013	FY 2013-2014
Investigators - total cases	Unavailable	1,826	1,264
Investigators – total hours	Unavailable	9,239	6,465
Social workers - total referrals	1,449	1,136	1,537
Resource attorneys - total referrals	526	427	718
Unique youth served by social workers and resource attorneys ⁶⁴	1,275	1,196	1,680
Social worker - monthly average extended service caseload	21.8	22	24
Resource attorney - monthly average extended service caseload	30.5	29	29.5

Investigators

Public Defender data indicate that investigators provided assistance on 1,264 juvenile cases in FY 2014, down from 1,826 in FY 2013. Total hours worked on juvenile matters were 9,239 in 2012-13, and 6,465 in 2013-14 (see Figure 10).

Panel counsel survey respondents estimated that they use investigators between zero and 20 times per year, with the average being six times per year per attorney. The seven panel heads who maintain pooled investigator accounts were asked more than once to review their records (or to have their accountants review the records) and determine the exact number of times an investigator was obtained through the panel head's pooled account in 2014. Only one panel head responded and in that branch in 2014 the average was two investigators per year per attorney.

⁶⁴ The number of unique youth served are tallied by quarter and then summed for an annual total, so in a small number of cases these statistics may over count some youth. This may occur if a juvenile receives services in one quarter but then is charged in a new petition later that year, or a juvenile may be referred to a social worker in one quarter and then referred again for a different reason later that year, or may be referred to a resource attorney in the next quarter, or a social worker may perform an extended service in one quarter and then a brief service in the next quarter.

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Based on panel counsel survey responses, an extrapolation to all 45 panel attorneys would translate to investigator assistance for 270 panel juvenile clients per year, as compared to 1,264 for the public defender.

If the average rate of use of investigators as self-reported in the survey was applied to 2014 dispositions, panel attorneys would have used an investigator in 9% of their dispositions, while public defenders used investigators in 26% of their dispositions.

Appellate Attorneys

In 2014, the juvenile appellate lawyers in the Office of the Public Defender handled approximately 1,539 consultations for public defender clients in juvenile delinquency court. From 2012 through 2014, these same attorneys filed 18 appellate court documents on behalf of juvenile clients.

It is not known whether or how often panel counsel file writs or habeas petitions on behalf of their clients.

Appeals, Writs, and Habeas Petitions

Appeals, writs, and habeas petitions are means by which to pursue legal challenges against the actions of the trial court. In California, all indigent defendants (juveniles and adults) who have an appealable issue have access to appellate attorneys through the state Court of Appeals and the Administrative Office of the Courts.⁶⁵ In Los Angeles the California Appellate Project (CAP) manages and oversees the court-appointed appellate counsel program and performs quality control functions and oversight for those attorneys.⁶⁶ CAP attorneys are generally paid \$95 an hour.

Public defenders, APD, and panel counsel were all clear that appeals for their juvenile delinquency clients are handled by the CAP attorneys. For general consultation about appellate issues, the Public Defender and the APD have in-house appellate attorneys, and there is one attorney amongst the panel attorneys who specializes in appellate issues and is available for consultation. For writs and habeas petitions, however, the answers were less clear.

CAP attorneys are generally limited to appeals, and do not represent clients with writs and habeas petitions. For the Public Defender and the APD, the in-house appellate attorneys are tasked with filing writs and petitions for juvenile delinquency clients, and they have done so. For panel counsel, however, the answer is unknown. Panel heads could not recall a writ or habeas petition that they had filed recently, and most did not know if the flat-fee is intended to cover writs and habeas petitions, or whether a writ or habeas would be a new petition resulting in a new payment. Although writs are mentioned in the contract, the CEO did not know.

⁶⁵ <http://www.courts.ca.gov/4201.htm>

⁶⁶ www.lacap.com.

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whether writs and habeas petitions would be considered new petitions under the contract; the question had apparently not been raised in recent memory. This could mean that panel counsel are not filing writs or habeas petitions on behalf of their clients.

This is a potentially critical issue, as there could be instances in which the client is significantly harmed by the failure to file a writ or habeas petition, or in which the client loses a right or an argument because of failure to file.

Immigration Attorneys

The Public Defender estimates that approximately 10% of the cases in which assistance is provided by the PD appellate immigration lawyer are juvenile cases. In 2014, the immigration attorney provided expert assistance and consultation on 1,820 cases. Based on the Public Defender's estimate, this would mean that the appellate immigration lawyer provided assistance in approximately 182 juvenile delinquency cases in 2014.

Panel attorneys were asked to estimate their use of immigration resources in the survey. About half of survey respondents (56%) said they seek immigration guidance six or seven times a year, and 30% said they seek immigration guidance once or twice a year. They work with different sources, including immigration legal clinics, immigration attorneys who work pro bono, and attorneys paid through PACE.

Social Workers

Public defenders made 1,537 referrals to social workers in FY 2014, 1,136 in FY 2013, and 1,449 in FY 2012. Approximately half of all referrals were for extended services and half for brief services.⁶⁷ Public Defender data show that, in FY 2014, the 13 psychiatric social workers in the Public Defender's Office carried an average monthly caseload of 24 extended service clients, and the seven resource attorneys carried an average monthly caseload of 29.5 extended service clients.⁶⁸

Although panel counsel do not have on-staff social workers, since 2013 panel counsel have been able to request that the court appoint and pay for a social worker through

⁶⁷ Brief referrals are for issues that can be resolved in 90 minutes or less; extended referrals are those for issues that can take anywhere from a few days to a year or longer.

⁶⁸ The Public Defender tracks recidivism for its clients who receive extended services from the social workers and resource attorneys. They define recidivism as an arrest for a new offense within a year after the case reaches disposition. The clients were tracked in both the juvenile and adult systems, in Los Angeles County only. Cases are not counted if a public defender did not represent the client through disposition. In 2013-14, 123 youth were rearrested for a new offense in either juvenile and adult court, or 21%. In 2012-13, 155 youth were rearrested for a new offense in either the juvenile or adult systems, or 23%. In 2011-12, the recidivism rate for these clients was 22%.

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the PACE system. Four social workers are identified on the approved PACE list. According to records pulled from PACE, 43 requests were made for those four social workers in FY 2013-14. However, some of these requests were made by the APD in Lancaster, because the APD does not have on-staff social workers. The APD believes that ten of these requests originated from their office. This would mean that, in FY 2013-14, there were 33 non-APD requests for the four social workers identified on the 730/PACE list.

This estimate of 33 requests in FY 2013-14 will both overstate and understate the actual number of 730 requests for social workers made by panel counsel. It may overstate the number of panel requests because some of the requests may have originated from retained counsel with indigent clients, or from the panel attorneys in Lancaster who are not part of the contract system. At the same time, it will understate the number of requests because panel attorneys can use court-paid social workers in addition to the four who are identified on the PACE list. One panel head indicated that they used a social worker not on the list on multiple occasions in 2014, and those additional requests were not included in the list of 43 that was obtained from PACE.

However, even if the PACE data undercounts the number of requests, it can be definitively said that panel counsel utilize social workers much less often than public defenders. **When viewed as a percent of 2014 dispositions, panel counsel requested PACE social workers in 1% of their dispositions,⁶⁹ while public defenders requested internal Public Defender social workers in 32% of their dispositions.**

Although panel heads contend that they are no different from public defenders because they can obtain social workers through PACE, it is notable that their use of social workers is so low that many judges are unaware of it. In the anonymous survey, the judges were asked an open-ended question soliciting their thoughts and suggestions about public defenders and panel counsel. The judges' responses included:

- "Giving the panel lawyers greater access and utilization of social workers;"
- "The panel should be held to higher expectations and they should be paid to meet those expectations. The current rate of pay should be quadrupled and the panel attorneys should have access to social workers;"
- "They could do more if they had social workers and were paid for their out of court work;" and

⁶⁹ Even if all 43 requests were from panel counsel, the percentage of dispositions would still be 1%.

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- “Panel attorneys should be provided equal resources such as social workers and resource attorneys.”

Panel counsel, however, have had access to court-paid social workers since 2013. The problem is one of utilization, not access.

730 Evaluators and Experts

As noted in the methodology section, PACE is the means by which 730 experts are obtained and paid. The PACE system categorizes the available resources and experts into the following categories: Attorney-Conflict, Attorney-No PD, Attorney-Other, Investigator, Doctor, Expert Witness, Laboratory, Interpreter, Translator, Examination Expert, Court Reporter, and Legal Runner. There are no definitions for these categories and it appears that the 730 experts are not consistently categorizing their services when the definition is not obvious. These categories therefore cannot be relied upon to determine the types of resources used by counsel.

For all PACE requests made over the past five years, 56% of the requests were made by public defenders, while 39% of the requests were made by panel counsel.⁷⁰ In 2014, 60% of all requests were made by public defenders, and 36% by panel counsel.⁷¹ This distribution is roughly consistent with the proportion of new petitions assigned to public defenders and panel counsel.

However, looking only at doctors, expert witnesses, and examination experts, 70% of the total requests over five years were made by public defenders, while 24% were made by panel counsel.⁷² In 2014, 75% of the requests in these three categories were made by public defenders and 21% were made by panel counsel.⁷³

When viewed as a percent of 2014 dispositions, panel counsel utilized 730/PACE resources in these three categories in 9% of their dispositions, while public defenders utilized 730/PACE resources in these three categories in 20% of their dispositions (see Figures 11 and 12). Just as with social workers, the issue appears to be one of utilization, not access.⁷⁴

⁷⁰ Percentages are of requests with known attorney types. Attorney type was unknown for 4,289 requests.

⁷¹ Attorney type was unknown for 500 excluded requests.

⁷² Attorney type unknown for 3,245.

⁷³ Attorney type was unknown for 463 requests.

⁷⁴ In the survey, 90% of panel counsel respondents said that their PACE requests are granted “almost always” or “usually.” Only 10% said that the court grants their requests “sometimes” or “rarely.”

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Figure 11. 2014 PACE Requests Relative to Dispositions (Doctors, Experts and Exam Experts only)

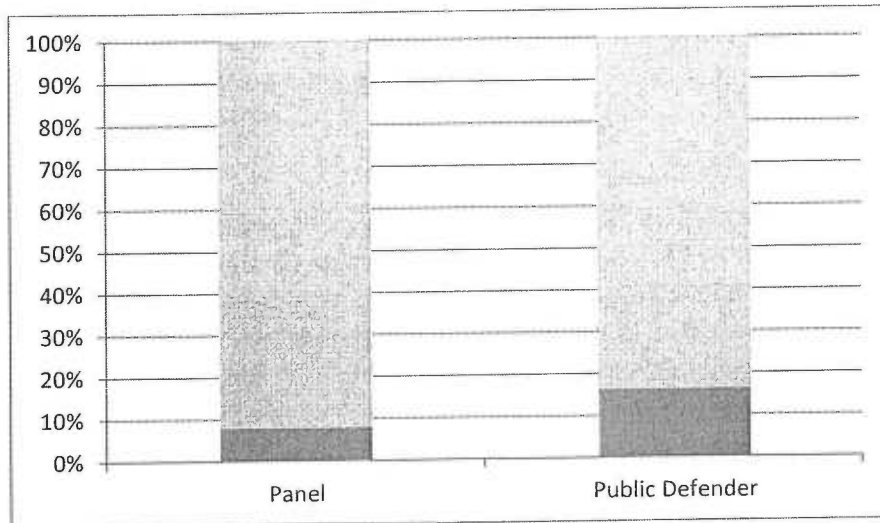


Figure 12. 730 PACE Requests for Doctors, Experts, and Exam Experts Relative to Number of Dispositions

		2010	2011	2012	2013	2014
APD	PACE requests	42	61	45	22	15
	Dispositions	301	257	250	283	211
		14.0%	23.7%	18.0%	7.8%	7.1%
Panel	PACE requests	438	471	351	332	271
	Dispositions	5355	4800	4237	3500	3150
		8.2%	9.8%	8.3%	9.5%	8.6%
Public Defender	PACE requests	1097	1260	1076	1130	954
	Dispositions	6036	5607	5349	4904	4864
		18.2%	22.5%	20.1%	23.0%	19.6%
Private	PACE requests	70	64	58	59	38
	Dispositions	531	452	439	400	325
		13.2%	14.2%	13.2%	14.8%	11.7%

317(e) Education Attorneys

The number of public defender referrals for education attorneys has risen over the past three years, as has the share of requests attributable to public defenders. In 2012, out of 38 total education attorney referrals for delinquency cases, only five (13%) were from

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public defenders. By 2013 that number had risen to 34 out of 86 (39%), and by 2014 it had risen to 79 out of 204 (39%). The Public Defender attributes the increase to better training within the office.

In contrast, both the number and share of panel attorney requests has dropped in the past three years. In 2012, panel attorneys made 14 out of 38 education attorney referrals (37%). In 2013, the number dropped to eight out of 86 referrals (9%), and in 2014 panel attorneys made 23 out of 204 referrals (11%).

Viewed as a share of 2014 dispositions, panel attorneys made a 317(e) request in less than 1% of their 2014 dispositions, while public defenders made a 317(e) request in 2% of their 2014 dispositions.

Alternate Public Defender Resource Use

The Alternate Public Defender is not included in this section on rate of resource use because, with one exception, the APD does not track separate resource use by the juvenile attorneys in Lancaster. The exception is the APD appellate attorney assigned to juvenile matters.

Over the past three years, the APD appellate attorney assigned to juvenile matters has consulted on an estimated 25 to 50 issues per year. In addition, over the past three years the APD appellate attorney or a supervising attorney has reviewed an estimated 50 cases in which a juvenile was transferred to adult court and was subsequently represented by the APD's Adult Division. In that time, the APD has filed two writs or habeas petitions on behalf of such juveniles. Both proceedings were based on inadequate representation by panel counsel in delinquency court. Both writs were granted on the basis of ineffective assistance of counsel (IAC) and new fitness hearings were ordered (see Appendix D for an example of an IAC case). It does not appear that the CEO was notified of these findings or, if the CEO was notified, it does not appear that the CEO did anything in response.

Resource Use Reflected in Practice and Outcome

Although a formal outcome analysis was beyond the scope of this project, some of the data collected suggests differences between public defenders and panel counsel in both practice and outcomes. These differences were seen not only between public defenders and panel counsel, but also between courthouse branches and between individual panel attorneys. These differences may be a reflection of the resources available and the rate at which they are used, as well as factors such as attorney culture.

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Caseloads

There is some difference between the relative caseloads of public defenders and panel attorneys, but the variations within panel counsel are particularly noteworthy.

Based on JAI data and attorneys on staff, on average each juvenile public defender received approximately 103 new 601 and 602 petitions in 2014.⁷⁵ Based on this same data, each APD juvenile attorney received approximately 87 petitions in 2014.⁷⁶ A review of panel invoices showed that each attorney received an average of 80 new 601 and 602 petitions in 2014.⁷⁷

This panel counsel average, however, hides a wide range of one to 274 new 601 and 602 petitions per attorney for the year.

Panel attorney billings – which include 777 and 778 petitions as well as 601 and 602 petitions discussed above – show an even greater range. In 2014, the average number of total billings per panel attorney was 127. But in that year four panel attorneys billed for fewer than ten matters, while one billed for 495. Most panel attorneys fell in the middle of the range with 39% of attorneys billing for 41 to 100 petitions. Removing the highest billing attorney, the 2014 average drops from 127 to 119.

Over the three year period in which invoices were examined in detail, one panel attorney billed the County for a total of 1,982 new petitions of all types over the three years (an average of 661 new petitions per year⁷⁸) – the next highest three-year total was 867. The average number of billings for all panel attorneys was 289 per year (see Figure 13).

⁷⁵ Public defender average is estimated based on the total number of 601/602 petitions assigned to the public defender in 2014, divided by 54 (49 deputy public defenders, plus 9 DICs each with less than a full caseload). Panel counsel number of new petitions per attorney is based on the quarterly invoices submitted by panel counsel.

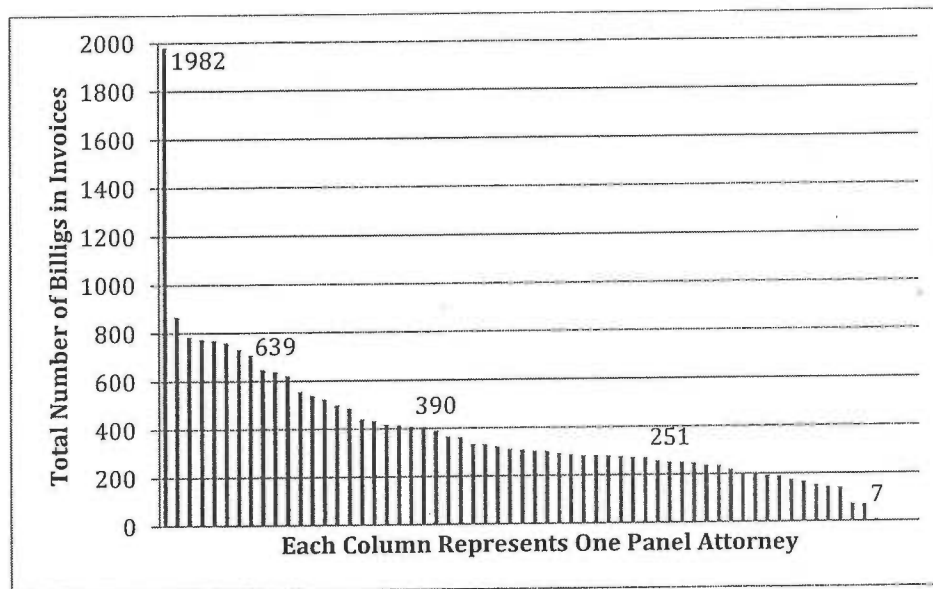
⁷⁶ For all attorney types, these are the numbers as of case assignments at initial appearance; they change somewhat by the time of disposition. For APD, only the two attorneys in Lancaster were included in this calculation.

⁷⁷ Note that, for all attorney types, these numbers do not reflect the attorneys' actual workload at any given time. The workload will be much higher because it includes previously filed matters that are not yet resolved, 777 and 778 petitions, and other matters.

⁷⁸ At \$340 per petition, this would mean income of almost \$225,000 a year for that particular panel attorney.

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Figure 13. Individual Panel Attorneys' Total Number of Billings, 2012-2014



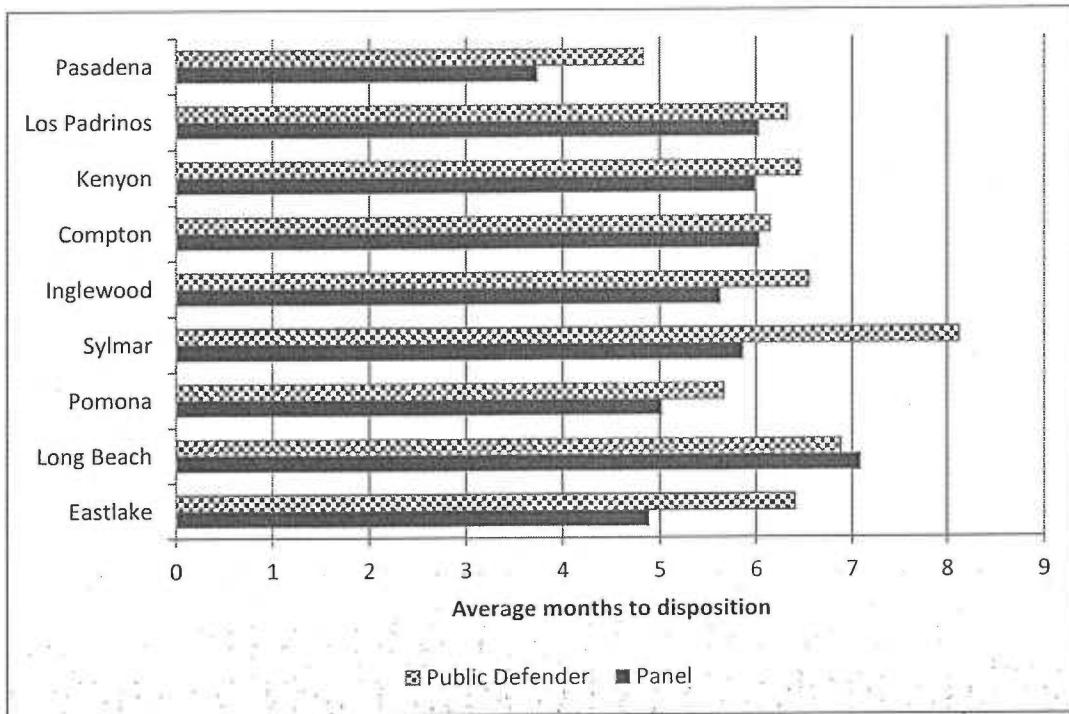
Reasons for the wide billing variations are unknown. Bills are monitored and reviewed by the CEO for accounting errors, double billing, and other administrative or technical concerns. However, the CEO does not have requisite expertise to determine the legitimacy of the billings submitted, nor can the CEO use the billing to identify potential red flags such as caseloads that are too high. Oversight of the panel attorneys by a more qualified agency or group is recommended.

Time to Resolution

Further differences were seen between public defenders and panel counsel, and between courthouse branches, regarding time to resolution (see Figure 14). Long Beach and Compton cases were resolved in roughly the same time whether they were panel counsel or public defenders. Panel counsel cases in Pasadena and Eastlake were among the quickest to be resolved in the County. Public defender cases in Sylmar took the longest in the County. These differences could be a result of caseload composition or other factors rather than attorney type; further clarification would require more research. It is likely, however, that time to resolution affects resource use, as cases resolved quickly would be less likely to use resources such as social workers, investigators, and appellate attorneys.

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Figure 14. Average Months to Disposition by Courthouse and Attorney Type, 2010-2014



Panel counsel quarterly invoices provide further information about time to resolution as applied to panel counsel in particular.⁷⁹ For example, panel counsel in one branch resolved around 61% of their new 601 and 602 petitions within the same billing quarter, while the attorneys in a different branch resolved around 22% of their new 601 and 602 petitions within the quarter.⁸⁰ Differences between individual panel attorneys were even greater: Over the three years reviewed, **one attorney resolved 15% of their new 601 and 602 petitions in the same billing quarter, while another resolved 80% of their new 601 and 602 petitions in the same quarter.**

Dispositional Outcomes

⁷⁹ Three years of panel counsel invoices were reviewed.

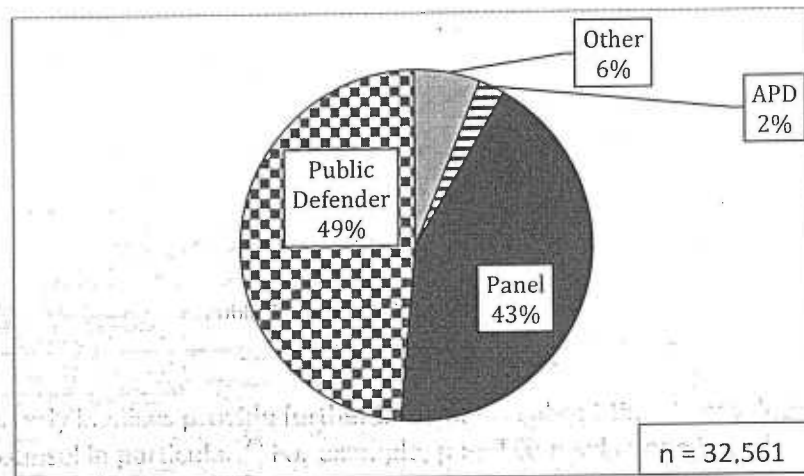
⁸⁰ "Resolved within the quarter" was determined by the presence of a disposition and/or disposition date in panel invoices because they bill at assignment and, if billing correctly, should only have a disposition and/or disposition date when disposition is reached within that same billing quarter.

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Dispositions for youth in delinquency court generally fall into four categories of increasing seriousness: home on probation, suitable placement, camp, and commitment to the Department of Juvenile Justice (DJJ). Examining DJJ commitments and camp commitments reveals potential differences in outcomes between public defenders and panel counsel, although care should be taken not to infer too much from these numbers without further investigation.

Between 2010 and 2014, according to JAI data, public defenders handled 51% of all dispositions and 49% of the felony dispositions, while panel attorneys handled 41% of all dispositions and 43% of the felony dispositions (see Figure 15).

Figure 15. Juvenile Felony Dispositions, 2010-2014



While public defenders handled 49% of the juvenile felony dispositions, they were responsible for only 23% of the DJJ commitments, and only 29% of the camp commitments. Conversely, while panel counsel handled 43% of the felony dispositions, they were responsible for 54% of the DJJ commitments and 63% of the camp commitments (see Figures 16 and 17).

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Figure 16. DJJ Commitments, 2010-2014⁸¹

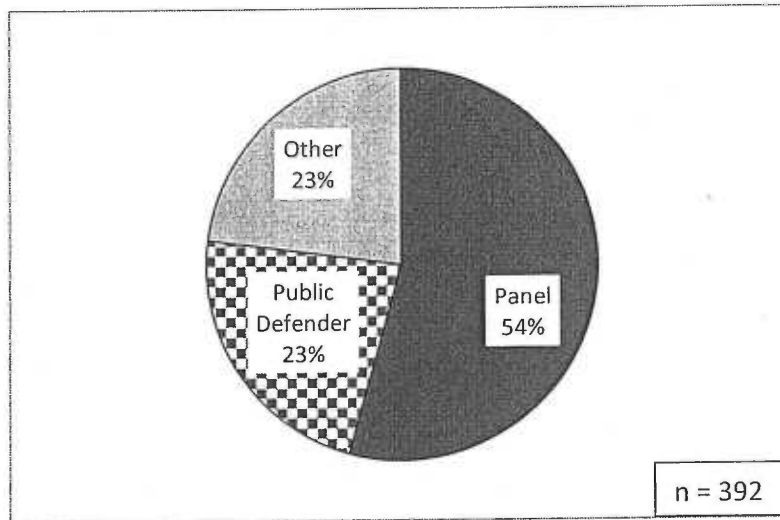
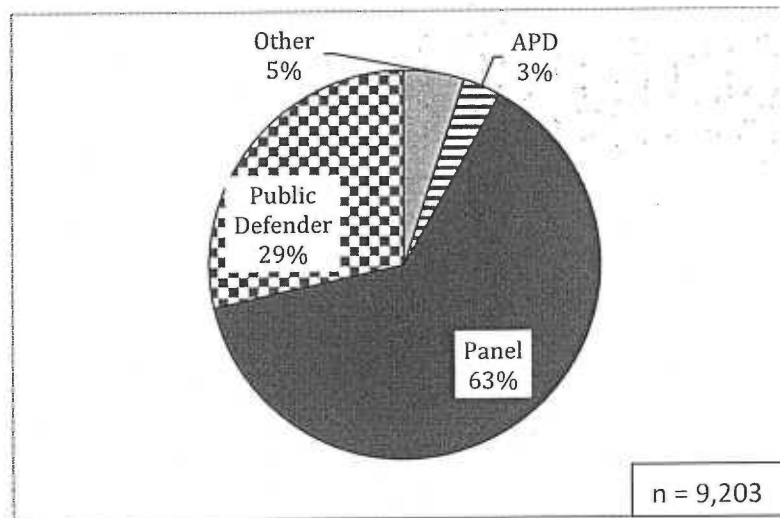


Figure 17. Camp Commitments, 2010-2014



The disproportionality seen above may or may not reflect differences in resource use and attorney practice. It could mean that public defenders' lawyering style and resource use results in clients who are less likely to be sentenced to camp or DJJ. However, it

⁸¹ APD had no DJJ commitments between 2010 and 2014 according to JAI data. A check of APD records revealed that they had one DJJ commitment between 2010 and 2014; it was apparently coded incorrectly in JAI.

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could reflect different caseloads. In other words, panel attorneys may have more clients going to DJJ and camp, because they have more clients facing the possibility of DJJ or camp. If the caseloads are different, the different outcomes may not be a reflection of resource use or lawyering style.

A key question is thus whether public defenders and panel counsel represent similarly-situated clients, such that public defender outcomes and panel counsel outcomes can be compared (at least as applied to DJJ and camp). Unfortunately, the answer to this question is unknown. As a matter of policy, in a multiple-defendant case the Public Defender will take the client facing more serious consequences. However, in many cases the Public Defender has a pre-existing conflict that prevents them from taking the client facing more serious consequences, or the Public Defender represents an adult involved in the same case, so the more serious client ends up with panel counsel. In interviews, panel heads stated their belief that they are more often assigned to the clients facing more serious consequences.

However, the Public Defender represents more juveniles altogether. So it could be true that panel counsel are more often assigned to the juveniles facing camp or DJJ when there are conflicts, and, at the same time, it could be true that panel counsel and public defenders represent the same total number of clients facing camp or DJJ.

In an attempt to shed light on the issue, judges were asked about the relative severity of public defender and panel counsel caseloads in the survey. Judicial opinions were not uniform: 41% responded that panel clients and public defender clients were about equal in terms of severity, 24% responded that public defenders have a greater share of the defendants facing more serious consequences, and 29% responded that it was the panel attorneys who have a greater share of defendants facing more serious consequences.

The data show that panel counsel are responsible for a disproportionate share of DJJ and camp commitments, but the full meaning of this data will require further research.

Scope of Advocacy

Finally, the panel heads and public defenders had different perspectives and practices regarding what it meant to be a good juvenile defense attorney. The difference can be summed up by a comment made by one of the judges:

The PD and panel lawyers define a “win” differently. The PD’s office, as a county institution, has an interest in seeing that the juvenile system works properly. To that end they pursue due process issues and mental health issues thoroughly. The panel attorneys, while very sensitive to the objectives of the juvenile court,

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treat their cases more like a criminal case. That is, they try to get their client the best deal on the charges and disposition. They are less concerned about having their clients receive the love of the court and probation. They want their kids out of the system as soon as possible.

Interviews with public defenders and panel counsel were consistent with the judge's perspective. Public defenders repeatedly emphasized the expanded services they provide to address their clients' needs, especially in the areas of mental health and education support. They prioritize training and supervision that responds to the clients' needs well beyond the narrow criminal charges, and they have resources such as the on-staff social workers and resource attorneys, among others, to do that.

In contrast, in interviews for this report, six of the eight panel heads barely mentioned representation beyond their response to the criminal charges. Instead, the panel heads focused heavily on the positive dispositions they receive for their clients in response to the criminal charges, stressing their belief that they obtain good deals for their clients because of their long experience, as well as the value they provide by resolving cases quickly. Many of them emphasized their own and other panel members' experience as adult criminal defense lawyers. One judge echoed the panel perspective, saying "The average criminal defense experience of my panel is over 25 years. They provide excellent representation up through disposition. [. . .] Post dispo they don't do much – and they are paid nothing."

Consistency of Representation, Case File Management, and Parental Engagement

During interviews and outreach for this report, three potential concerns were raised: (1) that panel counsel stand in for each other, causing clients not to have a consistent point of contact, (2) that panel counsel do not maintain full case files, and (3) that panel counsel do not adequately communicate with their clients' parents or families.

1. Substitution of counsel may not comply with the County's Guidelines, which recommend that "[t]here may be occasions when a stand in attorney is necessary, but these should be exceptions."⁸² The Public Defender objected to this section of the Guidelines, stating its concern that the language "could be interpreted to improperly restrict the Public Defender's power to designate assigned counsel based upon the business needs of our Department. It is important to distinguish here between the Public Defender and private counsel, and to generally outline how they differ. Because our lawyers work under one law firm they can

⁸² *Guidelines for Attorneys Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 10.

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easily and quickly share information . . . There is no conflict in our attorneys sharing such information about the minor when standing in for each other.”⁸³ Panel counsel do not appear to have objected to the Guidelines. In any event, it was impossible to obtain any data regarding the frequency with which attorneys of any type stand in for each other, and the panel heads claimed that it wasn’t their practice. If it occurs to an unacceptable degree, it may be isolated to a few attorneys in particular. No data was available to make any determinations on the subject one way or another.

2. Failure to maintain case files could also fail to comply with standards and guidelines, as “counsel has an obligation to keep and maintain a thorough, organized and current file on each case. Documentation should be clear, up-to-date and orderly, permitting a successor attorney to readily locate all information.”⁸⁴ However, as with substitute counsel, nothing beyond anecdotal information was available. The matter therefore cannot be determined one way or another.

3. Communication with parents is critical, and is strongly emphasized by the Public Defender in its training and supervision of new attorneys. Building a relationship with parents was emphasized in Public Defender interviews for this report. In interviews with panel heads, most never mentioned their clients’ parents, while a few had a perspective very similar to the Public Defender’s. In the survey, when asked an open-ended question about their philosophy about communication with their clients’ families, about three-quarters of the panel attorneys who responded to the question commented on the importance of engaging family members. When asked about the nature of interaction with clients’ family members, 78% of panel survey respondents said the most frequent way was to meet with parents outside the courtroom before and/or after hearings. At the same time, about one-quarter of panel survey respondents noted that family members were not their clients and that they believed confidentiality was very important. According to one panel attorney: “My communication with client’s family is mostly limited to information gathering to assist the case for charges and disposition. I take my client’s privacy and confidentiality seriously. I do try to be nice and civil but I inform them that the minor is my client and confidential nature of discussions with minor and facts discussions must be conducted in private.”

⁸³ Ronald L. Brown, *Response to ‘the guidelines’*, Los Angeles County Public Defender, March 28, 2014, p. 9-10.

⁸⁴ National Juvenile Defense Center Standards at 25 (2012); see also Los Angeles County Guidelines for Attorneys Representing Youth in Los Angeles Juvenile Delinquency Court, p. 9 (2014).

Part V: Per-Case Costs

PART V: Per-Case Costs Borne by Counsel

Response to item 1) c. in the motion:

“A comparative analysis of the itemized per-case costs borne by the Public Defender, the Alternate Public Defender, and juvenile panel attorneys.”

Highlights

Panel counsel bear a number of costs that are not borne by individual public defenders, including the costs of their own training, the costs of investigators, and other costs associated with representation of their clients.

The Office of the Public Defender provides training, social workers, investigators, and other resources for all deputy public defenders.

Neither panel counsel nor public defenders bear the cost of 730 experts paid through the County's PACE system. Social workers, therefore, can be obtained by panel counsel without cost.

Data was not available to quantify the actual per-case costs for either the Public Defender or panel counsel.

Measuring annual actual costs against the number of new petitions or the number of dispositions does not provide a per-case cost. However, as a means of comparison over the past five years, annual actual costs measured against number of dispositions shows an average of \$2,912 per disposition for the Public Defender and an average of \$751 per disposition for panel counsel. This is a means of comparison only; it is not the per-case cost.

Public Defender

The Juvenile Division of the Office of the Public Defender includes the on-staff resources identified in the resources section above:

Part V: Per-Case Costs

- Attorneys: 49
- Social Workers: 13 in courts, 2 supervising
- Resource Attorneys: 7
- Deputies in Charge: 9 at the 9 courthouses plus 1 who is the Collaborative Justice DIC
- Head Deputies: 2
- Appellate Attorneys: 2
- Appellate Immigration Attorney: 1
- Investigators: Roster of public defender investigators, 9 investigators in charge
- Administrative Support: 16 admin support, 4 paralegals, 1 supervising paralegal
- DJJ Unit: 1 attorney, 1 paralegal
- SB 9 and SB 260 Units: 3 attorneys, 1 social worker

While all of these resources are part of the Juvenile Division, not all of them are part of the Juvenile Division budget. The appellate attorneys, immigration appellate attorney, and all investigators are housed within the budget of the Office of the Public Defender, not within the Juvenile Division. The budget of the Juvenile Division includes the deputy public defenders, the DICs, the Head Deputies, the trainer, the social workers, resource attorneys, paralegals, administrative support, and the DJJ, SB 9, and SB 260 units.⁸⁵ All employees are full time.

In addition to staff, the Juvenile Division covers other costs associated with representing its clients such as office supplies, computers, phones, and photocopying. The Juvenile Division also covers the costs of the monthly and ongoing office trainings, as well as the annual training. Out-of-pocket costs borne by individual public defenders include their own parking and their own MCLE if it is not obtained through training that is provided by the Office of the Public Defender.⁸⁶ Malpractice insurance is provided by the County because the attorneys are County employees and it is therefore not an expense of the Public Defender or its attorneys.

Panel Counsel

In the panel attorney survey, a majority (70%) of panel counsel indicated that they pay for a secretary, law clerk, or paralegal (most of those pay for a secretary only), while

⁸⁵ Not all of the Juvenile Division funding comes from the County. In particular, the Public Defender receives a small amount of federal funding through the Juvenile Accountability Block Grants (JABG), and the Juvenile Mental Health Court is funded by the State.

⁸⁶ Public defenders are paid as if it were a work day for the annual juvenile training because they are required to attend (although they must cover their own cost of food at the training).

Part V: Per-Case Costs

30% indicated that they do not pay for secretary, paralegal, or law clerk. Panel counsel survey respondents were asked to identify the out-of-pocket expenses that they incur for juvenile panel clients and responses included: investigators, service of process, office supplies, parking, photocopying, rent, telephone, MCLE and continuing legal education, answering service in English and Spanish, and internet. The out-of-pocket costs differ by attorney and most panel attorneys were unable to estimate their cost when asked in the survey. In addition, almost all panel attorneys (91%) represent clients other than their juvenile panel clients, and many of their costs cannot be disaggregated into costs that are specific to their panel juvenile delinquency cases.

Panel counsel, like public defenders and alternate public defenders, do not have to pay for 730 experts; the court pays for those resources through the PACE system. This means that panel counsel have access to social workers and other resources without cost.

Panel counsel are required to pay out of pocket to attend the annual Public Defender training.⁸⁷ In 2015, the cost per person for panel attorneys to attend the Public Defender training was \$125 plus parking. Panel attorneys are also required to pay the cost of hosting their annual training seminar. The cost per attorney to attend the 2015 seminar hosted by the panel was \$65, plus \$12 for parking.

Alternate Public Defender

Like the Public Defender, the APD is a County office with a County budget. However, the APD does not disaggregate its costs into separate juvenile and adult budgets. In general, the Juvenile Division costs include staff (three full-time attorneys plus one supervising attorney and available investigators and support staff), as well as costs such as office supplies and a case management system. The APD Juvenile Division attorneys are often invited to present at California and national conferences or training sessions, but generally those costs are covered by the inviting agency.

Per-Case Costs and Comparisons

It is not possible to provide an itemized per-case cost for any of the counsel. Neither panel attorneys nor the Public Defender nor the APD itemize their per-case costs: PD and APD do not do so because the costs are subsumed within the larger office budgets, while panel attorneys do not do so because they are compensated at the beginning of the case and therefore there is no need for them to track hours worked and costs incurred on a per-case basis.

⁸⁷ Deputy public defenders do not have to pay to attend this training.

Part V: Per-Case Costs

The closest approximation, and the only means by which the Public Defender and panel counsel can be even roughly compared, is to compare the total actual costs against the total number of dispositions, or to compare the total actual costs against the total number of 601 and 602 petitions assigned at initial appearance.⁸⁸

It is critical to note, however, that the comparison below is *not* the cost per case. Rather, the discussion below is a way to utilize the same information available for both public defenders and panel counsel. As discussed earlier, the services provided and the methods of practice differ widely between panel attorneys and public defenders. Looking only at numbers calculated below cannot tell the complete story for any of the attorneys.

Within those confines, the data show higher County cost for public defenders than for panel counsel, as measured against total dispositions and against total number of new petitions.

In 2014, the public defender reached disposition in 4,864 cases. If the actual cost in FY 2014-15 is distributed over just those dispositions, the “cost” for each disposition in 2014 was \$3,450. The same calculation for panel counsel results in an average “cost” per disposition of \$687 in 2014. Using this same methodology, the five year average per-disposition was \$2,912 for public defenders and \$751 for panel counsel.

Looking at new 601 and 602 petitions at initial assignment (rather than at dispositions), the Public Defender “cost” \$3,015 per new petition in 2014 and panel counsel “cost” \$948. Viewed as a five-year average, the “cost” per new petition was \$2,052 for public defenders and \$967 for panel counsel (see Figures 18 and 19).

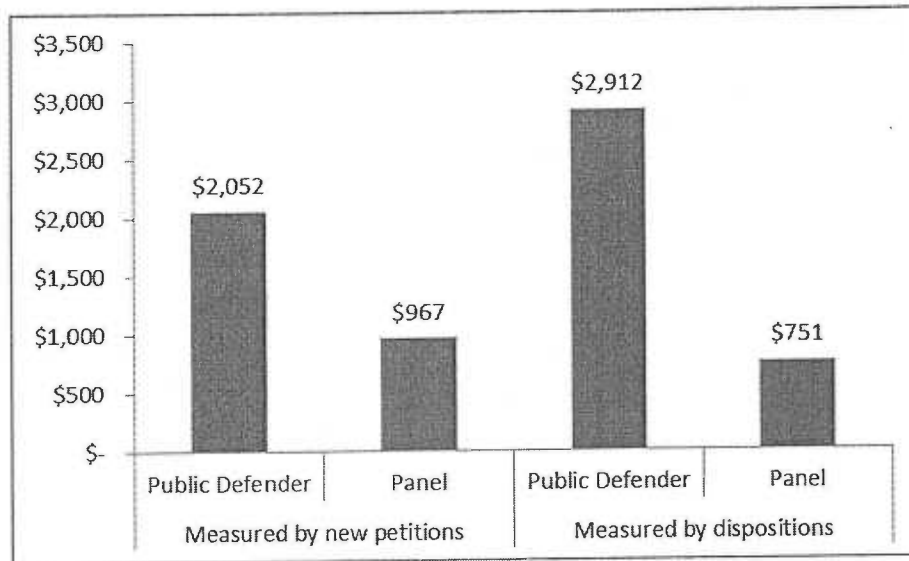
Figure 18. Actual Costs Measured Against Number of Dispositions and Number of New Petitions, 2011–2015

	2011	2012	2013	2014	2015
Measured by number of dispositions					
Public Defender	\$2,615	\$2,491	\$2,878	\$3,128	\$3,450
Panel	\$779	\$798	\$720	\$771	\$687
Measured by number of new petitions at initial assignment					
Public Defender	\$1,462	\$1,495	\$1,943	\$2,344	\$3,015
Panel	\$911	\$975	\$940	\$1,061	\$948

⁸⁸ No such cost can be calculated for the APD, because the APD does not maintain a separate juvenile budget.

Part V: Per-Case Costs

Figure 19. Actual Costs Measured Against Petitions and Dispositions, Five-Year Average



It is critical to recognize that this methodology folds all annual expenses into the “per-case” calculation even if the expenditures are not related to resolution of the case. The numbers above in no way represent a “per-case cost.”

For example, as discussed above, the Public Defender’s actual annual costs include the costs of social workers, resources attorneys, the DJJ unit, the SB 9 unit, and the SB 260 unit. Many of the services provided by these staff are distinct from the disposition of a particular petition, but the expenses for these services are nonetheless included in the “per disposition” calculations above. Many of these actual costs also represent services that are not provided by panel counsel.

Public defenders also incur costs for court appearances and client services in situations that do not usually apply to panel counsel. For example, public defenders appear for juveniles who are arrested but have cases pending in other jurisdictions, and for juveniles arrested on a warrant.

In addition, both public defenders and panel counsel provide services for clients after disposition, including appearances for 777 petitions (probation violation), 778 petitions (change in status), psychotropic medication hearings, and status appearances. Measuring actual annual cost against the number of dispositions does not take these post-disposition activities into account. To address this issue, the Public Defender tracks the total number of court appearances made by its attorneys, for appearances that are

Part V: Per-Case Costs

not connected to routine representation between initial appearance and disposition. This system tracks court appearances for juveniles who do not become Public Defender clients, as well as post-disposition court appearances. In fiscal year 2013-2014, the Office counted 30,332 such appearances, or more than ten court appearances a week for each of the 49 deputy public defenders in the nine juvenile branches. The cost of representing clients in these post-disposition and other proceedings is folded into the "per disposition" cost above although these costs are incurred after disposition.⁸⁹

Finally, looking only at the annual actual expenditures for the Public Defender and for panel counsel ignores numerous other costs related to juvenile delinquency. For example, the calculations above ignore the costs of camp and Probation -- those costs are borne by the County and they might increase or decrease depending on the nature of the representation provided by counsel.

⁸⁹ According to their quarterly invoices, 777 and 778 petitions made up about 34% of panel billings over the past three years. According to PD data, 777 and 778 petitions made up about 32% of their total petitions between 2010 and 2014.

PART VI: Transfer Cases

Response to item 1) g. in the motion:

“A comparative analysis of the juvenile cases represented by the Public Defender, the Alternate Public Defender (in the Lancaster juvenile courts), and juvenile panel attorneys, which are transferred to adult criminal court pursuant to WIC 707 (a) and (b).”

Highlights

Indigent juveniles facing possible transfer to adult court are more often assigned panel counsel. Over the past five years, as between panel and public defenders, panel counsel were assigned to 71% of the fitness motions and public defenders were assigned to 29% (for all fitness motions 56% were assigned to panel and 21% to public defenders; the remainder were mostly retained counsel).

Panel counsel clients are more likely to be found unfit and transferred to adult court. Over the past five years, 26% of panel clients were found unfit and transferred to adult court, but only 13% of public defender clients were found unfit and transferred to adult court. This is a statistically significant difference.

The youth are presumed to be similarly situated because they all have pending fitness motions. The differences in outcomes could therefore be a result of different attorney types. However, a causal relationship cannot be definitively determined because information about other potential causes is unknown.

Out of 114 fitness cases examined in detail, four were resolved in less than one month, and all four resulted in a finding of unfitness and transfer to adult court. Three of the four were panel cases and one was retained counsel.

For cases examined in detail that resulted in transfer to adult court (66 in total), panel counsel consulted less often with experts, provided less documentation to support the client, and filed fewer motions. Panel counsel also resolved these unfit cases faster than public defenders – the average was 9.4 months for public defenders but only 4.9 months for panel counsel.

Twenty percent of the panel attorneys responding to the survey indicated that conceding unfitness occasionally, sometimes, or often makes sense for the client.

Part VI: Transfer Cases

Transfer cases, in which a fitness motion is filed and the District Attorney seeks to transfer a juvenile in adult court, constitute a critical part of the juvenile defense attorney's job. Attorneys must advocate for their clients to avoid the risk of the more serious and long-standing consequences that can accompany an adult criminal record. As requested by the County, the Warren Institute obtained JAI data for all transfer cases, and examined a sample of transfer cases in detail. This analysis revealed critical differences in transfer case distribution, practice, and outcomes.

Outcome Analysis

Using JAI data for all fitness motions filed in the past five years, the Warren Institute conducted an outcome analysis comparing the results of fitness motions by attorney type. The analysis was performed by Su Li, Ph.D, Research Methodologist and Statistician of Empirical Legal Studies at UC Berkeley, School of Law.⁹⁰ Dr. Li examined five years of JAI data from 2010 through 2014 reflecting cases in which a fitness motion was filed and the client was assigned panel counsel or a public defender. There were a total of 771 such fitness motions over the five years.⁹¹

Dr. Li determined that:

- Over the past five years, panel counsel were assigned to 71% of the fitness motions and public defenders were assigned to 29% (these percentages do not count assignments to APD or retained counsel).
- Twenty-six percent (25.9%) of panel clients with fitness motions were found unfit and transferred to adult court, but only 13.4% of public defender clients with fitness motions were found unfit and transferred to adult court.
- The difference is statistically significant.

The methodology is worth noting:

⁹⁰ Among other degrees, Dr. Li holds a Ph.D in Sociology and a M.S. in Mathematical Methods for Social Science, both from Northwestern University in 2006 and 2002, respectively.

⁹¹ During the on-site file review, it was learned that JAI was accurate in relation to a finding of unfitness. Cases with a "U" were cases in which the youth had been found unfit. Cases without a "U," however, were sometimes still pending. To check for any error, the statistical analysis was re-run without any 2014 cases. The cross-tab showed 27.8% with panel counsel coded as unfit, and 16.6% public defender cases coded as unfit. This result is also statistically significant and is consistent with the result found when the 2014 cases were included.

Part VI: Transfer Cases

- The original Excel file provided to the Warren Institute by the County contained all JAI entries from 2010 through 2014 with a hearing coded as “FIT,” meaning that the matter had appeared on calendar for a fitness motion. JAI codes for type of attorney (DPD for public defender, CRT for panel counsel, APD for alternate public defender, PRI for private counsel). Cases where the youth is found unfit are marked with a “U.”
- Because JAI is a calendaring system, the initial data file contained an entry for every appearance made by a youth when the fitness motion was on calendar, even if the matter was on calendar multiple times for status and continuance. The original file thus reflected multiple entries for almost every petition. Multiple entries were eliminated so that each combination of a case number and petition date appeared only once in the analysis. The most recent court appearance was kept for each case number/petition date in the JAI file. The resulting file contained 1,486 rows of data.
- If a case number appeared multiple times with different petition dates, the attorney type was checked. Fifteen cases had changed attorney types. These 15 cases were eliminated.
- During the individual on-site file review (described later in this section), it was learned that JAI sometimes contained error when a youth had more than one petition pending. Occasionally, clerks would code all pending petitions as “FIT” even if a fitness motion had not been filed against all pending petitions. Youth with multiple petitions sometimes have more than one fitness motion pending, but not always, and in that situation JAI data could not be used to determine which of the pending petitions had fitness motions and which did not. In other words, JAI sometimes indicated that a youth with multiple petitions also had fitness motions pending for each petition, when in fact the youth had fewer (or only one) fitness motion pending.
- JAI was reliable as it related to at least one pending fitness motion. That is, JAI never indicated that a youth had a fitness motion when the youth did not have any pending fitness motions.
- To eliminate error associated with multiple petitions, cases with multiple entries (i.e., multiple pending petitions) were consolidated.
- After this step, 1,044 data records remained. Among the 1,044 data entries, 983 had valid attorney types. 771 of those 983 were coded as DPD or CRT.

Case File Review

At the request of the County, the Warren Institute visited all nine courthouse branches in August and September 2015 and reviewed a number of individual court files on site for cases in which fitness motions were filed. A random selection of files would have resulted in a large number of files in which the youth remained in juvenile court,

MARCH 1, 2016

WARREN INSTITUTE ON LAW AND SOCIAL POLICY, UC BERKELEY SCHOOL OF LAW

REPORT TO THE LOS ANGELES CEO AND AUDITOR/CONTROLLER ON JUVENILE INDIGENT DEFENSE

FINAL

Part VI: Transfer Cases

because this is the more frequent result. In order to gain an understanding of cases in which the youth were found unfit, cases with findings of unfitness were oversampled. This means that the files reviewed are not a random sample, and attributes associated with findings of unfitness will be more heavily weighted in the result. Thus, while the information below presents a detailed description of the files reviewed, it should not be extrapolated to all fitness motions without a statistical analysis that corrects for the oversampling. Such an analysis was beyond the scope of this review.

In order to identify the cases to be reviewed, a list was compiled of the 90 most recent cases where the juvenile was found unfit (i.e., transferred to adult court) and the 90 most recent cases where the juvenile was found fit or remained in juvenile court. Two additional cases were added because they involved juveniles with multiple petitions.

Out of these 182 cases, 26 files had been archived and could not be accessed for inclusion in this report; 14 files did not in fact have a fitness motion pending against the petition that had been identified in JAI; and 12 files were unavailable or could not be located by branch clerks. The detailed case file review thus consisted of 130 separate fitness motions filed by the District Attorney.⁹² However, the analysis below reflects only 114 cases because eight motions were still pending at the time of review and therefore could not be categorized as fit or unfit, and eight had a change of attorney while the motion was pending that made it impossible to assign the result to one attorney or another. The distribution of cases in the file review by attorney type is shown in Figure 20.⁹³

Figure 20. Distribution of Sample Cases in Transfer Case File Review

Counsel Type	Fit	Unfit	Total
Public defender	13	6	19
Panel	25	50	75
APD	0	4	4
Private	10	6	16
Total	48	66	114

⁹² As noted in the methodology section, these are called 130 “cases” but are actually 130 combinations of a case number and unique petition. If a juvenile had more than one petition pending at a time and fitness motions were filed in relation to more than one of those petitions, that juvenile would be included more than once in the list of 130.

⁹³ Note that, because the files went back to 2012, the data includes cases from the Kenyon courthouse branch that closed in mid-2013.

Part VI: Transfer Cases

Notably, 27% (31 out of 114) of the cases included a petition to prescribe psychotropic medication to the youth. The degree to which that number is higher than should be expected is a subject that the County may wish to investigate in the future.⁹⁴

Possible Differences in Practice

Time to Resolution

For all 114 cases reviewed, the average length of time between the filing of a fitness motion and resolution was 7.1 months. Public defender cases took longer than average (10.5 months) and panel attorney cases took less time than average (5.8 months). APD cases resolved in an average of 10.2 months and private attorney cases averaged 8.2 months.

For cases in the sample that resulted in a finding of unfitness, the average length of time to resolution was 5.7 months. Public defenders took longer on average (9.4 months) than panel attorneys who took 4.9 months. APD's average was 10.2 months and private attorneys averaged 5.1 months.

For cases in the sample in which the juvenile remained in juvenile court, the average length of time to resolution was 9.1 months. Again, public defenders took longer – 11 months – than panel attorneys who took 7.7 months. Private attorneys averaged 10.1 months.

Some cases were resolved remarkably quickly. Indeed, out of the 114 cases examined, four fitness motions were filed and resolved in less than one month. All four resulted in the juvenile being transferred to adult court. Three of these were panel counsel cases, and one was a private attorney case.

A total of 19 motions out of the 114 (16.7%) were resolved in three months or less – 18 by panel attorneys and one by a private attorney. Eighteen of the 19 cases resolved in three months or less resulted in the juvenile being found unfit and transferred to adult court.

At the other end of the spectrum, 15 out of the 114 motions (13.2%) took a year or longer to resolve. Seven (47%) were public defender cases, six (40%) were panel cases,

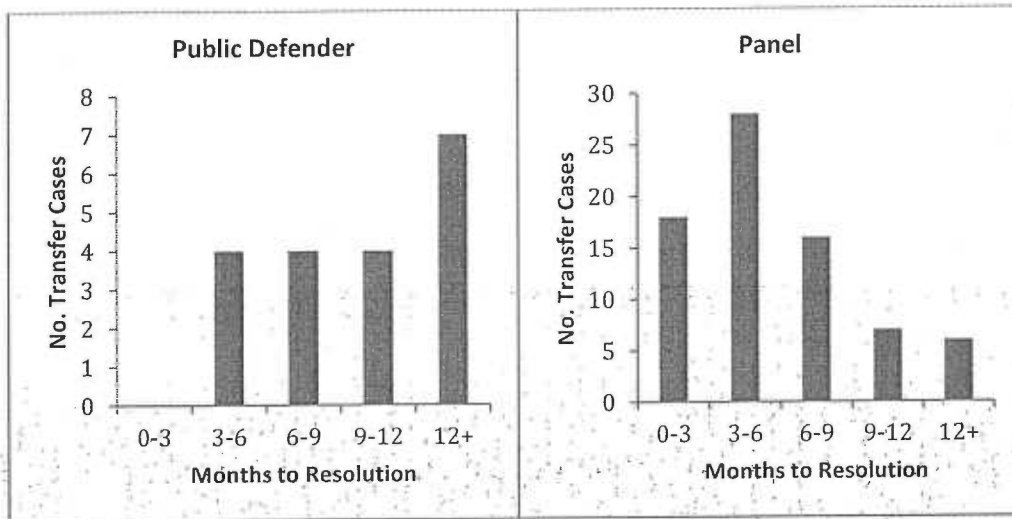
⁹⁴ A 20% rate for antipsychotic prescriptions for foster youth was recently called “disturbing” and “unacceptable” in Pennsylvania. See <http://jije.org/pennsylvania-juvenile-offenders-given-psychiatric-drugs-at-high-rates/147154/>

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and two (13%) were private cases. Nine of the 15 stayed in juvenile court, and four (2 panel and 2 public defender) were transferred to adult court.

Overall, 37% (7) of public defender cases took over 12 months to resolve. Conversely, almost one-quarter (18) of the panel attorney cases in the sample were resolved in less than three months. Only 8% (6) of the panel attorney cases took longer than 12 months (see Figure 21).⁹⁵

Figure 21. Time to Resolution for Fitness Motions, by Attorney Type



Resource Use and Representation in Transfer Cases

Cases remaining in juvenile court

Out of the 48 cases remaining in juvenile court in the sample of 114, 96% (46) reflected a negotiated resolution to keep the client from being transferred to adult court, as documented by the withdrawal of the fitness motion by the District Attorney.

Eighty-three percent (40) of the 48 cases remaining in juvenile court reflected counsels' consultation with an expert (medical, psychological, or social worker), either through request for an expert, submission of an expert report, or expert testimony. Public defenders consulted experts in 92% of their cases that remained in juvenile court in the sample and panel in 88%.

⁹⁵ APD cases all resolved within eight to eleven months.

Part VI: Transfer Cases

Cases found unfit and transferred to adult court

Out of the 66 cases in the sample of 114 in which the juvenile was found unfit and transferred to adult court, 77% (51) reflected counsels' consultation with an expert, medical doctor, psychologist, or social worker, either through request for an expert, submission of an expert report, or expert testimony. Public defenders consulted an expert in 83% (5 out of 6), panel attorneys in 80% (40 out of 50), APD in every case, and private attorneys in only 33% (2 out of 6). Most included submission of an expert report: for public defenders it was three out of the five, and for panel counsel it was 32 out of the 40.

Regarding documentation in support of the client's case, 89% (59) of the 66 unfit cases in the sample contained one or more of the following: character letters; reports from medical, psychological, or social workers; school records; dependency court records; IEP documentation; or other written evidence. Public defenders had evidence of this type of documentation in 100% of their cases, panel attorneys in 90% (45 out of 50), APD in 100%, and private attorneys in 67% (4 out of 6).

Other data that was gathered from a review of the 66 cases in which the juvenile was found unfit is presented below in Figure 22. As a percentage of the total, panel counsel are lower than public defenders in every category.

Figure 22. Resource Use and Representation in Sample of 66 Unfit Cases

	Total Number of Unfit Cases in Sample	Expert Consultation	Documented Support	Written Motion	Testimony	Edsel P. Hearing
Public Defender	6	5 (83%)	6 (100%)	4 (67%)	2 (33%)	5 (83%)
Panel	50	40 (80%)	45 (90%)	4 (8%)	5 (10%)	35 (70%)
APD	4	4 (100%)	4 (100%)	1 (25%)	4 (100%)	4 (100%)
Private	6	2 (33%)	4 (67%)	2 (33%)	1 (17%)	5 (83%)
Total	66					

Part VI: Transfer Cases

- Written motions: Sixty-seven percent (4 out of 6) of public defenders' cases that resulted in transfer had a written motion, 8% (4 out of 50) of panel attorney cases, 25% (1 out of 4) of APD's, and 33% (2 out of 6) of private attorney cases.⁹⁶
- Expert testimony: Twenty-percent (13) of the 66 unfit cases reflected testimony from an expert or other witness. Public defenders had expert or other testimony in 33% (2 of 6) of their cases, panel in 10% (5 out of 50), APD in 100% (four out of four) and private attorneys in 17% (1 out of 6) of their cases.
- Edsel P. hearing: Eighty-three percent (5 of 6) of public defender cases in the sample that resulted in transfer had an Edsel P. hearing, 70% (35 out of 50) of panel attorney cases that were transferred had the hearing, all APD cases (4 out of 4), and 83% (5 out of 6) private attorney cases.

Waiver or Submission of Fitness

In four of the 66 cases in the sample where the juvenile was transferred to adult court, the attorney waived, conceded, or submitted fitness, essentially meaning that the attorney did not advocate for his or her client at the fitness hearing. Three were panel cases and one was a private attorney. The court brief filed in Appendix D is an example of a panel case in which the attorney submitted on fitness. Panel counsel in that case was found to have been constitutionally ineffective. It does not appear that the CEO was notified or, if the CEO was notified, it does not appear that the CEO had any structure that allowed for an action in response.

On the issue of waiver, the Public Defender and panel counsel view transfer cases differently. The Office of the Public Defender has a policy that no public defender can waive, stipulate or submit to transfer without full review up the entire chain of command, to the Head Deputy.⁹⁷ The Office could not recall an instance in which approval was given for waiver, submission, or stipulation to transfer. Some panel attorneys, in contrast, believe differently: 20% of the panel attorneys responding to the survey indicated that conceding unfitness occasionally, sometimes, or often makes sense for the client. Some of their comments include:

- "I prepare for a fitness hearing on each fitness case. However, there are times when a hearing is not in my client's best interest."

⁹⁶ Not all court clerks recorded oral motions consistently so oral motions could not be accurately counted; therefore, only written motions are included here. 17% (11 out of 66) cases included at least one written motion.

⁹⁷ The policy is slightly different if the juvenile is 17.

Part VI: Transfer Cases

- “I have conceded unfitness 4 times in 36 years each time resulting in great benefit to the client. But it should happen rarely and only when you are sure you are doing the right thing.”
- “In a rare case, the circumstances may be that the client will be better off in adult court.”

PART VII: National Standards and County Methods for Specialized Training and Continuing Legal Education; Evaluation, Supervision, Mentoring and Support; Accountability and Quality Assurance; and Compensation and Incentives

Response to motion item 1) d & e.:

“A review of the methods of specialized training, continuing legal education, supervision, mentoring and support, evaluation, compensation/incentive systems, accountability, and quality assurance employed by the Public Defender, the Alternate Public Defender, and juvenile panel attorneys.”

“A review of the methods of specialized training, continuing legal education, supervision, mentoring and support, evaluation, compensation/incentive systems, accountability, and quality assurance recommended by national standards.”

Highlights

The County's current contract with panel counsel does not allow panel counsel to access court-paid investigators; panel counsel must pay for investigators from their flat fee or they must find an investigator to work pro bono. National and state standards state that the County should provide investigators for panel counsel.

Both panel attorneys and public defenders have annual training, but panel attorneys are required to organize and pay for their training out of pocket. Standards state that the County should ensure that training is available without cost to all counsel for indigent defendants.

Because the County has not established a qualified oversight body for panel counsel, substantive oversight, supervision, and quality control have been provided, if at all, by the panel heads. This leads to inconsistency and an inability of the County to ensure quality. It is also inconsistent with standards. In at least two instances, panel attorneys have been constitutionally ineffective and either the County was not informed, or the County was informed but had no structure that allowed for a response.

Part VII: Training, Accountability, and Compensation

Relying on the judges to provide oversight is problematic, lacks consistency, and is not recommended.

Flat-fee contracts such as those used in Los Angeles are strongly criticized in California and even barred by law in other states; since at least 2006 the State Bar has stated that they should not be used.

In an effort to ensure quality of representation for juvenile defendants nationwide, the American Bar Association (ABA), the National Legal Aid and Defenders Association (NLADA), and the National Juvenile Defenders Center (NJDC), among others, have promulgated national standards for training, supervision, compensation, evaluation and quality control of juvenile attorneys. The NJDC has additionally identified a guiding set of principles designed to provide an ethical framework for all juvenile defense standards:⁹⁸

1. Juvenile defenders play a critical role in the fair administration of justice for children;
2. Juvenile defense is a specialized practice anchored in juvenile-specific training and practice skills;
3. Juvenile defense requires zealous advocacy;
4. Juvenile defense requires competence and proficiency in court rules and the law;
5. Juvenile defense requires legal representation that is individualized;
6. Juvenile defense requires representation that is developmentally appropriate;
7. Juvenile defense is based on the clients' expressed interests;
8. Juvenile defense requires that clients be meaningful participants in their defense;
9. Juvenile defense includes counseling clients through the legal and extralegal processes;
10. Juvenile defense includes ensuring that clients and their families are treated with dignity and respect and that there is decorum in the courtroom;
11. Systemic barriers and deficiencies impair juvenile defenders' abilities to provide high-quality representation; and
12. Systemic barriers and deficiencies lead to disproportionate representation of vulnerable, underserved populations at every contact with and stage of the juvenile delinquency court process.⁹⁹

⁹⁸ National Juvenile Defense Center, "Models for Change; Systems Reform in Juvenile Justice" at 9 (2012). Available at <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

⁹⁹ National Juvenile Defense Center, "Models for Change; Systems Reform in Juvenile Justice" at 9 (2012). Available at <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

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These guidelines and standards are necessary because, absent competent, diligent and zealous advocacy, juveniles may face “increasingly negative consequences from an arrest or court involvement, such as decreased educational and/or employment opportunities, restrictions of access to public benefits and privileges and compromised immigration status, as well as placement in lifelong registries.”¹⁰⁰

California has adopted many of these same standards in the State Bar Guidelines on Indigent Defense Delivery Systems.¹⁰¹ In addition, Los Angeles has its own standards, documented in the Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court.¹⁰²

Specialized Training and Continuing Legal Education

Standards

The quality of juvenile representation is tied in large part to the education and training of the attorneys who appear in juvenile court.¹⁰³ To “make certain that all parties receive adequate representation, it is fundamentally important that attorneys have adequate training before they begin practice in juvenile court and on a continuing basis thereafter.”¹⁰⁴

In the juvenile system, failure to develop competent juvenile attorneys often occurs when there is a lack of recognition that juvenile defense is a specialty that requires preparation and intensive training.¹⁰⁵ Counties and others responsible for indigent defense may improperly conflate the representation of children in delinquency proceedings with the distinct, but equally important, representation of adults in criminal

¹⁰⁰ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 19 (2012). Available at <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

¹⁰¹ Administrative Office of the Courts, “Effective Representation of Children in Juvenile Delinquency Court,” (2015) <http://www.courts.ca.gov/documents/EffRepChildrenBro.pdf>

¹⁰² The Public Defender has not fully endorsed these Guidelines. The Guidelines, and the Public Defender’s position, are more fully discussed in the last section of this report.

¹⁰³ Advisory Committee Note, Standard 5.40(d)(4), California Rules of the Court (2015).

¹⁰⁴ Advisory Committee Note, Standard 5.40(d)(4), California Rules of the Court (2015).

¹⁰⁵ Nat’l Juvenile Def. Ctr. & Nat’l Legal Aid & Def. Assoc., *Ten Core Principals for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2008). Available at <http://www.modelsforchange.net/publications/424>; See also Judith B. Jones, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin: Access to Counsel* (2004). Available at <https://www.ncjrs.gov/pdffiles1/ojdp/204063.pdf>

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proceedings.¹⁰⁶ Moreover, juvenile defense has at times been viewed as a stepping-stone to adult criminal defense. Instead, the NJDC and NLADA advocate that the “public defense delivery system encourages experienced attorneys to provide delinquency representation and strongly discourages use of delinquency representation as a training assignment for new attorneys for future adult court.”¹⁰⁷

Recent California law recognizes the critical need for qualified juvenile defenders:

It is essential that California’s juvenile delinquency defense attorneys have the appropriate knowledge and skills needed to meet the demands of this increasingly complex area of legal practice. Advances in brain research demonstrate that children and adolescents do not possess the same cognitive, emotional, decision-making, and behavioral capacities as adults. Counsel must ensure that these differences are appropriately recognized in the attorney-client relationship and defense of the case.¹⁰⁸

Competent juvenile representation requires counsel to “not only possess knowledge of the law,” but also “to understand youth development and be able to interact effectively with youth.”¹⁰⁹ This will likely require that attorneys establish community resources and “develop relationships with local social service providers.”¹¹⁰ Furthermore, counsel must be cognizant of the various moral, economic, social, and political factors that play into a client’s particular situation.¹¹¹ “Juvenile defenders need to familiarize themselves with key elements of a ‘developmentally sound practice’ in juvenile court, and be able to recognize, consider, and address how disabilities, trauma, and immaturity affect

¹⁰⁶ Nat’l Juvenile Def. Ctr. & Nat’l Legal Aid & Def. Assoc., *Ten Core Principals for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2008). Available at <http://www.modelsforchange.net/publications/424>

¹⁰⁷ Nat’l Juvenile Def. Ctr. & Nat’l Legal Aid & Def. Assoc., *Ten Core Principals for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2008). Available at <http://www.modelsforchange.net/publications/424>. The need for training is echoed by the National Council of Juvenile and Family Court Judges and the Pacific Juvenile Defense Center. National Council of Juvenile and Family Court Judges, *Key Principals for Improving Court Practice in Juvenile Delinquency Cases* (July 2010), at <http://www.ncjfcj.org/resource-library/publications/key-principles-improving-court-practice-juvenile-delinquency-cases>. Pacific Juvenile Defense Center, *Statement of Beliefs* (2015); <http://www.pjdc.org/about/statement-of-beliefs/>

¹⁰⁸ AB 703, signed September 30, 2015.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160A8703

¹⁰⁹ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 22 (2012).

¹¹⁰ Nat’l Juvenile Def. Ctr. & Models for Change, *The Nat’l Juvenile Def. Standards* at 22 (2012); see also Instit. Of Jud. Admin. Am. Bar Assoc., *Juvenile Justice Standards Annotated: A Balanced Approach* at § 1.4, 70 (1996) (noting juvenile attorneys typically work with social worker and probation departments) (Hereafter cited as *Juvenile Justice Standards*). Available at <https://www.ncjrs.gov/pdffiles1/ojdp/166773.pdf>

¹¹¹ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 22 (2012).

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youths' behaviors, relationships, and perceptions of safety.”¹¹² This means, for example, that attorneys should be able to incorporate into their pretrial motions knowledge of developmental immaturity and its influence on a client's ability to intelligently, knowingly, and voluntarily waive constitutional rights.¹¹³

With regard to entry-level training and qualifications, the NJDC has defined six core competency areas for minimum proficiency in juvenile delinquency:

1. Counsel should be familiar with and utilize state juvenile delinquency statutes, criminal statutes, case law rules of procedure, rules of evidence, and rules of appellate procedure that impact juvenile practice;
2. Counsel should be knowledgeable about the key aspects of developmental science and other research that informs specific legal questions regarding capacities in legal proceedings, amenability to treatment and culpability; counsel should recognize when to consult experts;
3. Counsel must be properly trained in effective adolescent interviewing techniques;
4. Counsel must have training in the specialized skill of communicating with young clients in a developmentally appropriate and effective manner;
5. Counsel should be up-to-date on the consequences of juvenile adjudication; and
6. Counsel should be proficient with the operations of, and laws regarding, child-serving institutions, including schools, social service agencies, and mental health agencies.¹¹⁴

The California State Bar, in its Guidelines on Indigent Defense Services Delivery Systems, recommends that counsel “be experienced and not in an entry level position, [and] be trained in the development, education, substance abuse and mental health of youth[.]”¹¹⁵ Absent any local rules, the court is responsible for establishing relevant prerequisites for court-appointed attorneys and advocates in the juvenile court. The court should “ensure that attorneys who appear in juvenile court have sufficient training to perform their jobs competently, as follows: require that all court-appointed attorneys meet minimum training and continuing legal education standards as a condition of their appointment to juvenile court matters; and encourage the leaders of public law offices that have responsibilities in juvenile court to require their attorneys who appear in

¹¹² Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 22 (2012) (quoting Marty Beyer, *Developmentally-Sound Practice in Family and Juvenile Court*, Nev. L.J. 1215 (2006)).

¹¹³ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 23 (2012).

¹¹⁴ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 21-22 (2012).

¹¹⁵ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 22; www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

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juvenile court to have at least the same training and continuing legal education required of court-appointed attorneys.”¹¹⁶

With respect to ongoing training and continuing education, “the juvenile defender must be clear about his or her role and be able to keep pace with the growing body of scientific research and legal jurisprudence that applies directly to the representation of children.”¹¹⁷ California Penal Code Section 987.2(c) requires that “[i]n counties that utilize an assigned private counsel system . . . as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to . . . seek to educate those panel members through an approved training program.” The system should “provide training resources free of charge to program attorneys.”¹¹⁸

Regarding continuing legal education in particular, the American Bar Association does not mandate a particular number of continuing legal education hours for juvenile attorneys; whether to set a requirement of a particular amount of continuing legal education hours to practice juvenile law (or any law) falls under the purview of each state bar. In California, attorneys are required to complete 25 hours of MCLE (minimum continuing legal education) every three years, four hours of which must be on ethics, one hour of which must be on elimination of bias, and one hour of which must be on competence (substance abuse or mental illness).¹¹⁹ The California State Bar does not set separate requirements for criminal defense or juvenile delinquency attorneys, but recommends that jurisdictions require formal training in addition to the MCLE 25 unit requirement. The MCLE units may apply toward this requirement, but “the local jurisdiction may require more than 25 units and should also require some nexus to criminal law rather than only the MCLE’s generic unit requirements.”¹²⁰

The County should note that, on September 30, 2015, Governor Brown signed AB 703 into law. AB 703 requires that, by July 1, 2016, the Judicial Council adopt new rules of court to do the following:

(1) Establish minimum hours of training and education, or sufficient recent experience in delinquency proceedings in which the attorney has demonstrated competence, necessary in order to be appointed as counsel in delinquency proceedings. Training hours that the State Bar has approved for Minimum Continuing Legal Education (MCLE)

¹¹⁶ Standard 5.40(d)(1) and (2), California Rules of the Court.

¹¹⁷ National Juvenile Defense Center, “Models for Change; Systems Reform in Juvenile Justice” at 5 (2012). Available at <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>

¹¹⁸ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006). At 19.

www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹¹⁹ <http://mcle.calbar.ca.gov/Attorneys/Requirements.aspx>

¹²⁰ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006), at 15.

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credit shall be counted toward the MCLE hours required of all attorneys by the State Bar.

(2) Establish required training areas that may include, but are not limited to, an overview of juvenile delinquency law and procedure, child and adolescent development, special education, competence and mental health issues, counsel's ethical duties, advocacy in the post-dispositional phase, appellate issues, direct and collateral consequences of court involvement for a minor, and securing effective rehabilitative resources.

(3) Encourage public defender offices and agencies that provide representation in proceedings under Sections 601 and 602 to provide training on juvenile delinquency issues that the State Bar has approved for MCLE credit.

(4) Provide that attorneys practicing in juvenile delinquency courts shall be solely responsible for compliance with the training and education requirements adopted pursuant to this section.¹²¹

Looking forward, the County will need to consider how implementation of AB 703 will be overseen as applied to panel counsel.

Public Defender Practice and Compliance

It is a concern that deputy public defenders are relatively inexperienced, as both the NJCD and the NLADA "encourage[] experienced attorneys to provide delinquency representation and strongly discourage[] use of delinquency representation as a training assignment for new attorneys or future adult court."¹²²

However, the Office has a training structure designed to compensate for the attorneys' relative inexperience. The deputy public defenders in the Juvenile Division cannot start in the Juvenile Division but can transfer after two to three years of practice in adult misdemeanor court. When the new attorneys arrive in the Juvenile Division they first

¹²¹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB703

¹²² Nat'l Juvenile Def. Ctr. & Nat'l Legal Aid & Def. Assoc., *Ten Core Principals for Providing Quality Delinquency Representation Through Public Defense Delivery Systems* at 2 (2008). Available at <http://www.modelsforchange.net/publications/424>. The need for training is echoed by the National Council of Juvenile and Family Court Judges and the Pacific Juvenile Defense Center. National Council of Juvenile and Family Court Judges, *Key Principals for Improving Court Practice in Juvenile Delinquency Cases* (July 2010), at <http://www.ncjfcj.org/resource-library/publications/key-principles-improving-court-practice-juvenile-delinquency-cases>. Pacific Juvenile Defense Center, *Statement of Beliefs* (2015); <http://www.pjdc.org/about/statement-of-beliefs/>

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observe for a few days with the DIC in that courthouse. On the third day they meet the Head Deputy and have a full day of training with the appellate attorneys and the Head Deputy in the downtown office. Training with the appellate attorneys includes the scope of juvenile representation, hearing types, dynamics of juvenile court (including working with parents), a brief introduction to adolescent development, immigration, collateral consequences, adjudications, dispositions, 777 petitions, 778 petitions, strikes, priors, and other subjects. Training with the Head Deputy includes protocols for critical incidents, child abuse reporting, fitness cases, homicide cases, and file documentation policy. It also includes training regarding file management, expected evaluations, expectations regarding client visits, and the relationship with parents. See Appendix E for a full description of the training provided by the appellate attorneys, the DICs and the Head Deputies.

New attorneys then go to their branch courthouses, where a few weeks later they have a follow-up full day of training with the same appellate attorneys and other speakers covering many of the same subjects in greater detail, including fitness, immigration, competency, confessions, adolescent development, sex cases, special education, regional centers, resource attorneys, social workers, mental health courts, and strikes. A new attorney is not permitted to handle a homicide case or a fitness case until at least two months have passed satisfactorily. At the branch, the DIC continues with additional training, including training in how to interview juvenile clients and case preparation (experts, investigations, and motions).

For ongoing training, the Public Defender hosts an annual seminar on juvenile defense that is mandatory for all attorneys in the office and open to all juvenile defense attorneys outside of the Office. See Appendix E for the agendas from the last ten annual seminars.

The Office offers monthly webinars on juvenile delinquency subjects such as psychotropic medications, forensic examinations, forensic cellphone and GPS devices, and internet and social media. The Office also provides additional follow-up trainings for new attorneys, monthly in-person trainings that are offered within the particular courthouse branches, and tours of juvenile facilities. In addition, the DICs, the social workers, and the resource attorneys all meet monthly to review subjects of particular interest; social workers and resource attorneys also attend the law trainings and each others' trainings. Past training topics have included effective report writing, hard to place youth, common street drugs, IEPs, and educationally related mental health services. Attorneys receive MCLE credits for most of these trainings as well as for the annual seminar. See Appendix E for a list of the webinars offered in the last year, dates and subjects of most recent trainings, meetings, and tours. These additional trainings and webinars are not open to attorneys outside the Office. The annual seminar is open to the defense bar and other public defender offices.

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The Juvenile Division recently hired a full-time trainer. She has been with the Office of the Public Defender for over 13 years, recently as an appellate attorney specializing in juvenile delinquency issues. It is expected that the Juvenile Division training program will change and expand under this new leadership.

All attorneys in the office are required to comply with the requirements of the California State Bar for minimum continuing legal education (MCLE). Both the annual public defender training, and most of the internal monthly trainings, meet MCLE requirements for public defender attorneys. The Public Defender does not make training mandatory beyond its annual seminar and the MCLE requirements, but according to the Public Defender most attorneys attend far more than the minimum MCLE amount each year.

Even with the training, however, the practice of rotating young attorneys through the Juvenile Division was criticized by a few of the judges in the survey, including one who stated:

Some public defenders spent more time on other needs of minors such as education, special immigration status, and mental health. Institutional representation can provide extra resources, including non-attorney personnel to do this. The Public Defender's Office and the District Attorney's Office both need to be reformed as well. Juvenile is a rotating assignment resulting in attorneys with little interest in the other aspects of the Juvenile system beyond crime and punishment. Representation should be institutional, long term, and by attorneys with a real interest in juvenile law practice.

Panel Counsel Practice and Compliance

The contracts between the County and the panel attorneys do not specify any training or entry requirements for new attorneys, and do not require any specific training or continuing legal education. However, because panel counsel have all been practicing for so long, they would almost certainly meet any minimum competency requirements set by the County. The original RFP required five years of experience, and panel heads state that they continue to adhere to those requirements despite the fact that those requirements are not written into the contract.¹²³

Although the County does not explicitly require any ongoing training, 90% of the panel attorneys who responded to the survey indicated that they attend the Public Defender's annual seminar almost every year. In addition, the panel attorneys themselves host an annual seminar (organized by the Sylmar panel head) that is open to all juvenile defense

¹²³ The content of the original RFP could not be confirmed for all eight branches.

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attorneys. Agendas from the past few years' panel seminars are attached in Appendix F. Nearly all surveyed panel attorneys (87%) said they attend the annual panel seminar almost every year. One panel head stated that they require attorneys in that branch to attend the annual panel seminar, the annual Public Defender seminar, or both. Other panel heads indicated their belief that the attorneys in their branch were experienced enough to monitor their own training.

When asked how they kept abreast of new laws and duties, the most common methods were the Public Defender training, newsletters and journals, and the annual panel seminar. One panel head emphasized a listserv available to panel attorneys, but only 11 of the 31 attorneys in the survey identified the listserv as a primary means used to stay current on changing laws and duties.

It is a concern that panel attorneys have to pay to attend the annual Public Defender training. The fact that the County does not cover the cost for panel attorneys to attend training – or make training available free of charge for panel attorneys – conflicts with standards because the County does not “provide training resources free of charge to program attorneys.”¹²⁴ Instead, panel attorneys are required to create and pay for their own training out of their flat-fee payments, putting panel attorneys in the position of having to choose between attending the annual training, and being compensated for their work with clients.

As with public defenders (and all attorneys), panel attorneys must comply with the MCLE requirements of the State Bar, which is 25 hours over three years. The County does not impose any additional continuing legal education requirements on panel counsel, nor does the County require or provide any specialized continuing legal education. The panel's annual training seminar provides six hours of MCLE each year.

More critically, the issue of specialized training both for entry into the panel system and for ongoing training is going to become more important as the panel attorneys retire or leave juvenile practice. More than half (58%) of the panel attorneys indicated that they expected to retire or leave the panel in less than ten years, and 17% indicated that they expected to leave in less than five years. The County currently has no system to review or evaluate new attorneys who wish to join the panel, nor does the County have any person who would be able to substantively evaluate the performance and capacities of entering or existing panel counsel. As this group of panel attorneys heads toward retirement it will become critical that the County consider how it will ensure that new attorneys are qualified to represent juveniles in delinquency court.

¹²⁴ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006). At 19. www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

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Finally, in light of the passage of AB 703, the County will need to develop a structure to ensure that panel attorneys comply with new standards once they are developed. The County does not currently have any such structure.

Supervision, Evaluation, Mentoring, and Support¹²⁵

Standards

Indigent defense structures and delivery systems include institutional public defender offices, assigned counsel, conflict counsel, law school clinicians, and non-profit law centers. The nature of these systems will impact the content and the type of attorney supervision that is appropriate.¹²⁶ The fact that panel counsel are independent does not mean that supervision is irrelevant; the American Bar Association recommends that *all* indigent defense attorneys be “supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.”¹²⁷

The State Bar states that the County “shall establish written procedures, using uniform standards, to periodically monitor and accurately assess the performance of its attorneys.”¹²⁸ When looking to contract or independent providers of indigent defense, “[s]uch evaluations cannot be identical to those of supervisors of employees because of assigned counsels’ status as independent contractors”¹²⁹ but supervision is still a requirement.

Although judicial evaluation can be a component of County supervision, the American Bar Association strongly recommends that supervision of counsel not lie solely within the judiciary to maintain the independence of counsel and to allow counsel to advocate for their clients. “The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.”¹³⁰

Whatever the structure of the indigent defense system, a supervisor “provide[s] leadership and ensure[s] that counsel is able to effectively offer the most competent,

¹²⁵ Evaluation is a component of both supervision and quality assurance and, therefore, it appears in both sections.

¹²⁶ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 144 (2012).

¹²⁷ American Bar Association, *ABA Ten Principles of a Public Defense Delivery System with Commentary* (2002) (Principle 10).

¹²⁸ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 16

¹²⁹ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 16

¹³⁰ American Bar Association, *ABA Ten Principles of a Public Defense Delivery System with Commentary* (2002). (Principle 1.)

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diligent, and zealous representation possible to protect the client's procedural and substantive rights."¹³¹ This means ensuring that:

- a. Counsel has regular and ongoing opportunities to receive relevant and specialized training and leadership development;
- b. Counsel's skills and abilities are a proper match with the number and complexity of cases assigned;
- c. Counsel receives interactive and timely feedback in the form of leadership, coaching, training, role-playing, mentoring, and other support;
- d. Counsel has access to investigative and other critical resources; and
- e. Counsel has back-up and support when systemic barriers interfere or conflict with counsel's duties to clients and undermine his or her role.¹³²

To comply with the above-mentioned list, supervisors should construct an environment that nurtures respect for juvenile defense and "supports zealous defense for youth."¹³³ This allows the attorney under supervision to "withstand court challenges and provide competent, diligent, and zealous legal advocacy for the client."¹³⁴ Moreover, in the event that "the role of the juvenile defender is questioned or maligned, or when system stakeholders attempt to penalize defense counsel, or their clients, for appropriate zealous advocacy," a supervisor is charged with intervening.¹³⁵

To promote effective representation, supervisors are expected to provide both formal and informal learning opportunities.¹³⁶ Of critical importance are training opportunities that (1) inform counsel regarding changes in the law, (2) allow practice in lawyering skills, (3) inform counsel regarding advancement in developmental science and other areas of adolescent development, (4) highlight changes in client demographics, including historically marginalized populations, and (5) discuss rehabilitative and community-based services and the means to access them.¹³⁷ National standards also recommend that a supervisor in juvenile indigent defense ensures that, among other things, counsel has access to investigative and other critical resources.¹³⁸

Supervisors "should develop written standards and consistent formal methods of review."¹³⁹ They should create stop-gap measures that provide counsel with assistance

¹³¹ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³² Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³³ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³⁴ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³⁵ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³⁶ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 145 (2012).

¹³⁷ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 145 (2012).

¹³⁸ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

¹³⁹ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 146 (2012).

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when needed,¹⁴⁰ and there should be systems in place where the supervisor provides regular and timely feedback.¹⁴¹ “[S]upervisors should seek to promote an office culture in which counsel feels comfortable seeking guidance from colleagues as well as supervisors.”¹⁴² “The evaluation system must clearly articulate performance expectations and afford counsel feedback regarding performance.”¹⁴³

The County’s Guidelines also address supervision. They adopt the NJDC Standards and emphasize that supervisors must: (1) “provide leadership and ensure that counsel is able to effectively offer the most competent, diligent, and zealous representation,” (2) “ensure that counsel has regular and ongoing opportunities to receive relevant and specialized training and leadership development,” (3) “ensure that counsel’s skills and abilities are a proper match with the number and complexity of the cases assigned,” and (4) “ensure that counsel has access to investigative and other critical resources.”¹⁴⁴

Finally, concerning mentoring, neither national nor state standards require it. However, “for lawyers facing [] difficult situations, having an experienced mentor to consult can make all the difference in whether they succeed or fail in the profession, and . . . whether they have a satisfying or a disappointing career.”¹⁴⁵

Public Defender Practice and Compliance

The Public Defender, as a structured County department, builds supervision, mentoring and support into the Office. In an attorney’s first two months, they are observed regularly by the supervising DIC while they interview their clients, meet with family, appear in court, litigate motions and argue at hearings. The DIC then writes a memo recording his or her evaluation for the Head Deputy; the attorney’s performance must be satisfactory.

All public defenders are formally evaluated annually, consistent with County requirements. In addition, anyone who is promoted (from a Deputy Public Defender II to a Deputy Public Defender III, for example) has a mandatory six month probation period, and he or she is evaluated during that six month period in addition to the annual evaluations. Performance evaluations are performed consistent with the Attorney Performance Standards dated February 8, 2010. The standards differentiate the

140 Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 146 (2012).

141 Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 146 (2012).

142 Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 146 (2012).

143 Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 146 (2012).

144 *Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court*, p. 85.

145 Fujie, Holly, State Bar of California. “Mentoring: Now more than ever.” *California Bar Journal* (May 2009). Available at

<http://archive.calbar.ca.gov/%5CArchive.aspx?articleId=95444&categoryId=95319&month=5&year=2009>

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evaluation criteria for supervisors, but all attorneys including supervisors are evaluated for technical skills. For supervisors, the categories are preparation and knowledge, advocacy, attitude, adaptability and productivity, effectiveness of personal interactions, and supervisory skills. For other attorneys, the categories are advocacy and communication skills (client relations, courtroom effectiveness, case negotiations and sentencing skills), case analysis and preparation skills (legal analysis, research and writing, effective use of investigators, paralegals, experts and witnesses, work habits and organization), and role attitude and experiences (experience, professional relations and role attitude as defense attorney, compliance with policies and procedures, role attitude as public defender, assignment flexibility and leadership). See Appendix G for a copy of the February 8, 2010 Standards.

Panel Counsel Practice and Compliance

The current panel counsel structure lacks an overriding supervision and evaluation mechanism. The only substantive supervision comes from the panel heads themselves. One panel head in particular stated that he/she actively supervises the attorneys in his/her branch, and provides training and coordination. Other panel heads, however, stated that the attorneys in their branches were highly experienced attorneys who do not need supervision. All panel heads stated that the attorneys support each other and contact each other with questions. Some panel heads contend that the County does not need to evaluate them because they have sufficient experience to render evaluation unnecessary. Indeed, in three of the contracts the panel heads negotiated a provision that may to prevent the County from taking action in response to a negative evaluation.

The County is ultimately responsible for ensuring that all indigent defense counsel are serving their clients competently and zealously. The County is effectively the supervisor until it designates another agency or group to provide qualified and substantive supervision and evaluation, and provides adequate funding to do so.

Relying on the panel heads to self-supervise is not recommended. The panel heads are also representing indigent juveniles on behalf of the County, and there is no mechanism to supervise or evaluate the panel heads themselves. Moreover, there is no feedback mechanism that would allow the County to ascertain whether or not the panel heads are adequately supervising the attorneys in the branch, or whether they are performing any supervisory function at all.¹⁴⁶

¹⁴⁶ One panel head stated that they supervise their attorneys. Other panel heads contend that supervision, to the extent it is necessary, is provided by the judges. Supervision by judges is addressed in the next section.

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The contracts do place some degree of supervisory or evaluative authority in the CEO's office, and it appears that up until 2006 the CEO's office surveyed the delinquency court judges about the panel counsel on a semi-regular basis. However, the survey was not anonymous and the judges' names were used when their comments were reported back to the panel heads. Since the panel heads and the judges have close relationships, and since they continue to see each other on a regular basis, it is possible that the non-anonymous survey did not elicit the judges' full and honest responses and was therefore an ineffective quality control mechanism. It does not appear that any further substantive evaluation or supervision was done until Fall 2014, when the CEO audited each panel heads' compliance with the contract. This audit, however, was limited to administrative compliance with the contract terms.

In addition, the County does not provide a structured and knowledgeable intermediary or supervisor to oversee the panel attorneys and as a result there is no one available to support the panel attorneys in the event of court challenges, or if "the role of the juvenile defender is questioned or maligned, or when system stakeholders attempt to penalize defense counsel, or their clients, for appropriate zealous advocacy."¹⁴⁷ There is also no outside intermediary tasked with advocating for resources, leaving it to the panel heads to advocate for themselves. Their ability to advocate, however, is limited by the fact that they are relying on the County for their continued income.

One of the judges commented that, to the best of their recollection, it was only public defenders or retained counsel who had challenged a particular judge through Civil Code Section 170.6. Panel counsel, to this judge's recollection, have not made such challenges. This judge commented that, in an adversarial system that depends on counsel to fully advocate for his or her client even at the expense of the relationship with the judge, failure to challenge a judge in appropriate circumstances is exceedingly troublesome.

Evaluation, Accountability, and Quality Assurance

Standards

A strong evaluation system will achieve accountability and quality assurance. Evaluation, accountability, and quality assurance are all related, as the system needs evaluation to ensure both accountability and quality. Thus the California State Bar recommends that within any indigent defense system, whether institutional, contract, private, or otherwise, "there should exist a mechanism whereby the quality of representation

¹⁴⁷ Nat'l Juvenile Def. Ctr., *The Nat'l Juvenile Def. Standards* at 144 (2012).

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provided by indigent defense providers is monitored and accurately assessed, employing uniform standards.”¹⁴⁸

For a county-based office such as the Public Defender, to effectively evaluate their staff attorneys and ensure accountability and quality, supervisors should “promulgate, adopt, and implement performance standards or guidelines based on best practices.”¹⁴⁹ “An institutional defender should provide a continuous, interactive system whereby mentors, supervisors and managers provide assessment, feedback, documentation, remediation and other functions to ensure that the quality of service being provided is assured.”¹⁵⁰

With respect to contract and assigned attorneys, the State Bar states that “each jurisdiction shall establish operating rules which promote the overall quality of indigent representation”¹⁵¹ for those contract and assigned attorneys.

Accountability and quality should be monitored in part by the manner in which the contract is awarded and by inserting provisions in the contract that demand high quality representation. The appointment process for contract attorneys “should never be *ad hoc*, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.”¹⁵² “An Administrator and/or Board of Governors should oversee the assigned counsel system. Because of the possibility of conflict, or the appearance of conflict, the administrator should not be allowed to maintain a private criminal law practice.”¹⁵³ The salaried administrator should also have a budget to manage the private attorneys, support high performance, and provide quality oversight including an appeals process if necessary.¹⁵⁴

The American Bar Association and the National Legal Aid and Defenders Association have promulgated general standards for contract systems that are relevant to evaluation and quality assurance. Though not specific to the juvenile law system, the ABA standards and the NLADA Guidelines provide an overview of an effective contract

¹⁴⁸ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006), at 14.

¹⁴⁹ Nat’l Juvenile Def. Ctr., The Nat’l Juvenile Def. Standards at 146 (2012).

¹⁵⁰ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006), at 17.

¹⁵¹ The State Bar of California, Guidelines on Indigent Defense Services Delivery Systems (2006), at 14.

¹⁵² American Bar Association, ABA Ten Principles of a Public Defense Delivery System with Commentary (2002).

¹⁵³ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 36.

www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹⁵⁴ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 39.

www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

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system. The two organizations contain the following common standards for contracting:¹⁵⁵

1. Contracts should ensure quality of representation (ABA Standard 5-3.1; NLADA Guidelines III-8). One recommended way of ensuring quality of representation is to refuse to award a contract on the basis of cost (ABA Standard 5-3.1; NLADA Guideline IV-3).
2. The professional independence of all indigent defense delivery systems, including contractor systems, should be maintained by creating an independent organization such as a board of trustees or policy board to administer and award contracts (ABA Standard 5-3.2(b); NLADA Guideline III-1).
3. Contracts should not contain provisions that create conflicts of interest between the contractor and clients (ABA Standard 5-3.2(c); NLADA Guideline III-13). Among the potential conflicts addressed are forcing contractors to choose either paying for investigation, expert, transcription, and other services or forgoing these services by not including them in the contract; failing to ensure that the contract's mechanism for addressing conflict cases does not act as a financial disincentive for withdrawing; and inducing an attorney to waive a client's rights for reasons not related to a client's best interests (ABA Standard 5-3.3(b)(vii)(x); NLADA Guideline III-13).
4. To avoid situations in which lawyers or law firms are awarded contracts and delegate responsibility to inexperienced associates, contracts should include identification of attorneys who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval (ABA Standard 5-5.3(iv)).
5. Contracts should include allowable workloads for individual attorneys and measures to address excessive workload (ABA Standard 5-3.3(b)(v); NLADA Guidelines III-6 and III-12).¹⁵⁶
6. Contracts should include provisions for supervision, evaluation, training and professional development (ABA Standard 5-3.3(b)(xi); NLADA Guidelines III-6 and III-7).
7. Contracts should include the grounds for termination of a contract (ABA Standard 5-3.3(b)(xv); NLADA Guidelines III-4 and III-5).

¹⁵⁵ For a list of standards promulgated by the ABA, see The Am. Bar Assoc., *Providing Defense Services* (2015), www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_blk.html

¹⁵⁶ Caseloads are not addressed in this report, but acceptable caseloads are addressed in great detail in the ABA's *Ten Principles*, in the ABA's *Juvenile Justice Standards*, by the American Council of Chief Defenders, and others.

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Also for contract or assigned systems, “each jurisdiction should maintain a written complaint procedure for complaints made against an attorney who is providing indigent legal representation,” and maintain documented procedures for resolving those complaints, as well as a sanction system.¹⁵⁷

Finally, each jurisdiction should include a written evaluation system which may include input from judges, prosecutors, and other members of the defense bar. The system should include having a qualified and experienced person or committee review significant law and motion work, and having a qualified and experienced person or committee make a productivity evaluation based on the number of cases handled or handling of difficult cases.¹⁵⁸

Public Defender Practice and Compliance

As an institutional provider of indigent defense, the Public Defender is responsible for the evaluation and quality control of its employees. The Public Defender’s evaluation systems, discussed earlier, appear to comply with standards. The Office has promulgated performance standards and guidelines based on best practices and provides a continuous, interactive system whereby supervisors and managers provide assessment, feedback, documentation, remediation and other functions to ensure that the quality of service being provided is assured.

Panel Counsel Practice and Compliance

The County’s current panel counsel structure lacks a number of the features recommended by national and state standards. Specifically, the County has:

- No mechanism to assess the quality of representation using uniform standards.
- No articulated performance standards or guidelines based on best practices. No specificity about what will be monitored. No cohesive set of quality standards.
- No full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.
- No substantive oversight by a qualified independent administrator or Board.
- No system for evaluation that allows for qualified and experienced review of panel attorneys’ work.

¹⁵⁷ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 16.

¹⁵⁸ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 17.

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- Any substantive oversight that does exist is performed by the panel heads, who themselves are panel members and who therefore raise the possibility or appearance of conflict. The panel heads are either uncompensated for this work or they are compensated only by taking a portion of the other attorneys' flat fees, which is in itself problematic.
- No budget to manage the panel counsel, support high performance, and provide quality oversight including an appeals process if necessary.
- Contracts that create conflicts of interest by requiring attorneys to pay for investigators and their own training out of their flat fee (this issue is more fully discussed in the incentives section below).
- Contracts that do not identify the attorneys, and no provision requiring notification or approval for substitution of panel counsel in the branch.
- No contract provisions defining supervision, evaluation, training, and professional development.
- No written complaint procedure for complaints made against a panel attorney. No means by which judges or clients can express dissatisfaction. No process for complaints; review, sanctions, or appeals. No consequences in the event that an evaluation reveals deficient performance.
- No means by which panel heads themselves are subject to quality assurance.
- No requirement that the County be notified in the event that a court finds that a panel attorney has provided ineffective assistance of counsel.
- Oversight that has been limited to compliance with billing requirements and invoicing procedures.
- Group contracts that, in the words of one of the judges responding to the survey, "mean that we have to take the good with the bad."

Panel heads respond that they monitor their own quality, and that the judges notify them if one of the panel lawyers is below standards. This structure is not recommended and does not comply with the recommendation of the American Bar Association that supervision of defense counsel not lie within the judiciary in order to maintain the

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independence of counsel, and so that counsel can fully advocate for their clients without worrying about their job security.¹⁵⁹

In addition, while it is true that, over the past twenty years, on a few occasions the judges have reached out to the panel heads with concerns about a particular panel attorney, and the panel heads have acted to rectify the situation, this informal system lacks consistency and is inherently problematic. The system is entirely dependent on the longevity of the panel heads and judges, and the trust relationships they develop with each other. If a particular judge does not feel comfortable expressing a concern to the panel head, the system fails. It also provides no way for the judges to express concern about the panel heads themselves; if the judge has a concern about the panel head, there is no qualified individual with authority to whom the judge can express the concern.

This informal process is also generally most effective only at the margins, in those very rare situations where the unacceptable behavior is so glaring that no judge could be faulted for raising the issue. If the behavior is detrimental to the client but not so extreme, the judge may not be comfortable raising the concern, and the system fails.

Finally, the fact that the behavior had to be pointed out by the judges, and had not been caught by the panel heads prior to the judges' interference, itself represents a failure of the informal quality control system. Panel heads contend that they supervise the attorneys in their branches, but in the examples given the panel heads were unaware of the attorneys' unacceptable behavior until notified by the judge.

¹⁵⁹ American Bar Association, ABA Ten Principles of a Public Defense Delivery System with Commentary (2002). (Principle 1.)

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Alternate Public Defender

The APD is similar to the Public Defender for training, supervision, evaluation, and quality assurance because it has an institutional structure. The APD's system for staff performance monitoring and evaluation is similar to the Public Defender's, as all APD attorneys are also County employees.

Like the Public Defender, the APD has a full training and supervision program for new defense attorneys. When a new attorney has started working with the existing juvenile attorneys, even if that new attorney has many years of adult experience, the new attorney has been required to train with one of the existing attorneys to ensure up to date knowledge and compliance with all current juvenile expectations. The APD does not place new or inexperienced attorneys in the Juvenile Division.

Attorneys assigned to the APD Juvenile Division attend a two day training session on juvenile issues presented by an experienced APD juvenile practitioner. Training for all APD juvenile attorneys on a variety of juvenile issues is provided on a periodic basis.

The three attorneys, a paralegal, and the supervisor in the Juvenile Division attend the annual Public Defender training every year (one of them used to be a presenter at that training), and most years they also present at other statewide and national training.

Although its Juvenile Division is small, the attorneys mentor and support each other. They have a system for brainstorming and working together, often based around an APD binder containing one tab for each of the 33 areas about which juvenile attorneys should have knowledge, identified in the County's Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court.¹⁶⁰

¹⁶⁰ The areas are: child welfare services and entitlements, child and adolescent development, competency and capacity, mental health issues, communicating and building attorney-youth relationships with adolescents, administrative appeals, community-based treatment, resources and programs, counsel's role in treatment and problem solving courts, confidentiality rules in juvenile court,, dependency court/abuse and neglect process, Section 241.1 process, diversionary programs, addiction and substance abuse, ethical issues and considerations, gender-specific programming, immigration, racial, ethnic and cultural understanding, role of parent or guardians and other caregivers, sexual orientation and gender identity awareness, transfer to adult court and waiver hearings, education issues, Indian Child Welfare Act, local resources including out of home placements and funding streams, Probation Department policy, duties and mandates, child support and its implications, record sealing, writs, appeals, modification or court orders, violation/revocation hearings, transitional services for youth, collateral consequences and proceedings that may impact the youth, Rule of Court 5.663, local and state juvenile institutions, using experts and consultants, and use of psychotropic medication and protocols related thereto.

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Compensation/Incentive Systems

Standards

Adequate compensation for indigent defense attorneys is critical: “Lawyers participating in juvenile court matters, whether retained or appointed, are entitled to reasonable compensation for time and services performed according to prevailing professional standards.”¹⁶¹ The California Rules of Court look to local presiding juvenile judges to guide parity in pay. Presiding judges, in “conjunction with other leaders in the legal community, ensure that attorneys appointed in the juvenile court are compensated in a manner equivalent to attorneys appointed by the court in other types of cases.”¹⁶² “Compensation for the legal work in the juvenile court should reflect the importance of this work.”¹⁶³

With respect to assigned counsel and contract systems for indigent defense, “[r]easonable compensation should be provided to appointed attorneys in assigned counsel and contract indigent defense systems.”¹⁶⁴ Of particular importance is that “[r]ates of compensation should be sufficient to assure effective assistance of counsel.”¹⁶⁵ “[I]n no event should the net hourly compensation for assigned counsel be less than the aggregate hourly compensation of an institutional defender of the same level of skill and experience.”¹⁶⁶

The lack of parity of compensation among indigent juvenile defense attorneys, prosecutors, and adult defense attorneys is well recognized.¹⁶⁷ Moreover, “fees paid to attorneys appearing in juvenile court are sometimes less than the fees paid to attorneys doing other legal work. Such a payment scheme demeans the work of the juvenile court, leading many to believe that such work is less important.”¹⁶⁸

¹⁶¹ Instit. Of Jud. Admin. Am. Bar Assoc., *Juvenile Justice Standards Annotated: A Balanced Approach* at § 2.1(b)(i), pg 71 (1996).

¹⁶² Standard 5.40(c)(4), California Rules of the Court (2015).

¹⁶³ Advisory Committee Note, Standard 5.40(c)(4), California Rules of the Court (2015).

¹⁶⁴ Standard 5.40(c)(4), California Rules of the Court (2015).

¹⁶⁵ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 32. In addition, California Penal Code Sections 987.2 and 987.3 guide the Court in appointing panel counsel, and require that court-appointed attorneys receive reasonable compensation and necessary expenses. The following factors should be considered in awarding compensation to appointed counsel in criminal cases under these sections of the Penal Code: (1) Customary fees in the community for similar services by privately retained counsel; (2) time and labor required; (3) difficulty of the defense; (4) novelty or uncertainty of the law; (5) degree of professional ability, skill and experience required; and (6) professional character, qualification and standing of the attorney.

¹⁶⁶ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 32.

¹⁶⁷ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 32.

¹⁶⁸ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 163 (2012).

¹⁶⁹ Advisory Committee Note, Rule 5.40(c)(4), California Rules of the Court (2015).

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Flat Fee Contracts

National standards and recommendations are uniform in their disapproval of flat fee contracts such as that used by the County. A flat fee “does not link attorney time and effort to the level of remuneration,” and in so doing, “encourages attorneys to do what is most profitable for them and what is efficient for the system but not what is in the best interests of clients.”¹⁶⁹ For this reason and others, both the American Bar Association and the California State Bar strongly disapprove of flat-fee contracts.

According to the California State Bar, “fixed-period, bulk or flat rates should not be utilized unless based on reliable statistical caseload data, and only in conjunction with a method, specified in the contract, for increasing compensation to account for increases in caseload size or the cost of defending extraordinary cases.”¹⁷⁰ Similarly, the American Bar Association states that “contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative and other litigation support services.”¹⁷¹

Some states, such as South Dakota, Iowa, and Idaho, have banned the use of flat fee contracts for indigent defense.¹⁷² Others, such as Nevada and Michigan, have proposed banning flat fees, or banning incentive systems such as that created by a flat-fee. Iowa’s reasoning is illustrative: There, the Supreme Court found that a flat fee capped at \$1,500 per appellate case would “substantially undermine the right of indigents to effective assistance of counsel.” The Court explained that “the low level of compensation threatens the quality of indigent representation because of the perverse economic incentives introduced into the criminal justice system. ... Low compensation pits a lawyer’s economic interest ... against the interest of the client.”¹⁷³

¹⁶⁹ The State Bar of California, *Guidelines on Indigent Defense Services Delivery Systems* (2006), at 34; see also ABA Standards for Criminal Justice: Defense Function 136, Standard 5-2.4 (3d ed. 1992), available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_dfunc_blk.html#1.2

¹⁷⁰ State Bar of California *Guidelines on Indigent Defense Delivery Systems* (2006) at 33. www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹⁷¹ American Bar Association, *ABA Ten Principles of a Public Defense Delivery System with Commentary* (2002) (Principal 8).

¹⁷² South Dakota: https://ujs.sd.gov/media/firstcircuit/COURT_APPOINTED_ATTORNEY_FEES.pdf; Iowa: <http://www.nlada.net/jscri/blog/gideon-alert-iowa-sct-finds-rigid-flat-fee-contracts-%E2%80%9Csubstantially-undermine%E2%80%9D-right-coun>; and Idaho: <https://legislature.idaho.gov/idstat/Title19/T19CH8SECT19-859.htm>

¹⁷³ *Simmons v. State Defender*, 791 N.W. 2d 69 (Iowa 2010).

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A report by the Department of Justice in 2000 found that “good contract systems cost more per case than do public defender or assigned counsel programs.”¹⁷⁴ Although the number of research studies on flat-fee contracts is limited, the few that do exist show a connection between low fees and actions taken (or not taken) by defense counsel. “One study in Clark County, Washington, found the contracting system decreased the quality of representation, reduced the number of cases taken to jury trials, increased guilty pleas at first appearances, caused decline in motions to suppress and requests for expert assistance, and caused an increase in complaints from defendants. Another study found similar deficiencies in representation provided under a contracting system and concluded that, over the long term, contracting would cost the state more than an appointed counsel system.”¹⁷⁵

Investigators

Both the American Bar Association and the NLADA recommend that contracts not contain potential conflicts of interest between the contracting attorney and his or her client; forcing the attorney to pay for an investigator out of his or her compensation is a potential conflict that should be avoided.¹⁷⁶ Similarly, the State Bar recommends that investigators “should not operate as a charge against the indigent defense provider to such an extent that the net personal compensation to the defender is diminished.”¹⁷⁷ “To provide effective representation, juvenile practitioners should be provided with the necessary resources, including but not limited to ancillary services such as investigators, social workers and other experts. These services are essential in light of the new requirements imposed upon juvenile defenders to ensure that the ordered services are being provided.”¹⁷⁸ These guidelines were enacted in 2006¹⁷⁹ when the requirements were new, but the County continues to renew contracts that prohibit panel counsel

¹⁷⁴ Bureau of Justice Assistance, Dep’t of Justice, Contracting for Indigent Defense Services at 17 (April 2000) (noting several additional characteristics shared by effective contract systems, including independent oversight and monitoring, limitations on the practice of law outside the contract, guidelines on client contact and notification of appointment, and a mechanism for oversight and evaluation). <https://www.ncjrs.gov/pdffiles1/bja/181160.pdf>

¹⁷⁵ “Gideon at 50: A Three Part Examination of Indigent Defense in America, Part I: Rationing Justice: The Underfunding of Assigned Counsel Systems”, National Association of Criminal Defense Lawyers March 2013, citing Bureau of Justice Assistance, Contracting for Indigent Defense Services. at 10. (citing Lefstein, Norman, *Criminal Defense Services for the Poor: Methods and Programs for Providing Legal Representation and the Need for Adequate Financing* (1982), and Houlden, Pauline, and Steven Balkin, *Quality and Cost Comparisons of Private Bar Indigent Defense Systems: Contract v. Ordered Assigned Counsel*, *Journal of Criminal Law and Criminology* 76:176 (1985)).

¹⁷⁶ ABA Standard 5-3.3(b)(vii)(x); NLADA Guideline III-13.

¹⁷⁷ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006). www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹⁷⁸ State Bar of California Guidelines on Indigent Defense Delivery Systems (2006) at 23; www.calbar.ca.gov/portals/11/documents/indigent-services-guidelines.pdf

¹⁷⁹ Confirmed in correspondence with the State Bar, July 2015.

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from accessing the court-paid investigators that are available to other attorneys for indigent defendants.

The failure to provide investigators for panel counsel is particularly critical. A contract that does not compensate attorneys for investigators creates “an inherent and irreconcilable financial disincentive for a contract defender to investigate the case, [and] creates an unacceptable conflict of interest.”¹⁸⁰ Moreover, failure to provide investigators can lead to findings of ineffective assistance of counsel, as “the failure to investigate and interview a witness identified by the client or in documents obtained during the course of discovery is one of the most frequent post-conviction claims of ineffective assistance of counsel.”¹⁸¹

As discussed above, flat fee contracts are strongly discouraged, even barred in some states and counties. In the event they are used, however, “flat-fee contracts in California should separately reimburse the contracting attorneys for the expenses of adequate investigation and needed experts.”¹⁸²

Public Defender Practice and Compliance

The Juvenile Division of the Office of the Public Defender is a County office; all attorneys employed by the Public Defender are County employees. Salaries for public defender attorneys and staff comply with County policies. The Public Defender’s policies regarding compensation and incentives appear to conform to standards.

All payment structures have incentives and disincentives. A salary system (as opposed to flat-fee or hourly) can theoretically result in a disincentive to resolve cases quickly. It has also been alleged that the Public Defender’s evaluation system creates an incentive to file motions or litigate cases even when a quick resolution would be possible; this has been termed “promotion by motion.” The Public Defender responds that its supervision and oversight system corrects against any abuses in the system, and that they resolve cases as fast as they can, consistent with their obligation to protect their clients’ rights. The Public Defender strongly denies that any attorney in the office would be permitted to file a motion that was inappropriate or that did not have a basis in law.

A bigger concern, heard anecdotally and echoed by the judges in the survey, is the inability of juvenile public defenders to advance within the Juvenile Division, thus

¹⁸⁰ California Commission on the Fair Administration of Justice, Final Report, p. 94 (2006)

<http://www.ccfaj.org/>

¹⁸¹ Nat’l Juvenile Def. Ctr., *The Nat’l Juvenile Def. Standards* at 71 (2012).

¹⁸² California Commission on the Fair Administration of Justice, Final Report, p. 94 (2006)

<http://www.ccfaj.org/>

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creating an incentive for qualified juvenile defense attorneys to leave the division. Attorneys who wish to be promoted often move back to the adult division or transfer to APD, rather than stay in juvenile. This results in a loss of institutional knowledge and experience.

Panel Counsel Practice and Compliance

National standards discourage the use of the flat-fee system and in the event that they are utilized, it is recommended that contracting attorneys receive separate compensation for investigators and needed experts. The County's current juvenile panel system is not in compliance with the aforementioned national standards.

Whatever the pay structure, the County also needs to ensure parity between juvenile panel attorneys and other indigent defense providers. For example, indigent defense providers in the County's adult criminal court are compensated on an hourly basis, with the hourly rate graduated by the type of case.¹⁸³ Juvenile cases could be structured in a similar manner.

When asked an open-ended question about how the current panel and public defender system could be improved, a number of the judges commented on the low pay rate for panel lawyers. Judicial comments included:

- "Increase fees for attorneys handling the most difficult cases."
- "Pay them more."
- "The system should be changed so more serious cases could be billed at a higher rate and if the case becomes more serious because of unanticipated problems like mental health issues then the attorney could bill the case according to the work that went into resolving it."
- "Pay them a living wage."
- "The panel should be held to higher expectations and they should be paid to meet those expectations."
- "The flat fee system for payment of the panel needs to be changed to a system that reflects the actual time spent by the attorneys. Investigation and other ancillary costs need to be paid by the court separately and not negotiated into the panel attorney compensation."
- "Compensation. Money and time is always a factor when panel attorneys decide to go to trial on a matter. It takes money to properly investigate a case and prepare for trial."

¹⁸³ Los Angeles County Bar Association website, accessed September 25, 2015.
<http://www.lacba.org/showpage.cfm?pageid=24>

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Finally, because panel attorneys receive a payment for every petition, the system arguably creates an incentive to register as many petitions as possible. Anecdotally, investigation for this report uncovered allegations that a few panel attorneys have requested that the Court and Probation proceed with a formal 777 violation petition against a youth, rather than resolve a matter informally, so that the panel attorney could invoice for the matter as a new petition. This would be a clear ethical violation, but it cannot be confirmed and thus is no more than an unsubstantiated rumor.

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PART VIII: Compensation Models and Systems in Other California Counties

Response to motion item 1) f.:

“A review of the compensation models and systems for juvenile indigent defense contracts in other California counties.”

Highlights

Among the counties surveyed:

Los Angeles is the only county that does not make county-paid investigators available to panel counsel.

Los Angeles is the only county that has no centralized mechanism for quality control. It is the only county that contracts directly with private attorneys and does not fund a qualified office or agency to monitor quality.

Los Angeles is the only county in which no experienced attorney or committee provides supervision and oversight.

Los Angeles is the only county that compensates panel counsel with a uniform per-case flat fee. In other counties, panel counsel are compensated by salary, on an hourly basis, or via an event-based flat fee structure that provides for different flat fees for different activities and different types of cases.

The juvenile indigent defense systems in the following ten counties were examined for this section of the report:¹⁸⁴

- Alameda
- Sacramento

¹⁸⁴ Two additional counties, Riverside and Ventura, failed to return numerous calls, emails, and messages and therefore are not included in the review.

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- Contra Costa
- Fresno
- Kern
- Orange
- San Bernardino
- San Diego
- San Joaquin
- Santa Clara

Information about these selected counties was pulled from public websites, previous reports and media coverage, and telephone interviews and emails with representatives from each county. Where available, information was collected about the structure of indigent defense systems; the nature and level of county oversight; compensation structures and levels; and training. Below is a synthesis of the juvenile indigent defense systems in this group of ten counties.

Indigent Defense Structures

In all ten counties, as in Los Angeles, the Office of the Public Defender represents indigent youth if possible. The way in which the counties administer conflicts, however, varies significantly (see Figure 23).

- Three of the ten counties (Alameda,¹⁸⁵ Kern, and San Joaquin) assign all conflict cases to individual panel attorneys through a panel system overseen by the local Bar Association.
 - Alameda has 32 delinquency panel attorneys who handle approximately 450 cases a year, or about 14 cases per attorney.
 - Kern has 10 to 12 delinquency panel attorneys who each handle 75 to 80 cases a year.
 - San Joaquin has seven panel attorneys on the regular juvenile delinquency rotation; each attorney gets between 35 and 60 cases a year.
- One county (Sacramento) has a county office called Conflict Criminal Defenders (CCD) that provides attorneys when the Public Defender has a conflict. The attorneys are members of the Bar Association's Indigent Defense Panel; the County (through the CCD) and the Bar Association operate through an MOU.
 - Information about the number of juvenile delinquency panel attorneys and their caseloads was unavailable.
- Three counties (Santa Clara, San Diego, and Contra Costa) have a county-run Alternate Public Defender Office that handles the first level of conflict, and utilize panel attorneys for any further conflicts.

¹⁸⁵ Alameda County juvenile panel attorneys handle mostly felony cases. The Bar Association contracts out the juvenile misdemeanor cases to the East Bay Children's Law Office.

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- Santa Clara and San Diego manage those panel attorneys through a County office.
 - Santa Clara has three delinquency panel attorneys who each handle between 110 and 145 cases a year.
 - San Diego has six delinquency attorneys on the panel and the office has about 300 to 400 open cases at a time; the number of new cases per attorney per year was not available.
- Contra Costa uses a conflicts panel run by the Bar Association; each of the Contra Costa panel attorneys receives between two and six cases a year.
- Orange County has three privately run firms called Delinquency Contract Attorneys (DCAs) for the first three conflicts if the Public Defender cannot take the case. The primary DCA, called Juvenile Defenders, takes the largest share of the conflicts. The DCAs act as Alternate Public Defender Offices except they operate by contract with the County, not as internal County departments, so the attorneys are not county employees. Any subsequent conflicts after the three DCAs go to a court-administered delinquency conflicts panel staffed with 15 individual private attorneys. The private panel attorneys operate on four-year contracts; approximately 150 to 200 cases a year are referred to the panel as a whole so each private attorney gets 10 or 11 cases a year.
- The remaining two comparison counties (Fresno and San Bernardino) have contracts with private law firms to handle all levels of conflict. The private firms are paid an annual fee by the counties and the panel attorneys working in those law firms are salaried employees of the firm. It should be noted that these types of contracts for indigent defense are not recommended and have been subject to strong criticism by prosecutors, defense attorneys, judges, academics and stakeholders.¹⁸⁶
 - In Fresno, one private firm holds the contract with the County. That firm manages three separate groups of attorneys. The first level of conflict is staffed by a group of three full-time attorneys; the second level is staffed by a group of two full-time attorneys, and if there are further conflicts they go to a rotating group of independent private panel attorneys. All levels of conflict are accountable to the private law firm that holds the contract with the County. Caseloads are unknown for all attorneys.
 - San Bernardino similarly has one contract with a private firm. That firm manages three small offices as well as a small panel of independent

¹⁸⁶ See e.g., California Commission on the Fair Administration of Justice; <http://www.ccfaj.org/documents/CCFAJFinalReport.pdf> at 91 - 100 (2006).

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attorneys for further conflicts. The office that takes most of the conflicts has three full-time attorneys. The number of attorneys in the second and third conflict offices, and the number of panel attorneys, is unknown. The Public Defender conflicts off 600 to 700 juvenile cases a year.

Figure 23. Administration of First Level of Conflict for Juveniles in Selected California Counties

Bar Association Panel Attorneys	APD	Private Law Office
Alameda Kern San Joaquin Sacramento	Contra Costa San Diego Santa Clara	Fresno San Bernardino Orange

Santa Clara County Indigent Juvenile Defense: A Recent and Relevant Restructuring

In 2006 Santa Clara County commissioned an audit of its indigent defense system. At the time, juvenile delinquency cases were handled first by the Public Defender and any conflicts went to a panel run by the Legal Aid Society.¹⁸⁷ The auditors recommended that the least costly way to provide indigent defense services was to assign all adult and juvenile cases to the Public Defender; designate the Alternate Public Defender for conflicts; and then designate the Legal Aid Society when a further conflict was present.¹⁸⁸ It was anticipated that this system would also increase case flow and quality of service.

As a result of this audit, in 2008 Santa Clara County restructured its juvenile indigent defense system.¹⁸⁹ The Public Defender continues to have first assignment of all juvenile delinquency cases. The APD is assigned juvenile cases when the Public Defender has a conflict. For any further conflicts, the County established a new unit in the Office of County Counsel called the Independent Defense Counsel Office, allowing their contract with the Legal Aid Society to expire. One year after the changes were implemented, the County began to see improvements in the delivery of indigent defense services.¹⁹⁰

¹⁸⁷ The County's APD did not handle juvenile cases.

¹⁸⁸ "Management Audit of the Office of the Public Defender and Indigent Defense System of the County of Santa Clara," January 2007.

<https://www.sccgov.org/sites/bos/Management%20Audit/Documents/PublicDefenderAudit.pdf>

¹⁸⁹ February 26, 2008 Santa Clara County Office of the County Executive Press Release: "County to Bring Indigent Defense System In-house." https://www.sccgov.org/sites/opa/nr/Documents/Indigent-Defense-Sys-in_house-2008.pdf

¹⁹⁰ First Year Report on Restructured Indigent Defense System.

<http://www.sccgov.igm2.com/Citizens/FileOpen.aspx?Type=4&ID=30244>

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Oversight and Management

The comparison counties all have centralized mechanisms in place to ensure accountability and quality. Los Angeles County does not have such mechanisms in place. All ten have an attorney in a director or supervisory role who oversees the program or office in charge of private or panel counsel, and four of those attorney supervisors are former public defenders. This is consistent with a recent national review, which strongly recommended that “at the trial level, the appointment, review, and re-appointment of [. . .] panel lawyers should be overseen by a committee of lawyers knowledgeable about and committed to indigent defense[.]”¹⁹¹

Alameda

Alameda’s Criminal Court Appointed Attorneys Program is run through the Bar Association. The Program is managed by a Director, an Administrator, and a billing specialist. The Director is a former public defender. She is responsible for all daily operations including appointments, record keeping, caseload monitoring, budget, and the contract with the County. She answers to an Advisory Committee of five to 11 members, most of whom are experienced criminal defense attorneys. Advisory Committee members serve two year terms. Together, the Director and the Advisory Committee monitor quality assurance and evaluate panel members.

The Advisory Committee and the Director conduct confidential peer and judicial reviews of panel members. They are not required to give notice and the reviews may occur at any time. When there is an investigation into allegations of incompetence, the attorney may be required to submit a written explanation or discuss it with the Committee or Director. Remedies include remedial training, mandated mentoring and oversight, demoting class, suspension, and removal from the panel.

In 2014 Alameda started a panel counsel evaluation process; the new process was partially in response to concerns that had arisen because panel attorneys were remaining on the panel indefinitely. Within a year they went from 170 to 130 panel attorneys (adult and juvenile); some of the loss was due to quality control and some was due to natural attrition because attorneys chose not to continue on the panel in light of the new requirement. The County is implementing a requirement that all panel attorneys must be invited back on a yearly basis. The County has not yet determined the frequency of future evaluations but is committed to more evaluations in the future.

¹⁹¹ Federal Indigent Defense 2015: The Independent Imperative” at 9;
<https://www.nacdl.org/federalindigentdefense2015/>

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Alameda also enforces maximum caseload requirements for the panel attorneys' total caseloads. These caseload maximums include retained or other cases taken by the attorney in addition to the conflict cases.

Kern

Kern County's Indigent Defense Panel (IDP), managed through the Bar Association, is overseen by an Administrator. The Administrator is a former IDP attorney with 20 years of experience handling adult cases. For juvenile delinquency cases it is the court's three delinquency judges, not the IDP, who choose and appoint the individual panel attorneys in cases that need counsel. All matters other than case assignment, including oversight, complaints, and payment, are handled by the Administrator.

San Joaquin

The Bar Association panel in San Joaquin County is overseen by a Director and a Coordinator. The Director is an attorney. The Coordinator started as a legal secretary in a criminal law office and has been the Coordinator for 32 years. She and another person handle all the assignments and billing for the program. Panel attorneys are all in private practice and they maintain their own system of conflicts. The Director and the Coordinator handle complaints and solicit input from the judges. The program also has a review committee and a peer review process for attorneys about whom they receive complaints.

Sacramento

The Conflict Criminal Defender Office (CCD) in Sacramento County provides oversight for all panel attorneys. CCD is a County Department. The CCD and the Bar Association's Indigent Panel Committee work together through an MOU.

CCD has eight employees. The Executive Director and the Deputy Director are both former lawyers. CCD is responsible for case assignments, trainings, and billings; CCD is the point of contact for the courts. CCD and the Bar Association's Indigent Defense Panel Committee are jointly responsible for developing standards. Ensuring that the panel attorneys meet those standards is largely up to the Bar Association's Indigent Panel Committee; the Bar Association also has an Education Committee and a Peer Review Committee. Complaints about panel attorneys can be made to either the CCD or the Bar Association.

Santa Clara

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Santa Clara County has an Independent Defense Counsel Office housed within the Office of County Counsel. The IDO Director is a former juvenile public defender. She was the Juvenile Division Supervisor at the Public Defender's Office. She provides on-site administrative oversight, provides assistance to panel attorneys, and oversees the panel to make sure they are informed of and are adhering to current and new policies. She is directly involved in overseeing the panel counsel in day-to-day operations. Panel attorneys are evaluated on their availability, responsiveness, case outcomes, client relationships, and reputations with judges and prosecutors. The Director also oversees and reviews the billing, and represents the panel attorneys in interactions with County administration.

San Diego

Prior to 2009, San Diego had four offices charged with appointing counsel for indigent defendants: the Public Defender, the Alternate Public Defender, the Office of Assigned Counsel (OAC), and the Multiple Conflicts Office. In 2009 all four offices were consolidated into the Office of the Public Defender, with glass walls/firewalls between them. All four offices are under the general supervision of the Public Defender.

The Bar Association managed the panel from 1996 to 2009 but the OAC has managed the six delinquency panel attorneys since the consolidation in 2009. The OAC is run by a Director who is also an attorney. The Director is authorized by the Board of Supervisors to enter into contracts with the panel attorneys. Although the PD is the overall supervisor, there is an ethical glass wall between OAC and the PD, and they operate out of different offices.

The Director is responsible for referrals and case assignment procedures, keeps program records, continues development of policies, procedures, rules and regulations, and develops statistical information and reports related to the program. Complaints are investigated by the OAC Director who has the sole discretion to determine if the complaint has merit or not and what action should be taken. The Director may appoint a review committee to assist with the evaluation of the complaint at the request or approval of the panel attorney under investigation.

Contra Costa

The Bar Association's Criminal Conflicts Program oversees panel attorneys, both adult and juvenile, in Contra Costa County. Adult and juvenile panel attorneys are combined, possibly because the total number of cases going to panel attorneys is small. The Director and Program Administrator of the Criminal Conflicts Program is an attorney. The Director oversees case assignment, although a staff member handles the actual assignment except in extremely complicated cases. A committee of eight attorneys

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determines eligibility and entry onto the panel. The committee also investigates complaints by judicial officers and attorneys. The Director has discretion on how to handle complaints from clients or unwritten complaints from attorneys.

Contra Costa County also has a monitoring attorney program where an attorney may be assigned to monitor the legal representation of an appointed panel attorney in any case where the best interests of the client and/or the Criminal Conflict Committee will be served. In addition, panel members are subject to suspension, termination, or reclassification anytime for any substantial violation of the panel rules, rules of professional conduct, or disciplinary action by the Bar.

Orange County

Juvenile Defenders handle most of the conflicts in Orange County; it is a privately-run office that holds a contract with the County. The head attorney at Juvenile Defenders manages and oversees the office, including the billing. He is a former juvenile public defender and has been doing juvenile defense work for 35 years. All attorneys on staff in the Juvenile Defenders offices are experienced; they have been working full-time in juvenile delinquency for approximately 17 years. Oversight information was not available for the other two contracted offices or for the independent panel attorneys. Juvenile Defenders estimated that the Public Defender and Juvenile Defenders, combined, handle more than 95% of the juvenile delinquency cases in the County.

Fresno

The law firm of Ciummo & Associates holds a flat fee contract with the County to oversee all conflicts. Oversight of all conflict attorneys thus lies with the law firm, which is staffed with attorneys. The rotation for juvenile delinquency cases is approximately every two years. The office makes sure that at least one of the attorneys assigned to cover juvenile delinquency cases has been in the assignment at least one year and has at least five years of criminal defense experience.

San Bernardino

San Bernardino County, like Fresno, contracts with a private law firm for all conflicts. One of the partners at the private firm is an experienced juvenile delinquency attorney who has been handling delinquency cases for 30 years. No further information was provided about oversight of the attorneys.

Investigators

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Panel attorneys are given access to investigators in nine of the ten counties (information could not be obtained from Orange County as it related to the panel attorneys although Juvenile Defenders, the contracted office that takes the first level of conflict, has on staff investigators). For the nine counties with information known about the provision of investigators for panel lawyers, none of the juvenile panel attorneys are required to pay for an investigator out of their own pocket, as is the case in Los Angeles.

Compensation

Compensation models vary in each county. However, most of the counties utilize a tiered system based on seriousness of the case, or they compensate attorneys based on an hourly rate.

The panels run by the Bar Associations generally pay their attorneys an hourly rate. San Joaquin's is fixed at \$85 an hour and Sacramento has a tiered hourly system based on the seriousness of the case ranging from \$70 to \$100 an hour.¹⁹² Panel attorneys in Contra Costa County (both adult and juvenile) are paid on a graduated hourly rate of \$70 - \$80 an hour for misdemeanors with a tiered rate of \$115 to \$165 an hour for felonies depending on the type and stage of the case.

Kern County's structure is a hybrid where payments are generally based on the events in the case but some work is paid by the hour; the hourly rate is \$51 an hour.

San Diego also has a hybrid model that combines an hourly rate and an event-based fee for certain events. The County maintains a four page list of events in juvenile delinquency cases, but generally compensates attorneys \$800 for felony juvenile cases up through disposition, plus \$400 for a full day of trial or \$275 for a half day of trial.¹⁹³ For serious cases filed under 707(b), hearings are compensated at three different hourly rates (\$50, \$60 and \$65) up to a maximum between \$2100 and \$3200 depending on the charges.

Santa Clara relies mostly on a graduated event-based system, with a flat fee of \$375, \$800, or \$1100 depending on the seriousness of the case, plus a flat fee of between \$100 and \$400 for motions depending on the complexity and the need for a hearing, plus a half day trial fee of \$250 to \$350 depending the type of case. Homicide cases are compensated at \$115 an hour.

¹⁹² The quoted rates are for adult cases.

¹⁹³ http://www.sandiegocounty.gov/content/dam/sdc/oac/docs/OAC_Fee_Schedule_Feb_2014.pdf

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Alameda County changed its compensation model in 2013 from an event-based structure to a tiered hourly structure based on the seriousness of the case.¹⁹⁴ The County hoped the compensation model would eliminate the incentive for attorneys to take on too many cases. Amounts range from approximately \$68 to \$80 an hour, with a \$100 one-time fee for cases that are resolved on the same day as the initial appearance. The hourly rate for 777 violation petitions is \$80.

Orange County Juvenile Defenders, the office that acts as a private APD office, has a contract with the County for a flat fee per petition. The rate is \$302 per petition, including 777s, which covers arraignment through a two-day trial. The office receives an additional \$69 for every post-disposition progress review. Although the office's contract with the County is based on the flat fee, attorneys working in the office and representing clients are paid by salary. The contracts for the other two privately-run offices could not be confirmed but are presumed to be the same. The independent panel attorneys are paid by the court on an hourly basis through invoices submitted to the court; the hourly rate could not be confirmed.

In Fresno, the County has a flat-fee contract with a single private firm to handle all conflicts. That firm delegates representation to two smaller firms (one with three attorneys, the other with two) and the attorneys in both of those smaller firms work on salary. If there is a further conflict beyond the two firms the client is represented by a private panel attorney; the County and the firm were not willing to provide compensation information for those panel attorneys.

San Bernardino similarly has a flat-fee contract with a private firm that employs salaried attorneys. If the salaried attorneys are conflicted off the case, the firm that holds the contract maintains a panel of private attorneys who are paid on a per-case basis. The amount is unknown.

Training

All ten comparison counties offer trainings to their panel attorneys through the public defenders' offices, the bar association, or other organizations. Four of the ten counties have some sort of continuing education or training requirement for their attorneys.¹⁹⁵ Two counties, Kern and Sacramento, require trainings for new attorneys. The Orange County Public Defender provides monthly training seminars for free to any member of the Bar.

¹⁹⁴ <https://www.acbanet.org/UserFiles/files/PDFs/CAAP/Fee%20Schedule%20050113.pdf>

¹⁹⁵ Three (San Joaquin, Alameda, San Diego) require yearly continuing education. Sacramento requires that attorneys attend introductory trainings for attorneys that are new to the panel.

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PART IX: Recommendations from County Guidelines and Public Defender Cost to Implement

Response to Supervisor Molina's friendly amendment:

"...include as part of the study all the recommendations listed in Presiding Judge Michael Nash's draft report entitled, "Juvenile Court Delinquency Standards of Representation," changing the recommendations from "should do" to "must do," and request the Public Defender to determine the cost to implement these recommendations."

Highlights

The Public Defender objected to the draft Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court, and the final Guidelines (issued in 2014) were not endorsed by the Public Defender. Many of the objections arose from differences of opinion regarding the scope of the Public Defender's role, not from a lack of funding. Thus, not all objections will be resolved even if the County fully funds the Public Defender to implement the Guidelines.

There are some areas where the Public Defender could come closer to full compliance with increased funding, in particular by expanding the CARE program which provides social workers and resource attorneys for Public Defender clients. The Public Defender believes that expansion of the CARE program would require a very substantial increase in funding. No further specification was provided, on the grounds that to do so would be speculative.

In 2014, the Juvenile Division of the Los Angeles County Superior Court published Guidelines for attorneys representing youth in the Los Angeles juvenile delinquency court. The Guidelines act as a practice guide for lawyers representing youth in delinquency courts in California, with an emphasis on Los Angeles.¹⁹⁶ They set forth exhaustive standards capable of informing "judges, prosecutors, probation officers, and other juvenile justice stakeholders [about] the specifics of the role of defense counsel in

¹⁹⁶ *Guidelines for Attorney's Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 2.

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the delivery of zealous, comprehensive [holistic] and quality legal representation to which children charged with crimes are constitutionally entitled.”¹⁹⁷

A comprehensive review of every recommendation in the Guidelines, and an analysis of the degree to which panel attorneys and public defenders adhere to each of those recommendations, was well beyond the scope and budget for this report. However, research, outreach, and interviews for this report were informed by the Guidelines, and earlier sections of the report highlight numerous areas and practices that are addressed in the Guidelines.

The sections below respond to the Board motion by first addressing the issue of “should” versus “must,” then by highlighting some of the key Guideline recommendations chapter-by-chapter and addressing how they are or are not followed by panel counsel and public defenders. This section concludes with the Public Defender’s response to the Board request that the Public Defender assess the cost of full compliance with the Guidelines.

Guidelines Use of “Should” and “Must”

The Guidelines use both “should” and “must” to identify attorney obligations and recommended procedures. The Board motion requested a review to determine which of the “should” phrases should be “must” phrases. A full review of every use of the term “should” was beyond the scope of this report. Moreover, the fact that the Guidelines use both “should” and “must” means that use of the terms can be assumed to be intentional. That is, it can be assumed that the authors of the Guidelines intentionally chose “should” and intentionally chose “must” where those terms are used. Given the intense detail and consideration that went into the Guidelines, and given the short time frame for this report, a full review of every “should” and “must” in this report was impracticable.

Moreover, the term “should” appears in the Guidelines well over 100 times, and many of those are grammatically and contextually appropriate. This occurs, for example, when the Guidelines instruct attorneys to consider certain issues, as in “counsel *should* consider making a motion to sever counts when grounds exist to do so” (p.35), “if the youth is not placed within a reasonable period of time, counsel *should* consider a motion for modification of the disposition order, or seek relief by extraordinary writ” (p. 75), and “if formal [discovery] requests are not complied with in a timely manner, counsel *should* consider seeking sanctions, which may include the preclusion of

¹⁹⁷ *Guidelines for Attorney’s Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 3., quoting National Juvenile Defender Center: Role of Juvenile Defense Counsel in Delinquency Court, p. 7.

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prosecution evidence being introduced” (p.17). These “shoulds” are not necessarily calling for required *action* so much as required *thought*, and changing the “should” to “must” does not seem appropriate.

In addition, in many places the use of “should” is appropriate because the recommended action is dependent upon the totality of the circumstances, and it may, or may not, be the appropriate legal action in any particular case given the circumstances of that particular client. For example, “if the 241.1 process is initiated, and the youth is to remain detained, counsel *should* request placement/housing in the Elite Family Unit, (alpha and omega), at Central Juvenile Hall” (p. 48), or “if and when a placement changes, counsel should determine whether there is any unreasonable delay in the youth’s enrollment in school. Counsel *should* bring any issues to the court’s attention” (p. 76), or “counsel *should* advocate for modification to dependency if the youth has completed probation but has nowhere to go. Youth should not linger on probation for placement purposes” (p. 50). Most of the time, these recommended actions will be the best actions for the client – but not necessarily always, and to use the term “must” in the Guidelines would inappropriately remove the individual assessment that counsel must give to each client.

Finally, many times when the Guidelines use “should,” the question is not whether “should” is more appropriately a “must,” but whether the County is prepared to impose consequences in the event a “must” is not followed. So for example, the Guidelines recommend that “counsel *should* wear appropriate professional attire and advise the youth as to appropriate attire and demeanor for the courtroom.” (p.9). This could theoretically become a “must” – but the difference between “should” and “must” would have no meaning unless the County imposes consequences on attorneys who do not comply. In this particular example, such a policy might not be an efficient use of County resources. In another example – for instance, “in addition to understanding the juvenile court process and systems, juvenile team members *should* be competent in juvenile law, criminal law, the collateral consequences of adjudication” (p. 6) – the County might wish to devote the resources required to both monitor and enforce compliance if the “should” became a “must.”

To assist the County in making this determination, the next section addresses each chapter of the Guidelines and highlights key areas where either the Public Defender or panel counsel do not follow the recommendations.

Guidelines Implementation

The comprehensive nature of the obligations and goals embodied by the Guidelines caused the authors to acknowledge that complete adherence would be “difficult to

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achieve without sufficient funding and resources.”¹⁹⁸ This sentiment was mirrored in the Public Defender’s official response to the Guidelines. The Public Defender, “while agreeing with many of the principles articulated in the guidelines,” would not endorse them on the basis that “the guidelines would inevitably create local expectations that cannot realistically be met with existing resources.”¹⁹⁹

The section below addresses each chapter in the Guidelines and, where information was available, includes the position of the Public Defender and panel counsel regarding the recommendations in that chapter. Complete details regarding the Public Defender’s position are included in the Public Defender’s March 28, 2014 response to the draft Guidelines; those details are not repeated in full here.

Chapter One: Ethical Duties

Chapter One addresses the general ethical duties of attorneys in delinquency court, including those set by California law and rules of court, as well as standards and rules set by the American Bar Association.

The Public Defender states that its comprehensive training and support structure allows it to fully comply with the comprehensive requirements in Chapter One. However, the Public Defender disputes the Guidelines’ use of “best interests” rather than “expressed interests” of the child, a dispute that may (or may not) have been resolved by AB 703, signed into law in October 2015. In a later section (chapter two, recommendation 5), the Guidelines state that counsel must serve the interest of the youth “and may not substitute . . . the youth’s best interests for those expressed by the youth,” but this did not appear to resolve the Public Defender’s objection.

The Public Defender also objected to the scope of the 33 areas of specific substantive knowledge listed in section 5, stating that while the Public Defender trains all of its juvenile staff in each of the identified areas, “some [of the 33 areas] are so detailed that they go beyond the skill set of [their] attorneys.”²⁰⁰ The Public Defenders’ approach is to train all attorneys to recognize all 33 issues so that they are able to seek guidance from additional professionals if required, but not to require that each of the deputy public defenders have substantive knowledge in all 33 areas.²⁰¹ In practice, and as discussed in

¹⁹⁸ *Guidelines for Attorney’s Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 3.

¹⁹⁹ *Guidelines for Attorney’s Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, p. 1.

²⁰⁰ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 7.

²⁰¹ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 7.

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the Resource section above, the Public Defender's on-staff social workers and the resource attorneys have specific training in most if not all of the 33 areas, and the deputy public defenders use those resources extensively.

Panel heads state that they and the panel attorneys in their branches comply with the requirements in Chapter One. Panel heads further state that their long experience provides them with the knowledge necessary to provide representation or recognize legal issues in all 33 areas of specific substantive knowledge, without the necessity of social workers or resource attorneys.

Chapter Two: General Duties

Chapter Two covers a delinquency attorney's general duties of representation, including preparation, knowledge of the law, and court behavior.

The Public Defender states that it complies with Chapter Two, with a few exceptions. One of these, in response to recommendation 12, is a dispute regarding the extent of the attorney's obligation in the post-dispositional phase. This is discussed in the section on Guidelines Chapter 12, below.

The Public Defender also objected to the recommendation that "counsel must...bring to the court's attention other interests of the youth that may require advocacy in another legal or administrative arena, as appropriate."²⁰² The Public Defender expressly states that this Guideline cannot be complied with as a matter of policy on the basis that it conflicts with attorney client privilege.²⁰³ The use of the term "as appropriate" does not appear to have alleviated the Public Defender's concern.

Panel heads' position on each of the 18 requirements in Chapter 18 is unknown. In general, panel heads contend that they comply with everything expected of them by the court.

Chapter Three: Duties of Representation Prior to Arraignment

Chapter Three includes 19 specific recommendations regarding counsel's initial contact with his or her client. The Public Defender and panel heads both attempt to meet with and represent new clients prior to arraignment. Both stated that, while they comply

²⁰² *Guidelines for Attorney's Representing youth in the Los Angeles Juvenile Delinquency Court*, Superior Court of California County of Los Angeles Juvenile Division, 2014, pp. 8-9.

²⁰³ Ronald L. Brown, *Response to 'the guidelines'*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 7.

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with the recommendations in Chapter Three, it is not always possible to address all of the recommendations in Chapter Three prior to arraignment.

Chapter Four: Duties at Arraignment

Chapter Four contains ten specific recommendations about actions to be taken at arraignment. The Public Defender states that it complies with the recommendations in Chapter Four, with the exception of two legal disputes including whether the clients or the attorney determines which plea to enter. This disagreement centers on the question of the client's "expressed interests" versus "best interests" mentioned above.

Information was not available on a recommendation-by-recommendation basis from panel heads, but in general panel heads stated that they fully represent their clients at arraignment.

Chapter Five: Duties Post-Arraignment to Adjudication

Chapter Five covers detention hearings, discovery and investigation, the pre-plea hearing, alternatives such as diversion or deferred entry of judgment, and plea negotiation. Both panel heads and the Public Defender state that they fully represent their clients post-arraignment to adjudication, that they fully advocate for their clients' needs, and that they negotiate on their clients' behalf for the best possible outcome.

On the issue of discovery and investigation, the Public Defender states that its attorneys are trained to seek additional evidence beyond that provided by the DA and Probation in all cases. It is not known how often additional discovery or evidence is obtained by Public Defender attorneys, investigators, resource attorneys or social workers. For panel counsel, about a third (29%) of panel counsel stated that they rarely or less than half the time need to obtain potential evidence beyond what is provided by the DA and Probation. A little more than half (55%) stated that they obtain additional discovery or evidence in more than half or almost all of their new cases. The remaining 16% said that they need to obtain additional evidence beyond what is provided by the DA and Probation in about half their cases.

As discussed in the Resource section above, the Public Defender and panel counsel have different practices regarding additional evidence that might be needed to represent the client. If school records are needed, for example, the Public Defender generally has a resource attorney, social worker, or investigator obtain the records. In the survey, almost all panel counsel stated that they ask Probation or their client's parents to provide the records; a few respondents stated that they have occasionally obtained school records by subpoena.

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On the issue of investigators in particular, it appears that public defenders and panel counsel have strikingly different rates of use. This issue is addressed earlier in this report, in the section on resource use.

Neither public defenders nor panel counsel have a practice of attending the pre-plea interview with their clients.

Chapter Six: Competency

Both panel heads and the Public Defender state that they comply with the Guidelines, that they are fully aware of issues surrounding their clients' competency, and that they respond accordingly.

The Public Defender does not track how often its attorneys have competency concerns about a client. In the survey, 47% of panel attorneys said that they have competency concerns about a client once or twice a year.

Chapter Seven: Motions and Hearings

Chapter Seven contains an extensive discussion of almost all possible motions that might be made in a juvenile's case. Both the Public Defender and panel heads claim that their attorneys are aware of all possible motions, that they comply with Chapter Seven, and that they will bring motions when necessary.

Both public defenders and panel attorney utilize oral rather than written motions at times. It is the Public Defender's practice to discourage oral motions; the Public Defender does not track how often motions are made orally as opposed to in writing.

A little more than a third (38%) of panel counsel said that their motions are almost always or usually made orally, rather than in writing. The largest share of panel counsel (47%) stated in the survey that they bring about half written and half oral motions.

Chapter Eight: Crossover Youth

Chapter Eight addresses crossover youth (youth in both dependency and delinquency court) and, in particular, 241.4 hearings and AB12/212 proceedings. The Public Defender objected to the introductory language equating dual status with a benefit to the juvenile delinquency client, on the grounds that such status will sometimes harm the client and therefore should not always be pursued by the delinquency attorney.

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The Public Defender also objected to chapter section B (regarding AB 12/212), stating that it will not represent youth over 18 in re-entry hearings because it is “not tasked with representing individuals who are not under the delinquency jurisdiction of the court.”²⁰⁴

Unlike the Public Defender, panel counsel represent AB12/212 youth in any proceeding for which they are appointed by the delinquency court. They have been including these AB 12/212 appointments on their invoices to the CEO. Over the past three years, panel counsel have invoiced for approximately 125 such appointments.²⁰⁵

Panel counsel appointments generally occur when the youth is over 18 but eligible for social services such as tuition and rent allowance under AB 12/212 and Welfare and Institutions Code Section 450. The delinquency court appoints panel counsel as counsel of record, then counsel help the youth apply for services and monitors to verify that services are being provided by Probation. Counsel also make follow-up court appearances as requested by the court.

Chapter Nine: Fitness Hearings

Both panel counsel and the Public Defender state that they are aware of their obligations in fitness hearings, and that they comply with all requirements and recommendations.

To the extent there are differences in practice or outcomes in fitness hearings, those differences are addressed in the section on fitness hearings earlier in this report.

The Public Defender, but not panel counsel, will represent former clients who are eligible for parole hearings or re-sentencing proceedings available under SB 9, SB 260, SB 261, or *Miller*.

Chapter Nine also includes a discussion in Section D regarding housing for youth who have been transferred to adult court, both before and after the youth turns 18. Neither panel counsel nor the Juvenile Division of the Public Defender represent the youth once they are transferred to adult court, so compliance with this section of the Guidelines is unknown.

²⁰⁴ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, pp. 11-12.

²⁰⁵ Based on a review of three years’ of panel invoices.

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Chapter Ten: Duties at the Adjudication Phase

Both panel heads and the Public Defender state that their attorneys comply fully with the adjudication requirements in Chapter Ten.

Chapter Eleven: Disposition

Both panel heads and the Public Defender state that their attorneys comply fully with the disposition requirements in Chapter Eleven.

Chapter Twelve: Post-Disposition

Chapter Twelve includes a lengthy discussion and list of recommendations regarding counsel's role in proceedings after disposition, including actions that are recommended after the client has been placed on probation and returned home, or after the client has been sent to suitable placement, Camp, or DJJ. The chapter also includes recommendations regarding the client's return from DJJ, probation violations (777 petitions), and record sealing.

The Public Defender objected to the scope of Chapter Twelve, stating that the chapter "envisions delinquency counsel operating to monitor Probation and to ensure Probation's execution of their professional obligations. Such case management duties are beyond the role of defense counsel."²⁰⁶ The Public Defender also stated that it "does not currently continuously monitor all clients in camp and placement."²⁰⁷ In this, the Public Defender and panel heads appear to be in agreement, as panel heads similarly stated that it was Probation's job to monitor the youth after disposition. Both panel heads and the Public Defender were emphatic that they would act appropriately to advocate for their clients if notified of an issue by the client or by Probation.

Some judges noted the failure to do much post-disposition representation. Comments included:

- "Attorneys as a whole do not follow up on post-dispositional issues,"
- "I don't see much difference in what panel attorneys or public defenders are advocating post-disposition," and

²⁰⁶ Ronald L. Brown, *Response to 'the guidelines'*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p.13.

²⁰⁷ Ronald L. Brown, *Response to 'the guidelines'*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p.13.

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- “The lawyers, both public defender and appointed counsel, do not do a sufficient job” in psychotropic medication hearings, camp updates and release planning, suitable placements determinations, and group home updates.

Although they are similar in their approach generally to post-disposition representation, there is a difference between the Public Defender and panel counsel regarding clients in DJJ. The Public Defender has a DJJ unit, tasked with proactively monitoring its clients in DJJ, visiting clients in DJJ, advocating for services while the clients are in DJJ, and representing those clients in re-entry proceedings. Panel counsel do not provide any such proactive representative, but will represent and advocate for their DJJ clients if notified of an issue by Probation. This issue is addressed earlier in this report, in the section on resource use and rate of use.

Chapter Thirteen: Psychotropic Medication

Chapter 13 of the Guidelines includes six recommendations related to the authorization of psychotropic medications for youth. Among other things, the chapter recommends that counsel verify the accuracy of information in the psychotropic medication report, file an opposition if there are concerns, and attempt to communicate with the client prior to scheduled progress report hearings.

The Public Defender states that they are unable to comply with this chapter of the Guidelines as “to do so would subject us to incalculable professional liability.”²⁰⁸ According to the Public Defender “counsel is unable to comply with these requirements due to attorney client privilege. Counsel is ethically obligated to protect a client’s private health information from unlawful dissemination. It is Probation’s overarching responsibility to ensure the safety and treatment of youth under their care. This role cannot and should not be shifted to delinquency counsel.”²⁰⁹ The degree to which the Public Defender’s psychiatric social workers could provide guidance when psychotropic medications are requested for Public Defender clients is unknown.

Panel counsel’s position regarding Chapter 13 is unknown. In survey responses, panel attorneys stated that their practices regarding psychotropic medication hearings include:

²⁰⁸ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 14.

²⁰⁹ Ronald L. Brown, *Response to ‘the guidelines’*, Law Offices, Los Angeles County Public Defender, March 28, 2014, p. 14.

Part IX: Recommendations from County Guidelines

- “I research the medication sought in order to assess the side effects. I’ll ask the parents if they know what medication the child has been prescribed and see if the minor has received these meds in the past,”
- “I have no medical training so I leave the decisions on meds to the doctor and parent,”
- “If I receive such a request, I will discuss the request with my client and my client’s parents,”
- “I contact the minor and his family to discuss the options with them,”
- “I review to be sure that an independent M.D. has confirmed the request,”
- “I review the Order and check the file and status for apparent appropriateness,”
- “See if my client has any objection or family has any objection and proceed accordingly,” and
- “I determine what the medication is that is being prescribed and what the purpose of it is. I then determine whether or not that is appropriate.”

Neither public defenders nor panel counsel appear at psychotropic medication hearings unless the court requests an appearance by counsel. Both the Public Defender and panel counsel were emphatic that they always appear in court if the matter is placed on calendar and an appearance is requested.

In their survey responses, panel attorneys commented on the fact that many delinquency judges do not place psychotropic medication hearings on calendar, that notice is generally not given to counsel, and that some judges do not put medication requests on the record so counsel are unable to attend.

Chapter Fourteen: Transfers

Chapter Fourteen addresses inter-county transfers, both in and out of Los Angeles. The Public Defender states that it fully complies with this section. The degree to which panel counsel encounter transfer issues is unknown.

Chapter Fifteen: Consequences Beyond Disposition

Chapter Fifteen covers a number of potential collateral consequences that might be faced by a juvenile, including immigration, barriers to military enlistment, firearm restrictions, DNA collections, and limitations on the sealing of records. The Public Defender states that its attorneys are aware of collateral consequences and that the Office complies with Chapter 15. The extent of panel counsel compliance is unknown.

Part IX: Recommendations from County Guidelines

Chapter Sixteen: Supervision

Supervision is addressed earlier in this report in the section on Standards and County Compliance.

Public Defender Cost of Full Implementation

In its 2014 objections to the draft Guidelines, the majority of the Public Defender's objections were phrased as disputes regarding the legal scope of representation, not as lack of resources. These legal disputes include:

- Areas where the Public Defender interprets the Guidelines to require inappropriately advocating for the client's "best interests" rather than legally-required "expressed interests." (Chapters One, Two, and Four);
- Whether dual status, or status as a crossover youth, is always a benefit for the client and so should be pursued by delinquency counsel (Chapter Eight);
- Representing crossover youth over 18 on petitions for reentry, which the Public Defender says it is "not tasked with" (Chapter Eight);
- Post-disposition representation, which the Public Defender believes is "beyond the role of defense counsel" other than the existing DJJ unit (Chapter Twelve); and
- Advocacy relating to psychotropic medication requests, which the Public Defender believes "cannot and should not be shifted to delinquency counsel." (Chapter Thirteen).

Other Public Defender objections arise from the Public Defender's assertion that the Guidelines interfere with the Office's internal decisions regarding staffing and management of its attorneys (for example, whether all attorneys should master all 33 substantive areas, how the Office manages caseloads, and how the Office utilizes substitute or stand-in counsel if the assigned public defender is not available).

The objections identified above are not based in a lack of resources. Indeed, in the 2014 objection letter, the Public Defender did not explicitly identify any specific area where the Office desires to work but has been unable to do so due to lack of financial resources. However, the Public Defender recently identified two areas that would contribute to full implementation of the Guidelines: (1) expansion of the ability to proactively contact and monitor clients in Camp, and (2) expansion of the existing CARE program (social workers and resources attorneys) to serve a greater percentage of Public Defender clients.

Part IX: Recommendations from County Guidelines

The Public Defender was asked to estimate the cost of full compliance with the Guidelines. The Public Defender's response to the Board's request for a cost estimate is quoted verbatim below:²¹⁰

The Los Angeles County Public Defender's Office, (hereinafter "Office") is a widely recognized, award winning, national leader in the area of juvenile justice and holistic legal advocacy on behalf of troubled children in the justice system. For this reason, the Office fully embraces many of the ideas, as well as the intent and spirit embodied in the recommendations of the Juvenile Delinquency Guidelines. In fact, the Office on its own initiative, thoughtfully implemented many of these ideas and recommendations well over a decade ago and these strategic decisions continue to yield very positive outcomes for many Public Defender clients and their families. Moreover, the Office regularly collaborates with numerous public and private sector stakeholders in order to continually improve the quality of legal services provided to clients.

Background

The Office was a key justice system stakeholder that successfully secured funding under the Schiff-Cardenas Crime Prevention Act to help establish the first full-time juvenile mental health court in the United States. The Office currently staffs this court with a public defender clinical social worker and an attorney. Moreover, the Office has played a key pioneering role in the state of California in implementing post-disposition advocacy on behalf of detained youth in juvenile detention camps. With the underwriting of federal grant funds, the Office created the Post-Disposition Program in 1999. This unique collaborative initiative with the Probation Department identified and assessed children who were inappropriately sent to camp and obtained juvenile court orders to place them in less restrictive settings in the community where they received appropriate treatment and services while still under Probation supervision. During the funding period of Post-Disposition Program, the juvenile courts throughout Los Angeles County overwhelmingly agreed with the joint recommendations of the Probation Department and the Public Defender's Office and over one thousand youth were served.

In addition, under authority of Senate Bill 459, the Office was one of the first public defender offices in the state of California to monitor post-disposition treatment of clients housed in the Division of Juvenile Justice (DJJ). An experienced attorney and paralegal monitor and visit clients at state juvenile facilities to ensure that they receive appropriate treatment and services as ordered by the juvenile court.

²¹⁰ Provided by Winston A. Peters, Assistant Public Defender, Branch & Area/ Special Operations Office of Los Angeles County Public Defender, on September 17, 2015.

Part IX: Recommendations from County Guidelines

Over fifteen years ago, the Los Angeles County Public Defender's Office successfully applied for a federal grant, referred to as the Juvenile Accountability Block Grant (JABG) and transformed its model of representation from a strictly legal model to a holistic legal model that focused on representing the whole child rather than solely on the defense of the underlying charge. In so doing, the Juvenile Division of the Office began to more specifically focus on many of the underlying causes that bring troubled children into the juvenile justice system such as mental illness, substance abuse, co-occurring disorders, developmental disabilities, and abuse and trauma.

The Office made the strategic decision based on evolving best practices to initiate a multi-disciplinary approach to its representation of children and used the JABG federal funding to hire twelve in-house clinical social workers and to deploy attorneys trained in mental health and educational advocacy. As a result, the CARE (Client Assessment Recommendation Evaluation) Unit was created. Under the CARE model, this multi-disciplinary team of professionals work with front line deputy public defenders in the juvenile courts from the arraignment stage of juvenile court proceedings to case disposition to identify and assess troubled children and make recommendations to the juvenile court to effectively address their psychosocial needs.

Under the CARE model of legal representation, the deputy public defender as the attorney of record is uniquely positioned to gain the youth's trust and secure personal and often previously undisclosed critical information in areas that often include incidents such as sexual abuse, chronic depression, drug addiction, homelessness and primary and secondary trauma. In many cases, with the youth's permission this information is shared with the juvenile court and appropriate treatment and services are then ordered to address these issues. Since the inception of the CARE Program in 1999, thousands of public defender clients in juvenile delinquency courts throughout Los Angeles County have received these services. Nonetheless, in light of limited funding, the Office employs a triage approach and estimates that it reaches only approximately 8-10 percent of youth who could truly benefit from CARE services.

Most recently, the Public Defender's Office submitted a program evaluation proposal which resulted in a grant of \$250,000 from the Los Angeles County Quality and Productivity Commission. The Master Agreement with the selected provider has been finalized and the scope of work for the evaluation is being defined. The Office expects that this study will validate the efficacy of the CARE Program as well as the Office's underlying model of representation. Further, it is anticipated that this evaluation will result in suggestions for Public Defender rates to the Office's programs consistent with accepted best practices.

The Juvenile Division of the Office has a staff of seventeen clinical social workers, eight resource attorneys specializing in mental health and educational advocacy, five

Part IX: Recommendations from County Guidelines

paralegals and secretarial support.²¹¹ The Quality and Productivity Commission funded study will contextualize the Office's model of holistic legal representation within the framework of up-to-date research and data. The study will provide the foundation for moving forward to more comprehensively address the needs of children in the Los Angeles County juvenile delinquency system. In the absence of such an analysis, the Public Defender believes that it would be highly speculative to quantify numbers of staff that would be needed to represent the needs of all Public Defender clients in the juvenile delinquency system. However, it would be reasonable to conclude that if the Juvenile Guidelines were fully implemented, it would require a very substantial increase in Office Juvenile Division staff.

²¹¹ One social worker position counted here is now a paralegal position. One resource attorney counted here is also a DIC.

Conclusion

Los Angeles created its juvenile indigent defense system more than twenty years ago. Juvenile defense has gone through a revolution since that time, exponentially expanding the defense attorney's role and demanding that attorneys serve their clients well beyond the confines of the criminal charges. In a system that prosecutes thousands of children and teens each year and imposes consequences that can last a lifetime, this expanded representation is critical.

The revolution is long past, but the County's system has not changed. The question is thus whether the County's current system allows it to adequately ensure vigorous and high-quality representation for all of its indigent children and teens, regardless of the type of attorney assigned to them. As currently structured, the County does not appear to be able to provide the necessary oversight. The system is characterized by a transfer of substantive oversight, management, and quality control to the eight panel heads, combined with unusually low turnover amongst the panel attorneys and a payment structure that incentivizes rapid resolution of as many cases as possible. This has resulted in a lack of consistency between the eight branches and widely varying practices in areas such as resource use and, particularly for transfer cases, differences in outcomes. Moreover, the lack of substantive oversight leaves the County unable to identify and respond to critical issues such as ineffective assistance of counsel, unmanageable caseloads, and billing and contract irregularities. These unacceptable activities are certainly not widespread. But without any qualified oversight structure, the County cannot know the extent to which they occur.

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Appendix B: Office of the Public Defender, Juvenile Division Conflict Policy (p. 123)

Appendix C: Sample Los Angeles Panel Contract and Most Recent Extension (p. 139)

Appendix D: Panel Counsel IAC Case (p. 159)

Appendix E: Office of the Public Defender, Juvenile Division Training Materials and list of webinars (p. 195)

Appendix F: Panel Heads Annual Seminar Materials (p. 211)

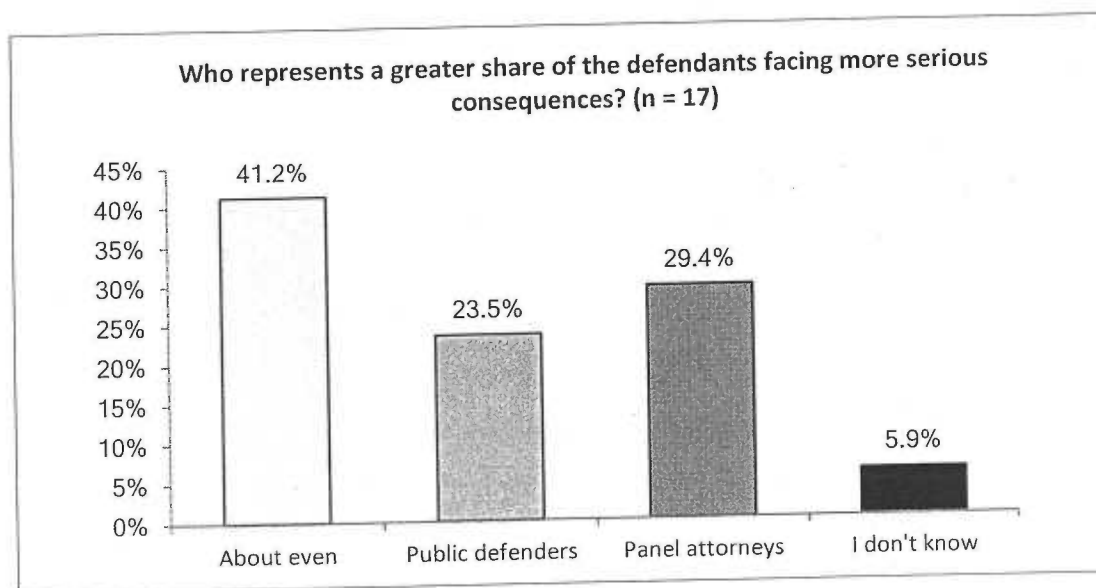
Appendix G: Los Angeles County Public Defender Attorney Performance Standards (February 8, 2010) (p. 222)

Appendix A:
Judicial Survey Highlights

Appendix A: Judicial Survey Highlights

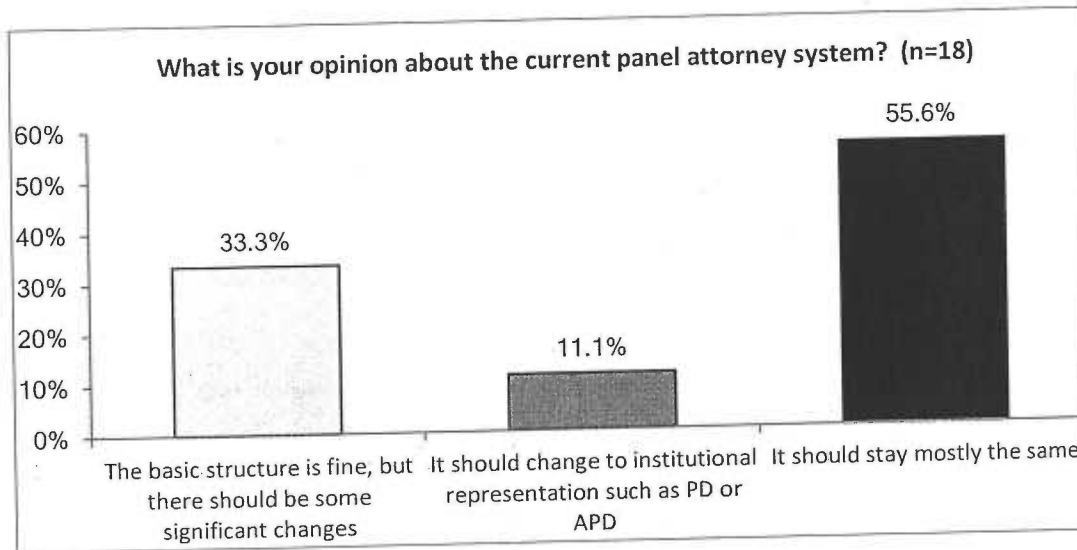
In July 2015, the 23 juvenile delinquency judges in Los Angeles County were sent an optional electronic survey. The survey contained three questions with answer choices, and an additional six optional narrative questions. The survey was anonymous and the judges were not asked to identify themselves or the branch in which they sit, nor were they asked any information about themselves such as how long they had been on the bench. Eighteen (18) of the 23 judges took the survey, although not all 18 answered every question. It should be noted the Judge Michael Nash, one of the principal authors of the Guidelines, chose not to take the survey because his views are reflected in the Guidelines.

The first question asked judges who, in their opinion, represents a greater share of the defendants facing more serious consequences. Opinions were split among the 17 respondents, as 41% (seven judges) said that they were about even across public defenders and panel attorneys, 24% (four judges) said that public defenders represent a greater share, and 29% (five judges) said that panel attorneys represent a greater share of defendants facing more serious consequences.



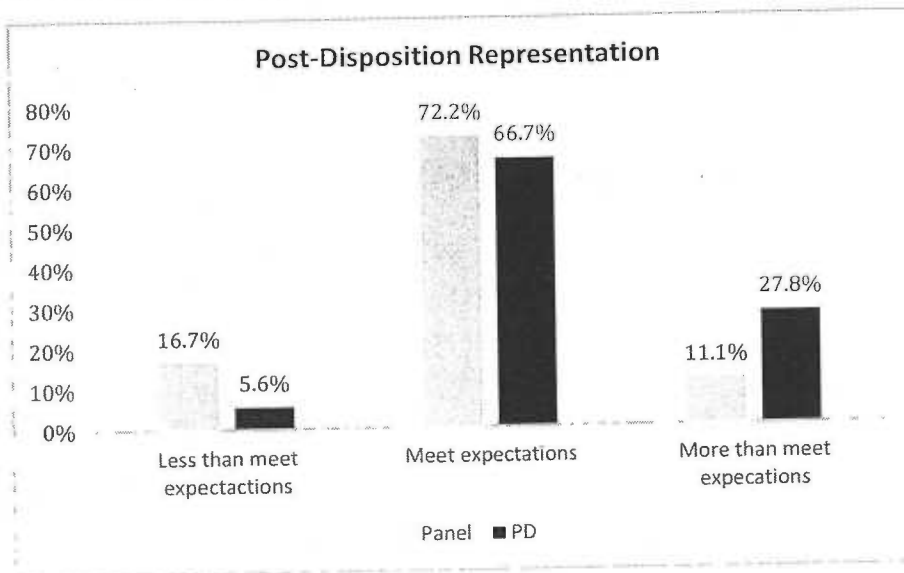
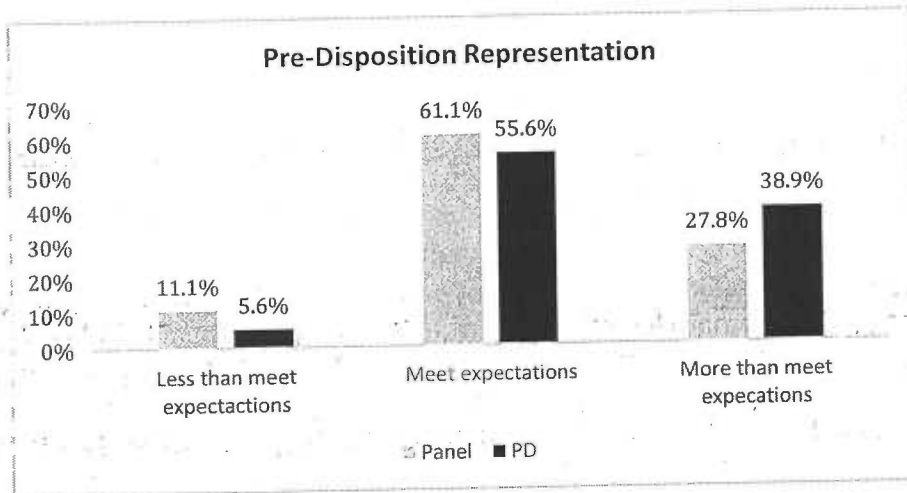
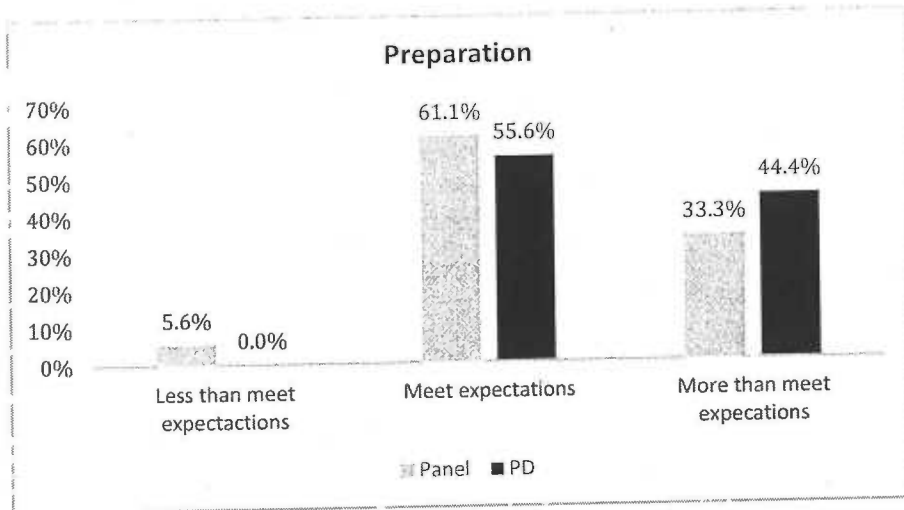
The second question asked judges about the extent of change needed in the current panel attorney system. Eighteen judges responded to this question. More than half of them said that it should stay mostly the same (10 judges, 55.6%). Six judges (one third of the respondents) believed that "the basic structure is fine, but there should be some significant changes." Only two responding judges (11%) said that the County should

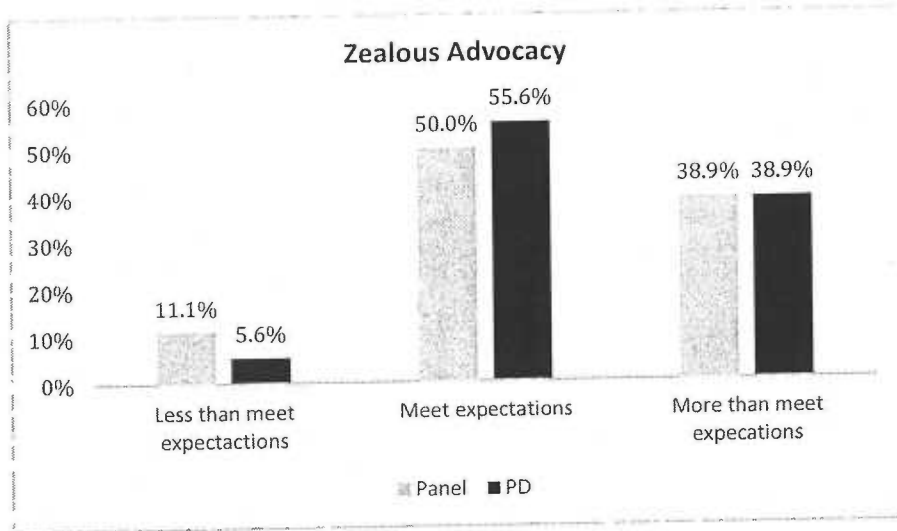
change to institutional representation such as PD or APD. Thirteen of the 18 then added a narrative comment about how the current panel system could be improved. Highlights of these narrative responses are referenced in the body of this report and focused mainly on the fact that panel attorneys should have access to social workers and the fact that panel attorneys should be paid more than they are currently paid.



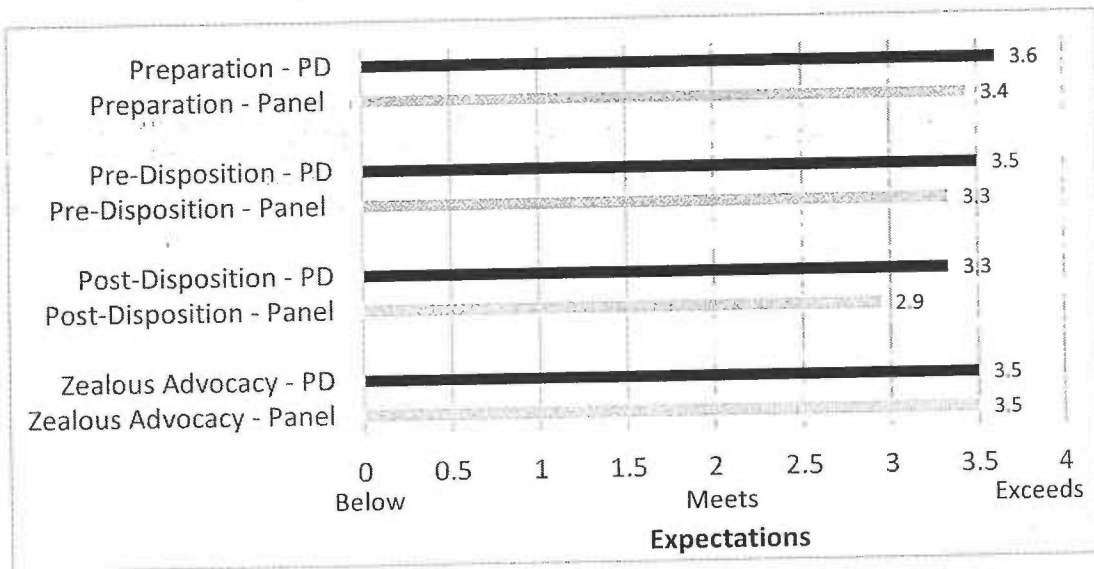
Finally, the judges were asked to evaluate public defenders and panel attorneys in their court along four dimensions: preparation, pre-dispositional representation, post-dispositional representation, and zealous advocacy. As the figures below show, the 18 judges generally felt that both public defenders and panel attorneys met or exceeded expectations in all four categories. Public defenders were rated somewhat more positively in terms of preparation, pre-dispositional representation, and post-dispositional representation.¹ In all categories, more panel attorneys than public defenders were rated as “less than meet expectations” but very few judges chose “less than meet expectation” for any response.

¹ The sample size is not large enough to test for statistically significant differences by attorney type.





Average of All Judicial Responses to Survey Questions Regarding Preparation, Representation, and Advocacy



Appendix B:
Office of the Public Defender, Juvenile Division
Conflict Policy

**LAW OFFICES
LOS ANGELES COUNTY PUBLIC DEFENDER**

POLICIES AND PROCEDURES

NUMBER: A-5

**CONFLICTS OF INTEREST
IN REPRESENTATION**

rev. February 5, 2010

<p style="text-align: center;">LAW OFFICES LOS ANGELES COUNTY PUBLIC DEFENDER POLICIES AND PROCEDURES</p>	<p style="text-align: right;">Supersedes Policy Dated 4/16/07 Date: February 5, 2010 Number: A-5 Page: 1 of 14</p>
<p>TITLE: CONFLICTS OF INTEREST IN REPRESENTATION</p>	<p>APPROVED: MICHAEL P. JUDGE PUBLIC DEFENDER</p>

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Conflicts of Interests in Representation

A. Statutory Basis for Protection of Client Confidences and Client Secrets

Chapter 3 of the Rules of Professional Conduct of the State Bar of California deals with "Professional Relationship with Clients." Rule 3-310 is the rule directly applicable to "Avoiding the Representation of Adverse Interests." That rule is intended to guide counsel in preserving the interests covered by Business and Professions Code section 6068(e) (1) which provides that:

"It is the duty of an attorney to do all of the following:

* * *

"(e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."

B. Text of Rules of Professional Conduct, Rule 3-310

Insofar as is applicable to the practice of a Public Defender, Rule 3-310 states as follows:

Rule 3-310. Avoiding the Representation of Adverse Interests

(A) For purposes of this rule:

(1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;

(2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;

(3) "Written" means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(2) The member knows or reasonably should know that:

(a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and

(b) the previous relationship would substantially affect the member's representation; or

(3) The member has or had a legal, business, financial, professional, or Personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

Conflicts of Interests in Representation

- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

C. Application of Rule's Terms to Public Defender Practice

For the purpose of these rules, accepting appointment to represent a defendant is the same as "accepting employment" or "accepting representation." It is the policy of the Public Defender that confidences obtained by one member of the office are to be treated as confidences obtained by all the members of the office. (See Rules of Prof. Conduct, Rule 1-100(B); 59 Ops.Atty.Gen.27, 29.) The term "defendant" should be understood broadly to refer to Public Defender clients in criminal and civil matters, and in adult, juvenile, and mental health courts.

There is a difference between "client confidences" and "client secrets." For purposes of protecting those interests, they are defined as follows:

"Confidence refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." (Former American Bar Association Code of Professional Responsibility, Disciplinary Rule 4101(A) [supplanted by Model Rules of Professional Conduct, Rule 1.6], adopted by California State Bar opinion #1976-37.)

D. Multiple-Defendant Cases

The courts of California have been very strict in their application of the rules forbidding representation of adverse interests in criminal cases: "[W]e have held- regardless of whether there was an objection-that even a potential conflict may require reversal if the record supports 'an informed speculation' that [the defendant's] right to effective representation was prejudicially affected. Proof of an 'actual conflict' is not required. The same principles apply when counsel represents clients whose interests may be adverse even when they are not codefendants in the same trial." (People v. Mroczko (1983) 35 Cal.3d 86, 105.)

Conflicts of Interests in Representation

It is thus the policy of the Los Angeles County Public Defender that, absent extraordinary circumstances, the Public Defender will not represent more than one defendant in any multiple defendant case. This policy conforms with the rule adopted by the California Supreme Court that a trial court, when appointing counsel, must initially select separate and independent counsel for each defendant, permitting joint representation only after such counsel have investigated the case and consulted with their clients, and concluded that joint representation will best serve the interests of justice and of the clients. (People v. Mroczko, supra, 35 Cal.3d at p. 115.)

E. Meaning of "Currently Represented Client"

It is important to define who is a currently represented client. Obviously, a client against whom charges are pending is a currently represented client. A defendant whose case is final, and who is no longer in custody, on probation, or on parole, is obviously not a currently represented client. It is the policy of the Public Defender that a client against whom judgment has been pronounced, whether by imposition of sentence or grant of probation is not a currently represented client unless that client has a pending subsequent appearance before a bench officer in that client's case. A client whose case is being processed under Proposition 36, Drug Court (either pre- or post-conviction), or Sentenced Offender Drug Court, is a currently represented client until successful completion or conclusion of all proceedings. A defendant who has been placed upon a diversion program, adult or juvenile, and in whose case judgment has not yet been pronounced, including a defendant who has been admitted into a Deferred Entry of Judgment program, remains a currently represented client. A defendant for whom the office is seeking post-judgment relief remains a currently represented client.

The status of a client (i.e., whether currently represented client or a former client) is not affected by the issuance of a bench warrant. For example, a currently represented client who fails to appear for a hearing, and for whom a bench warrant is issued, remains a currently represented client. Likewise, a client who is determined pursuant to this policy to no longer be a currently represented client and for whom a bench warrant has been issued, remains a former client.

F. Application of Policy to Juvenile Clients (other than DJJ Wards)

Rules of Court, Rule 5.661 (formerly Rule 1479), sets forth the responsibilities of children's counsel in delinquency proceedings. Subdivision (c) provides as follows: "[Right to representation] A child is entitled to have his or her interests represented by counsel at every stage of the proceedings, including post dispositional hearings. Counsel must continue to represent the child unless relieved by the court upon the substitution of other counsel or for cause."¹

¹This rule was proposed to the Judicial Council by the Los Angeles County Superior Court and promulgated as a result of this Office's successful implementation of psychosocial dispositional advocacy within the delinquency courts. The rule was intended to foster such advocacy in other counsel.

Conflicts of Interests in Representation

Being fully cognizant of this Court Rule, it is the policy of the Public Defender that Rule 5.661 *authorizes* post dispositional advocacy by appointed counsel but does not *mandate* it. When the Public Defender has undertaken such post dispositional advocacy, including upon request of the child, the child's family, or some other entity, during the pendency of that advocacy the child shall be considered to be a *currently* represented client. The fact of such advocacy shall be entered into the Public Defender section of the Juvenile Automated Index (JAI), or such other database which is available to our office for determining the status of representation.

The pendency of periodic non-appearance post disposition status reports (e.g., Probation Department placement status reports) in the Juvenile Court does not, of itself, cause the child client to be considered a *currently* represented client. However, if counsel has continued actual representation of the client since the most recent hearing by affirmatively undertaking subsequent advocacy, or has been ordered by the court to provide such advocacy after the previous hearing, then that client is to be considered a *currently* represented client.

G. Application of Policy to Juvenile Clients (DJJ Wards)

Welfare and Institutions Code section 779 was amended by SB459 (2003) to require court monitoring of the treatment plan for all wards of the Department of Juvenile Justice (DJJ, previously known as the California Youth Authority). It is the policy of the Public Defender that clients who have been committed to the DJJ remain in the status of *currently* represented clients until their discharge from physical custody of the DJJ.

H. Currently Represented Client Witness in Defendant's Case

It is the policy of the Public Defender that, absent extraordinary circumstances, the Public Defender will not represent a defendant if a currently represented Public Defender client is a witness against that defendant. (As discussed fully below, it is important to recognize that this rule is applicable only to currently represented clients.)

Of course, there will generally not be a conflict if a witness supporting the defendant is a client or former client, since the representation in that case will not usually be adverse. This is not always the case, however. For instance, there may be a conflict if a currently represented client does not want to testify in favor of the defendant, due to self-incrimination or other adverse consequences to himself. An attorney should discuss such situations with his or her supervisor.

Whenever a conflict is declared because representation of the individual would conflict with current Public Defender representation of another client, the deputy who is currently representing such client shall be informed immediately of the conflict by the deputy declaring the conflict.

I. Possibility of Adversity Between Two Currently Represented Clients

Care must be taken when there is a possibility that the interests of two currently represented Public Defender clients may be adverse, as in a case where we are representing two defendants in unrelated cases, but it turns out that one client may desire to blame the other for the offense alleged against him. If such an accusation is actually made, we obviously cannot represent both clients, and may not be able to represent either if to do so would violate the duties to former clients discussed below. However, when there is only a possibility that the clients' interests will be adverse, counsel should not prematurely declare a conflict which may never arise. The question of whether and when to declare a conflict in such circumstances will depend upon the facts of each case, and the likelihood that an actual conflict will develop. An attorney should discuss such situations with his or her supervisor.

J. Former Clients

Rule 3-310(D), supra, prohibits an attorney from using the confidences of a former client against that client, and also prohibits an attorney from taking a position adverse to a former client upon the subject of that representation. In the leading case of Wutchumna Water Co. v. Bailey (1932) 216 Cal. 564, the rule was stated as follows, "[A]n attorney is forbidden to do two things after severing his relationship with a former client. He may not do anything which will injuriously affect his former client in any matter in which he formerly represented him nor may he at any time use against his client knowledge or information acquired by virtue of the previous relationship." (Id., at p. 573.) Representation of a present defendant is prohibited not only when the attorney will be called upon to use confidential information against a former client, but also when he may be called upon to use such information. (Galbraith v. State Bar (1933) 218 Cal. 329,332-333; Earl Scheib, Inc. v. Superior Court (1962) 253 Cal.App.2d 703, 706-707.)

The mere fact that a witness adverse to the defendant had at one time been a public defender client does not constitute a conflict of interest in the defendant's case. Nor does access to or even actual possession of confidential information regarding that witness obtained as a result of such prior representation *ipso facto* constitute a conflict of interest.² However, the use of, or *potential use* of, such information against that witness does give rise to a conflict. For purposes of this policy statement, "potential use" means the reasonably predictable likelihood of an attempt to use that information against the former client in the current defendant's case. It does not mean the "possible" use of such information. Please note the limitation of "confidential information" in section O, below.

²This policy position is adopted notwithstanding the case of *Rhaburn v. Superior Court* (2006) 140 Cal.App.4th 1566. Though the *Rhaburn* court's opinion dealt extensively with "acquisition" of confidential information, it is apparent from the dispositional order that the court's concern was with confidential information which "may be acquired and used by counsel." *Rhaburn v. Superior Court, supra*, 140 Cal. App. 4th 1566, 1582 (continued...)

Conflicts of Interests in Representation

All motions or efforts by a prosecutor to seek a court order removing the public defender from representation of a defendant because of a purported conflict of interest must be immediately reported to the Head Deputy.

K. Special Rules Applicable to Juvenile Court

While the rules pertaining to conflicts have general application to juvenile court clients, we have established special protocols and conventions regarding juvenile court practice. When an adult is arrested along with a minor, the Public Defender will ordinarily represent the adult (in the absence of other bases for a conflict regarding that adult) and will declare a conflict as to the minor.³

The Public Defender provides services to minors inappropriately placed in Probation Department camps through evaluation by our social workers to support a Welfare and Institutions Code section 778 motion for modification of the dispositional order. It is the position of this office that notwithstanding a prior declaration by us of a conflict as to a ward who is being considered for such a motion, we will reexamine the status of the case of that ward and that of any others to determine whether the reason for the prior declaration of conflict still exists. If it does not, then the Public Defender may represent the ward in the 778 motion.

L. Adult Probation Violations

The Public Defender is obligated to strive to insure that indigent defendants receive effective representation in a cost-effective manner. Ordinarily, this objective can best be achieved by providing continuity of the attorney-client relationship in situations where a defendant has been represented by either the Los Angeles County Public Defender or the Alternate Public Defender.

²(...continued)

(emphasis added). The procedural setting presented by *Rhaburn* was an effort by the prosecutor to disqualify the Public Defender's office. The *Rhaburn* court refused to apply the concept of vicarious disqualification to an entire Public Defender office merely because that office had represented a witness in the past. *Rhaburn* relied heavily on the fact that the public defender office involved had established various limitations upon access to prior clients' files. The Los Angeles County Public Defender operates differently by not constructing such ethical walls. *Rhaburn* does not purport "to prescribe procedures which the public defender must follow in analyzing the possibility of conflict" *Id.*, at 1573. Using the language of *Rhaburn*, it is the position of the Los Angeles County Public Defender that "the attorneys involved could be trusted to obey not only the instructions of their superiors, but also the obvious dictates of their ethical duties." *Id.*, at 1576. The trial court may place substantial weight on counsel's assertion that no conflict of interest exists. (*People v. Lawley* (2002) 27 Cal. 4th 102, 146, *People v. Cornwell* (2005) 37 Cal. 4th 50, 76.)

³There are other conventions and protocols regarding conflicts unique to Juvenile Court practice which are not included within this policy.

Conflicts of Interests in Representation

The Public Defender shall accept the appointment to represent an indigent defendant who has allegedly violated probation when the Public Defender was counsel of record at the time of sentencing. The Public Defender should not accept appointment to represent an indigent defendant who has allegedly violated probation when the Alternate Public Defender was counsel of record in the underlying case for which the defendant is on probation.

If the former attorney was private counsel, either appointed or retained, the Public Defender will accept appointment by the Court to represent an indigent defendant on the probation violation case unless there is a conflict of interest that exists at the time of the alleged probation violation.

Notwithstanding these guidelines, if a new case has been filed, in addition to the probation violation, the attorney of record representing the defendant on the new case should also be appointed on the violation.

M. Waiver of Conflict

The law is clear that the mere fact that a former client is involved in present litigation, whether as a victim, witness, or otherwise, does not automatically mean that representation of the present defendant is prohibited. One exception to the prohibition upon the representation of adverse interests is waiver. It is the policy of the Public Defender that waiver of a conflict of interest is to be avoided except in exceptional cases where the adequacy of representation of both the present and former client will not be called into question as a result of such waiver. Remember that if such a waiver is obtained, it must be in writing and made by both the previously represented client and the new client. (See Alcocer v. Superior Court (1988) 206 Cal.App.3d 951, 962-963.) (Such a waiver could not apply to joint litigants with actually adverse interests at a contested hearing; see Klemm v. Superior Court (1977) 75 Cal.App.3d 893, 898; People v. Sanford (1985) 174 Cal.App.3d 11, 18-19.) Waiver may be used only after consultation with and approval from the Public Defender or his designated representative.

N. Formation of Actual Attorney-Client Relationship

Assuming that there is no waiver, the first question which must be answered is whether there was actually an attorney-client relationship between the Public Defender and the potentially adverse party. (See Hicks v. Drew (1897) 117 Cal. 305; Meechan v. Hopps (1956) 144 Cal.App.2d 284.) For such a relationship to exist, at a minimum, the Public Defender must have consulted with the client in such a manner that it could be assumed that confidential information was obtained. Thus, the mere appointment of the Public Defender in a case without such a consultation, if the Public Defender immediately thereafter was relieved from representation, would not create an attorney-client relationship requiring avoidance of adverse representation.

O. Possession of Information of Public Record

When the Public Defender's file contains information as a result of a previous attorney client relationship, it is the policy of this Office that the mere fact that such information exists does not necessitate a declaration of conflict if the information is equally available in the public record. For example, the Public Defender may know that a witness has been convicted of a felony (to be used for impeachment of the witness) by virtue of the Public Defender's representation of that witness. However, the fact of the felony conviction is also available in easily accessed public records, and thus knowledge of that fact does not require a conflict to be declared. Further, the possession of confidential information concerning a former client does not lead to a conflict if that information is completely irrelevant to the new matter. However, if the Public Defender is in possession of confidential information concerning a former client, and that information could be used against the former client in the new case, then the Public Defender cannot accept representation of the defendant in the new matter.

P. Wheeler Impeachment

Impeachment is no longer limited to proof of a prior felony conviction. A witness may be impeached with any conduct which amounts to moral turpitude, whether or not that conduct constituted a crime, and even if no conviction at all resulted. (See *People v. Wheeler* (1992) 4 Cal.4th 284.) Information dealing with prior misconduct of a witness who is adverse to the current client, which was obtained confidentially as a result of our prior representation of that witness in a case arising out of such misconduct, cannot ethically be used to impeach the witness. However, if the identical information is available through public records or other discoverable sources, the mere fact that it is also contained within a confidential case file does not *ipso facto* lead to a conflict. (See *Rhaburn v. Superior Court, supra*, 140 Cal. App.4th 1566, 1570, n.2.) The same considerations apply in any case in which the victim had previously been represented by the Public Defender, including deceased prior clients. In capital cases, care must be taken that conflicts not arise in the penalty phase as well as in the guilt phase. Thus we must be able to vigorously counter victim-impact testimony. (See, e.g. *Mickens v. Taylor* (123 S.Ct. 1237 (2002).) To avoid undue delay occasioned by late discovery of such information, investigations into prior *Wheeler* misconduct should be initiated in a timely fashion.

Q. Position Adverse to Subject Matter of Prior Representation

Finally, if no confidential information is involved, for a conflict to exist the new representation must, in fact, be adverse to the former client's interests in the matter in which he was represented. An attorney is not forbidden from taking a position adverse to a former client, so long as no confidences are involved and that adverse position has no reference to the former representation.

Conflicts of Interests in Representation

Caution must be used in a situation where a witness against a presently represented client is a former Public Defender client, whose confidences would not be used against him, but who is still on probation or parole. The question is whether the representation of the current client will be adverse to the former client in the matter in which the Public Defender formerly represented him. The question of whether or not a conflict exists in such cases should be discussed between the attorney and his or her supervisor.

The mere fact that the Public Defender previously represented a witness against a defendant does not automatically mean that there is a conflict in the absence of the Public Defender's possession of relevant and confidential information, and in the absence of the Public Defender's taking a position adverse to that witness in the matter in which the witness was represented. (See People v. Belmontes (1988) 45 Cal.3d 744, 776.)

If cross-examination of the witness would be limited to attacking the intrinsic characteristics of the witness's testimony, (e.g., ability to perceive), there is no conflict. On the other hand, there would be a conflict presented by cross-examination which directly involves the probationary status of the witness. An example of such cross-examination is a question which impugns the motivation of the witness's testimony as being to protect his own probationary status, i.e., a question which attacks the former client's interest in the matter in which the Public Defender had previously represented him.

Cross-examination which does not directly address the witness's probationary status could have an impact upon that probation. An example of this cross-examination is evidence which involves conduct specifically addressed in the former matter, and which could result in a violation of probation: e.g., presenting evidence that the witness, subject to a no alcohol condition, was drunk. However, evidence designed to show that the witness is presently lying, and thus committing perjury, is not conduct specifically addressed in the prior matter, and thus would not necessitate a conflict.

R. Physical Assault upon Counselor Staff

In the event of a physical assault by a client upon his or her attorney or another staff member, the attorney should determine whether the client's conduct has caused the attorney to be unable to represent the client to the best of his or her ability. If the attorney cannot overlook the indiscretion and determines that an "irreconcilable conflict" prevents competent and faithful representation, then a conflict of interest must be declared. In the event a prosecuting agency has filed a charge against the client alleging a Public Defender employee is a victim, or if the Public Defender is a witness to the act giving rise to such charge, then a conflict of interest must be declared. The

Conflicts of Interests in Representation

client's lack of trust in, or inability to get along with, his appointed attorney is not sufficient to compel the appointment of substitute counsel. (*People v. Crandell* (1988) 46 Cal.3d 833). Resolution of possible divergent views regarding potential complex legal and personal issues attendant to such a circumstance should not be left solely to the aggrieved attorney.

Any attorney or staff member who believes that he or she has come into contact with the bodily fluids of a client may employ the procedures of Penal Code sections 7500-7552 in order to obtain the results of testing of that client for HIV, Hepatitis B or Hepatitis C. It is the policy of the Public Defender that the seeking of such information does not create a conflict of interest. Nor do positive results of such testing give rise, *ipso facto*, to a conflict of interest.

It is the policy of the Los Angeles County Public Defender that the decision as to whether there is a conflict arising from the situations discussed in this section will be made only after consultation with and approval from the Department Head (or designated representative).

S. Preventing Harm to Others (Rules of Professional Conduct, Rule 3-100)

Rule 3-100 and Business and Professions Code 6068(e)(1), effective July 1, 2004, contains identical language intended to resolve the previous conflict between Business and Professions Code 6068(e) requiring a lawyer to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets of his or her client" and Evidence Code 956.5 which provides an exception to attorney-client privilege when the lawyer reasonably believes that disclosure of a confidential communication is necessary to prevent "a criminal act that the lawyer reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual."

Rule 3-100 states as follows:

(A) A member shall not reveal information protected from disclosure by B&P 6068(e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.

(B) A member may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(C) Before revealing confidential information to prevent a criminal act as provided in paragraph (B), a member shall, if reasonable under the circumstances:

Conflicts of Interests in Representation

- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and
- (2) inform the client, at the appropriate time, of the member's ability or decision to reveal information as provided in paragraph (B).

(D) In revealing confidential information as provided in paragraph (B), the member's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the member at the time of the disclosure.

(E) A member who does not reveal information permitted by paragraph (B) does not violate this rule.

In our highly complex environment possible scenarios regarding qualifying criminal threats, their timing, and sources of information other than the client, are limited only by the imagination. It must be recognized that the decision to disclose or to not disclose any given qualifying criminal threat may have legal, moral, and functional ramifications for the Law Offices of the Los Angeles County Public Defender which extend far beyond the parameters of the instant case.

It is thus the policy of the Los Angeles County Public Defender, and consistent with prior practice, that the decision(s) related to the following critical questions will be made only after consultation with and approval from the Department Head (or designated representative):

- (1) Can the subject information be disclosed?
- (2) Should the subject information be disclosed?
- (3) What portion of the subject information should be disclosed?
- (4) To whom, when, and under what circumstances should the subject information be disclosed?

It is the policy of the Los Angeles County Public Defender that, if a disclosure is made, a Conflict of Interest will be declared against the client about whom the disclosure is made. The timing of such a declaration may be arranged to reduce the level or scope of the risk to potential victims.

T. Challenging Adequacy of Prior Public Defender Representation

There are situations in which a Deputy Public Defender believes that he or she must challenge the adequacy of the representation provided by the Public Defender on a prior occasion. This can arise in the context of a challenge to a conviction of a prior offense in which the defendant had been represented by the Public Defender or in a case in which the current attorney believes that a Deputy Public Defender's previous

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ineffective representation materially affected the client's current case. In either of these situations, when there exists a colorable claim of ineffective assistance of counsel with respect to the representation afforded by the Public Defender in the prior case, a conflict may be declared in the current case if no other effective remedy exists and failure to replace our office would substantially impair the right to assistance of counsel in the pending case.

For purposes of policy, a "colorable claim" is one which if presented to the court could credibly establish to the satisfaction of the court that prior counsel had, "failed to perform with reasonable competence and that it is reasonably probable a determination more favorable to the defendant would have resulted in the absence of counsel's failings." (See People v. Smith (1993) 6 Ca1.4th 684,696, People v. Fosselman (1983) 33 Ca1.3d 572,584.)

Before declaring a conflict in such circumstances, the attorney shall submit the matter to the Head Deputy for review. Should the Head Deputy determine there is a colorable claim, he or she shall report to the Public Defender or his designee for determination of the conflict issue. Reports of a potential conflict shall not become a part of the defendant's file, nor shall any department employee, as part of this process, render an opinion beyond whether the claim is "colorable", i.e., the "validity" of a claim is beyond the scope of this inquiry.

If the defendant claims inadequacy of the prior Public Defender counsel, but the claim is not colorable or would not substantially impair the right to assistance of counsel in the pending case, and current counsel is unable to resolve this difference with the client, the client shall be informed that he may utilize the procedures set forth in People v. Marsden (1970) 2 Cal.3d 118. This policy applies whether the prior offense is an element of the current offense or is alleged as an enhancement.

U. Conflict in Other Pending Case

If a defendant has a presently pending case in which the Public Defender has declared a conflict, or in which the Public Defender has been relieved pursuant to People v. Marsden, supra, (1970) 2 Cal.3d 118, it is the policy of this Office that a conflict will be declared in all pending cases and in any new case that arises during the pendency of any such conflicted cases. However, if a conflict was declared in a case which is no longer pending, a conflict shall not automatically be declared unless there is a conflict in the present case under the standards discussed in this memorandum. Thus it is not the case that once a conflict has been declared as to a specific individual, there is always a conflict as to him.

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V. Duties Upon Being Relieved

Should this office declare a conflict or otherwise be relieved under the circumstances discussed, neither the reasons for the conflict nor the department's review shall be revealed to the client, court or subsequent counsel, including the Alternate Public Defender. However, if we are aware that the Alternate Public Defender would likewise be faced with a conflict of interest if that office were to undertake representation of the client, that conclusion should be brought to the attention of that office.

Material contained within the Public Defender file is the property of the client. When a conflict of interest is declared, subsequent counsel should receive all police reports, transcripts and other discovery contained in the case file, as well as client interviews, motions, investigation requests, reports and witness interviews. In the event that turning over particular material in the case file would violate our ethical duty to another client, that information shall not be given to subsequent counsel and shall be deleted from all documents that are transferred. If such material is withheld, subsequent counsel shall be given notice only that legal and ethical constraints preclude disclosure of some material. The Public Defender file shall be documented with the fact of the giving of such notice. The Public Defender's office must keep copies of all materials turned over to subsequent counsel except where little or no work product has been created (e.g., a conflict declared at the time of arraignment.)

Appendix C:
**Sample Los Angeles Panel Contract and Most
Recent Extension**

WHEREAS, [REDACTED], hereinafter referred to as "CONTRACTOR," desires to enter such contract with COUNTY to economically provide legal representation of such persons who are minors before the following courts: Juvenile Court - [REDACTED] District.

NOW THEREFORE, in consideration of the mutual covenants herein and the mutual benefits to be derived therefrom, the COUNTY and CONTRACTOR agree as follows:

1. Services to be Provided. CONTRACTOR'S members will provide complete legal defense services for all juveniles whom CONTRACTOR'S members are appointed to represent during the term of this Agreement or any extension thereof and who would be entitled to representation by the Office of the Public Defender in the courts covered by this Agreement but for the fact that the Office of the Public Defender is legally unavailable. Such services shall include all legal defense services typically provided by the Office of the Public Defender, including interview and preparation time, all necessary court appearances, all progress reports and change of plan reports for juveniles, hearings, motions, court waiting time, and trials at the trial court level and for writ proceeding and the filing of any notice of appeal that may be required by Penal Code Section 1240.1 or otherwise, including legal research, preparation of documents, secretarial and clerical support services, investigator services, and travel. CONTRACTOR'S members shall be responsible for handling the juvenile petition through completion of case. Once appointed,

during the term of this Agreement or any extension thereof, CONTRACTOR'S members shall be required to complete services for each juvenile who they are so appointed to represent regardless of any termination of this Agreement. Services to be provided by CONTRACTOR do not include services for court appointed experts or interpreters. CONTRACTOR'S members shall not be required to represent any such juvenile if the court makes a written finding that a conflict of interest or other legal disability precludes any of the CONTRACTOR'S members from being appointed to represent such defendant.

2. Number of Juveniles to be Represented. CONTRACTOR'S members agree to provide the services described in paragraph 1 for all juveniles described therein, regardless of the actual number thereof. The parties contemplate by this Agreement that the number of cases will not exceed 2,100 for the fourteen month period of August 31, 1996 through October 31, 1997 (1,800 cases per year). The cases upon which the contracting attorneys are appointed in excess of 2,100 (1,800 cases per year) are subject to the average cost per case provisions of paragraph 3bi.

3. Compensation.

3a. Contract Amount. Subject to the proportional payment provisions of paragraph 12, and the penalty provisions of paragraph 3b, CONTRACTOR shall be paid \$495,832 for providing the services described in paragraph 1. CONTRACTOR shall receive the quarterly

twenty-five (25) percent of the contract amount within approximately thirty days of submission of each quarterly billing that meets the requirements of paragraph 4.

3b. Additions in Contract Amount.

3bi. Additions. In the event that CONTRACTOR is required to represent more than 2,100 juveniles under this agreement (1,800 annually), or if the contract term is for less than 365 days, then the proportional number of juveniles calculated in accordance with paragraph 12, CONTRACTOR shall be paid the sum of \$250.00 for each juvenile represented in excess of that number.

3bii. Manner of Counting Juveniles. As used herein, a juvenile shall be counted as one juvenile for all counts and petitions consolidated together; and as more than one juvenile for petitions not consolidated together. Once a juvenile has been counted for a particular petition under this contract, that juvenile will not be counted again for that petition or petitions in this contract or any extensions thereof.

3c. Pro Bono Publico Services. To the extent that CONTRACTOR'S members are required to provide services for a juvenile under this

contract for which the limitations in this contract precludes them from being compensated, CONTRACTOR'S members shall provide those services Pro Bono Publico without cost.

4. Billing.

4a. CONTRACTOR shall submit its billing statement quarterly in arrears, no later than the fifteenth of the months of February, May, August, and November. For the first quarter only following execution of this agreement, CONTRACTOR may request and receive an advance payment of up to 25 percent of the total anticipated annual contract amount. The amount of the advance shall be credited by the COUNTY against all subsequent quarterly billings in lieu of further payments until fully earned.

4b. The billing shall be submitted in a form approved by the COUNTY'S Project Director to the person designated by COUNTY'S Project Director.

4c. Each billing statement shall contain at least the following information:

4ci. A running total of the actual number of juveniles represented by CONTRACTOR'S members under this Agreement for the period covered by the Agreement or for any extension thereof; and a running total of the actual number of such juveniles whose

cases have been completed.

4cii. A running total of the total amount of dollars billed, and of payments received under this Agreement for the period covered by the Agreement or any extension thereof.

4ciii. The case name, case number, court, juvenile name, and case type of each juvenile for whom services were provided and for which payment is sought under this Agreement, and the name of CONTRACTOR'S members representing such juvenile.

5. Penalty. In the event that a court covered by this Agreement is required to appoint an attorney other than a deputy Public Defender or one of CONTRACTOR'S members whose services are compensated pursuant to this Agreement to represent a juvenile due to any reason other than in conjunction with a written finding of a conflict of interest or legal disability that precludes CONTRACTOR from being appointed to represent such juvenile, then CONTRACTOR and its members shall be liable for any attorney's fees that COUNTY is required to pay the attorney appointed to represent such juvenile.

6. Cooperation in Recovering 987.4 & 987.8 Costs. CONTRACTOR and its members agree to cooperate to the full extent ethically permitted in assisting the COUNTY and the courts, and those acting on their behalf in recovering costs pursuant to Penal Code Sections 987.4 and 987.8.

7. Contract Term. The term of this contract shall be from the date it was approved and that this agreement has been executed by CONTRACTOR and COUNTY until the thirty-first day of October 1997, following the date of execution and court approval. No attorney may provide services pursuant to this Agreement or any extension thereof unless and until he/she has signed this Agreement or has provided COUNTY'S Project Director with a copy of this Agreement signed by him/her.

8. Contract Extensions. Upon the mutual written Agreement of CONTRACTOR, its members and COUNTY'S Project Director filed with the Clerk of COUNTY'S Board of Supervisors no later than the first business day of November 1997, or if the Agreement has previously been extended, no later than the first business day of November following the date of the last extension of this Agreement, this contract may be extended annually for a period not to exceed one year per extension. In executing any such contract extension, COUNTY'S Project Director shall have full authority to mutually agree with CONTRACTOR to adjust up or down the number of juveniles estimated to require representation under the contract extension, modify the designation of the courts at which the juveniles are to be represented, to adjust up or down by an amount not to exceed five percent (5%) the amount of compensation to be paid pursuant to the contract extension and the amount of any penalties to be paid.

9. Budget Reductions. In the event that the COUNTY'S Board of Supervisors adopt reductions in the salaries and benefits paid to a majority of COUNTY employees and impose similar reductions with respect to COUNTY contracts, COUNTY reserves the right to reduce its payment obligation correspondingly for Fiscal Year 1996-97 services provided by CONTRACTOR under this agreement. COUNTY'S notice to CONTRACTOR regarding said reduction in payment obligation shall be provided within 30 days of the Board's approval of such action. CONTRACTOR shall continue to provide all of the said services set forth herein.

10. Annual Audit. CONTRACTOR and its members shall maintain, on a current basis, adequate records to permit an audit of their performance under this Agreement and the accuracy of billing statements. COUNTY may audit such records at any time for up to five years beyond the termination of this Agreement. CONTRACTOR agrees to maintain such records for at least five years after the termination of this Agreement.

11. Termination.

11a. COUNTY may terminate this contract at any time upon thirty days' written notice thereof, effective thirty days after such notice is deposited in the United States Mail to CONTRACTOR at the following address:

[REDACTED ADDRESS]

In the event of termination, payment shall be made on a proportional basis as set forth in paragraphs 3bi and 12.

11b. Upon the written request of CONTRACTOR'S Project Director, COUNTY'S Project Director may agree to accept a written request from any of CONTRACTOR'S members to terminate his/her obligations under this Agreement. In the event of such termination, such member shall remain jointly and severally liable with CONTRACTOR for all liabilities of CONTRACTOR to COUNTY stemming from acts or omissions occurring prior to such termination.

12. Proportional Payments Upon Termination. In the event that this contract terminates for any reason in less than one year from the date of court approval and execution by the parties or from the date of execution of any extension thereof, then the contract amount shall be reduced proportionately by one twelfth (1/12th) for each thirty (30) day period that the actual term of this contract or any extension thereof is less than three hundred and sixty-five (365) days.

13. Project Directors. COUNTY'S Project Director shall be its Chief Administrative Officer or his/her designate. CONTRACTOR shall designate a Project Director and an Alternate Project Director who may act in the absence of CONTRACTOR'S Project Director. Until COUNTY receives ten days' written notice of a change in Project Directors, CONTRACTOR'S Project Director and Alternate

Project Director, together with their addresses and telephone number are as follows:

a. CONTRACTOR'S PROJECT DIRECTOR

[REDACTED]

b. CONTRACTOR'S ALTERNATE PROJECT DIRECTOR

[REDACTED]

COUNTY'S and CONTRACTOR'S Project Directors shall have full authority to act on behalf of the COUNTY and CONTRACTOR, respectively, consistent with the terms of this contract.

14. Compliance with Laws. CONTRACTOR and its members, in performance of this contract, shall comply with all applicable Federal, State and Local laws, and the regulations, guidelines, procedures and standards promulgated thereunder, including specifically the procedural requirements of Penal Code Section 1050, as well as all applicable professional standards.

15. Performance Standards. CONTRACTOR and its members shall be responsible for complying with all applicable professional standards, and shall be responsible for the internal monitoring of the work of his/her employees pursuant to this contract.

16. Independent Contractor. Both parties hereto in the performance of this contract will be acting as independent contractors and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be agents or employees of the other party for any purpose whatsoever.

CONTRACTOR'S members are not entitled to any benefits that COUNTY provides its employees, including, but not limited to, vacations, holidays, sick leave, retirement, workers' compensation, unemployment insurance, medical or hospital insurance, or legal defense costs or representation, EXCEPT for provisions contained in this contract requiring insurance to be carried by CONTRACTOR at COUNTY'S demand.

CONTRACTOR shall be considered an independent contractor with the right to control, conduct and direct the manner and means of performing the work contracted for herein, subject only to the conditions and obligations established by this Contract. CONTRACTOR shall not represent that it or any of its members are agents, employees, partners or joint venturers of COUNTY.

17. Assignments and Subcontracts. This contract is not assignable in whole or in part by CONTRACTOR or its members. Neither CONTRACTOR nor its members will, without consent of COUNTY, assign any right, duty or interest herein to any other person. All appropriate provisions and requirements of this contract shall apply to any subcontracts or assignments.

18. Insurance and Indemnification. CONTRACTOR and its members agree to indemnify, defend, and hold harmless the COUNTY and its Special Districts, elected and appointed officers, employees and agents (County) from and against any and all liability expense, including defense costs and legal fees, arising from or connected with claims and lawsuits for damages or workers' compensation benefits relating to Contractor's operations or its services, which result from bodily injury, death, personal injury, or property damage (including damage to Contractor's property). Contractor shall not be obligated to indemnify for liability and expense arising from the active negligence of the County.

Without limiting CONTRACTOR'S indemnification of COUNTY, and during the term of this Agreement, CONTRACTOR and its members shall provide and maintain at their own expense during the term of this contract the following program(s) of insurance primary to and not contributing with any other insurance maintained by the County. Such insurance shall be provided by insurers satisfactory to the COUNTY'S Risk Manager, and evidence of such programs, satisfactory to COUNTY, along with significant endorsements, shall be delivered to the Project Director on or before the effective date of this contract. Such evidence shall specifically

identify this contract and shall contain express conditions that COUNTY is to be given written notice at least thirty (30) days in advance of any modification or termination of any program of insurance.

Professional Liability: Such insurance shall provide an amount not less than \$500,000 per claim, endorsed as follows:

"Insurance afforded by this policy shall apply also to the liability assumed by the insured under the contract with the County of Los Angeles for Defense Services, provided such liability results from an error, omission, or negligent act of the insured, its members, officers, employees, agents, or subcontractors, if any. All other provisions of this policy remain unchanged."

This insurance requirement may be reduced or waived at the COUNTY'S sole discretion during periods of reasonable unavailability or excessive cost to purchase this coverage.

19. Warranties: CONTRACTOR warrants that it has the authority, under the laws of California and under its own rules, articles of association and bylaws, to enter contracts of the type contemplated herein. Each of CONTRACTOR'S members shall be jointly and severally liable for CONTRACTOR'S liabilities, if any, to COUNTY pursuant to this Agreement.

20. Failure to Procure Insurance: Failure on the part of CONTRACTOR or its members to procure or maintain required insurance shall constitute a material breach of contract under which COUNTY may immediately terminate this contract.

21. Evaluation and Monitoring. COUNTY through its Project Director shall monitor the progress and effectiveness of CONTRACTOR'S performance under this contract. Monitoring may include, but not limited to, verifying that the program is operating in accordance with the project specifications and regulations, the law, and applicable professional standards. COUNTY'S Project Director may assign other COUNTY personnel to evaluate and monitor the performance of this Agreement by CONTRACTOR. It is mutually understood that such assigned personnel are COUNTY employees and have no authority over the work of the office of CONTRACTOR.

22. Contract Modifications. COUNTY'S Project Director may for good cause grant written modifications to the Agreement upon written request of CONTRACTOR, if approved in writing by an attorney from COUNTY'S Office of County Counsel. CONTRACTOR shall initiate no modification of this contract without such approved written approval.

23. Notices. All notices shall be deemed effective upon deposit in any regularly maintained U.S. Postal receptacle. Notices and other correspondence shall be addressed to the COUNTY as follows:

Chief Administrative Office
Budget & Operations Management Branch
500 West Temple Street
Room 754 Kenneth Hahn Hall of Administration
Los Angeles, CA 90012

Attention: Debbie Lizzari

24. Debt Limitation. Both parties to this contract expressly acknowledge the fiscal year debt limitations imposed upon COUNTY by Article 16, Section 18 of the California Constitution.

25. Affirmative Action. CONTRACTOR shall make every effort to ensure that all programs funded wholly or in part by general funds shall provide equal employment and career advancement opportunities for minorities and women.

26. Discrimination. No person shall, on the grounds of race, sex, creed, color, or national origin, be excluded from participation in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment under this contract.

27. Amendments and Variations. This writing embodies the whole of the Agreement of the parties hereto. There are no oral agreements not considered herein. No addition or variation of the terms of this contract shall be valid unless made in the form of a written amendment to this contract formally approved and executed by both parties.

28. Professional Liaison. CONTRACTOR shall maintain ongoing communication with the judiciary and clerks of all the courts covered by this Agreement. CONTRACTOR shall also maintain ongoing communication with the Los Angeles County Bar Association and other interested professional groups to assure that its operations meet the established professional standards for adequate legal representation.

29. Consideration of Hiring County Employees Targeted for Layoffs. Should CONTRACTOR require additional or replacement personnel after the effective date of this contract to perform the services set forth herein, CONTRACTOR shall give first consideration for such employment openings to permanent County employees who are targeted for layoff after the effective date of this contract.

IN WITNESS WHEREOF THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES has caused this contract to be subscribed by its Chairman and the seal of said Board to be hereto affixed and attested by the Executive Officer-Clerk thereof, and has caused this contract to be subscribed in its behalf by its authorized officer, on the day, month, and year indicated.

COUNTY OF LOS ANGELES

DATE: AUG 20 1996

BY Mike Antonio
Chairman, Board of Supervisors

ATTEST:

JOANNE STURGES
Executive Officer-Clerk
Board of Supervisors



By Jannette M Bennett
Date: 8-7-96

CONTRACTOR:

By

Approved as to form:
DE WITT W. CLINTON
County Counsel

By F. R. Bennett
FREDERICK R. BENNETT
Assistant County Counsel

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

10

AUG 20 '96

Joanne Sturges
JOANNE STURGES
EXECUTIVE OFFICER

[REDACTED]
Contract Amendment and Extension – Conflict Administrator Services
at [REDACTED] Juvenile Court
Contract #70279 – SYN #10 of 08/20/96
November 1, 2013 – through October 31, 2015

Pursuant to the provisions of Paragraph 8 (Contract Extensions) and Paragraph 23 (Contract Modifications), and as approved by the Board of Supervisors, the current contract between the County of Los Angeles (COUNTY) and [REDACTED] (CONTRACTOR) for Juvenile Delinquency Defense Services is hereby amended to read:

3. Compensation.

3a. Contract Amount: Subject to the proportional payment provisions of Paragraph 13, and the penalty provisions of Paragraph 5, CONTRACTOR shall be paid \$ 333 for each case they are assigned to provide the legal representation services as described in Paragraph 1. Contractor shall receive the quarterly payment within approximately thirty days of submission of each billing that meets the requirements of Paragraph 4. CONTRACTOR shall be entitled to a two percent rate increase to \$340 effective October 1, 2014, and another two percent to \$347 increase effective April 1, 2015.

7. Contract Term. CONTRACTOR, its members, and COUNTY'S Contract Manager mutually agree to amend and extend said contract through the 31st day of October 2015, on the same terms set forth in the original contract, previous amendment or unless otherwise amended by this document. Stated contract provisions shall become effective upon execution of this document by all parties.

11. Termination. Only during the term of this extension, the County will not terminate the contract for convenience before October 31, 2014. However, the County shall have the right to terminate the contract for convenience in the second year of this extension, anytime between November 1, 2014 through October 31, 2015, with thirty (30) days advance written notice to CONTRACTOR.

13. Proportional Payments Upon Termination. In the event that this contract terminates for any reason in less than one year from the date of Board approval and execution by the parties, or from the date of most recent extension thereof, then the payment amount shall be \$ 333 per case (or such increased rate as authorized in Paragraph 3(a)) for the number of cases handled by CONTRACTOR during the period between the latest paid invoice and the contract termination date.

The undersigned mutually agree to this amendment and extension.

Date



Date:

Handwritten signature of the County's Contract Manager.

County's Contract Manager

Approved as to Form:
County Council

Date:

Handwritten signature of the Senior Deputy County Counsel.
Senior Deputy County CounselHandwritten signature of the Executive Officer, Board of Supervisors.
Executive Officer, Board of Supervisors

Date:

Handwritten signature of the Auditor-Controller.
Auditor-Controller

Appendix D:
Panel Counsel IAC Case

(Faint, illegible handwritten text)

SUPERIOR COURT OF THE STATE OF CALIFORNIA FILED
Superior Court of California
County of Los Angeles
FOR THE COUNTY OF LOS ANGELES

September 25, 2013

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY *Sherri R. Carter* Deputy
Sheryl Ritchey Humber

In re

) NO. BA401965

)

) ORDER GRANTING

ANTONIO H [REDACTED],

) WRIT OF HABEAS CORPUS

)

)

On Habeas Corpus

)

)

GOOD CAUSE APPEARING THEREFOR,

IT IS HEREBY ORDERED that the juvenile court vacate its finding of unfitness for juvenile court and conduct a new and different fitness hearing. The Alternate Public Defender's Office is appointed to handle the new hearing.

SO ORDERED this *25th* day of *September*, 2013.



[Signature]

JUDGE OF THE SUPERIOR COURT

WILLIAM C. RYAN

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION _____

IN THE MATTER OF

ANTONIO H [REDACTED],

On Habeas Corpus.

) No. B- _____
)
) LASC No. BA401965
)
)
)
)
)
)
)

PETITION FOR WRIT OF HABEAS CORPUS
(Exhibits Filed Separately)

JANICE Y. FUKAI,
ALTERNATE PUBLIC DEFENDER
OF LOS ANGELES COUNTY
Felicia Kahn Grant (State Bar No. 143798)
Jeffrey E. Cohen (State Bar No. 240537)
Deputy Alternate Public Defenders

9425 Penfield Avenue, Suite 2500
Chatsworth, California 91311
Telephone No. (818) 576-8692
Fax No. (818) 718-6375
Email: fgrant@apd.lacounty.gov

Attorneys for Petitioner, Antonio H [REDACTED]

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5

Welfare & Institutions Code section 707

5

petitioner is facing multiple life sentences.

Despite the severity of these charges and the potential consequences if convicted, petitioners' attorney in juvenile court declined to litigate the Edsel P. hearing, or to present any testimony at the fitness hearing. Instead, the prosecution presented the court with a transcript of the adult co-arrestee's harmful and legally inadmissible preliminary hearing (without objection from petitioners' lawyer), the incident and follow-up reports, three field identification cards, and information regarding predicate acts. The defense offered only one document—the report prepared by Dr. Fairbanks finding petitioner fit. No records were obtained by counsel or given to Dr. Fairbanks and no witnesses were provided, despite the fact that compelling mitigating circumstances regarding the minor's recent life history, as well as the facts of this case, were easily discoverable simply by speaking with the family. Additionally, information obtained from the minor himself inculpated him only as an accessory after the fact, yet nothing was done to convey this to the court or to probation.

In addition to the documents provided by the prosecution and Dr. Fairbanks report, the juvenile court also reviewed the Probation Officer's Report. A review of that report shows that probation attempted to schedule a video conference with petitioner but when told that no videos were being scheduled due to building repairs, no follow-up was done and petitioner was never interviewed. The purpose of interviews between juveniles and

the Probation Department is in part to assemble all available information relevant to assist in the evaluation of the minor's fitness for treatment as a juvenile and should be based on the most complete knowledge of the defendant's background that is possible.

Additionally, the minor's description and explanation of the circumstances of the alleged offense may significantly affect decisions about transfer to adult proceedings. (*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802.) Yet, petitioners' counsel provided nothing to probation—no documents or records and no witnesses, and counsel failed to ensure that the minor was available for an interview.²

Both counsel submitted on the documents presented and the probation report, without argument.

Counsel for petitioner provided the juvenile bench officer with nothing that the court could consider to overcome the apparent gravity of the offense, even though there existed substantial evidence that could have been used to argue that the minor's participation was not nearly as grave or serious as the charges would lead the court to believe. This is especially egregious since the fifth criterion (the gravity of the offense) is the *only* criterion under which the court found the minor unfit.

²While under some circumstances defense counsel may make a tactical decision to order probation not to interview the minor regarding the facts of the case, there are other circumstances where, regarding the circumstances and gravity of the offenses alleged, the juvenile may be the only witness who can present any mitigating circumstances. (See *Sheila O. v. Superior Court* (1981) 125 Cal.App.3d 812,815.) Counsel can always be present for these interviews. In any event, there can be no tactical reason for failing to provide probation with mitigating documents and statements from family members or other witnesses.

Counsel's representation fell below any objective standard of reasonableness under the prevailing professional norms. Additionally, petitioner suffered prejudice in that there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different. (*Strickland v. Washington* (1984) 466 US 668.)

Petitioner asserts that he is in custody, facing illegal prosecution as a certified juvenile in adult court because he was denied his right to effective assistance of counsel under the 6th Amendment to the United States Constitution and Art. I, Section 15 of the California Constitution and his Due Process right under the 5th and 14th Amendment of the United States Constitution and Article 1, section 7 of the California Constitution, when petitioners' attorney failed to effectively represent him at the fitness hearing.

Accordingly, petitioner, by and through his attorney, Janice Y. Fukai, Alternate Public Defender of Los Angeles County, respectfully petitions this court to issue its Writ of Habeas Corpus, to vacate the juvenile court's finding of fitness, and order that the matter be transferred back to the jurisdiction of juvenile court for further proceedings, and for such other and further relief this court may deem just and proper.

By this verified petition, the following facts and causes are set forth for issuance of the writ.

I

Petitioner, Antonio H [REDACTED], a 15-year-old minor, is currently in the custody of

the Los Angeles Sheriff's Department being held by the Los Angeles County Probation Department at Juvenile Hall in Los Angeles, California, under booking number [REDACTED].

II

Petitioner is currently illegally and unlawfully awaiting trial in adult criminal court, Los Angeles Superior Court case number BA401965. (Complaint and Information attached as "Exhibit A", Superior Court Minute Orders attached as "Exhibit B.") The illegality of petitioners' custodial restraint is set forth in the following paragraphs.

III

On April 26, 2012, at Eastlake Juvenile Court, the People filed a "Petition Under Section 602 of the Welfare and Institutions Code" Case Number FJ [REDACTED], alleging that minor Antonio H [REDACTED] committed two counts of Penal Code section 664/187 on April 24, 2012. In addition, it was further alleged that the offenses were for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members, pursuant to Penal Code section 186.22(b)(1)(C), and that the minor personally used a firearm, discharged a firearm, and caused great bodily injury, pursuant to Penal Code sections 12022.53(b), 12022.53(C) and 12022.53(d.) On the same date, April 26, 2012, the People filed a Motion to Find Minor Unfit Under Welfare and Institutions Code sections 707(b) and (c.)

(Juvenile Court Register of Action for Case Number FJ50288 attached as "Exhibit C," Juvenile Petition attached as "Exhibit D," and Notice of Motion to Find Minor Unfit attached as "Exhibit E.") Petitioner H [REDACTED] was 14 at the time of the alleged offense.

IV

On April 26, 2012, David N. Villa, was appointed to represent petitioner H [REDACTED] in Juvenile Court.

V

On June 2, 2012, pursuant to Court Order dated May 15, 2012, and at the request of David N. Villa, minors' attorney, Ronald R. Fairbanks, PhD. examined petitioner H [REDACTED] at Eastlake Juvenile Hall. On the same date, Dr. Fairbanks interviewed a member of the Eastlake staff who confirmed that the minor was "doing good." In conjunction with this evaluation, Dr. Fairbanks reviewed the following information described by him as follows: "15 pages of medical records for [REDACTED] clearly indicating that he had been shot five times. He also alleged that the minor had a weapon, but indicates that he was shot by the minor's companion and not by the minor. 10 pages of Probation Officer's report dated 5-15-12 from two Probation Officers, Jerry Powers and June Small, both of which (sic) were indicated by the minor during the interview that he did not know them, never met them or ever talked to them... They recommend him as

unfit.” (Dr. Fairbanks Report, attached as “Exhibit F.”) No documents were presented for review to Dr. Fairbanks and no witnesses were interviewed, other than the Eastlake staff member and the juvenile himself.

After interviewing the minor and conducting several psychological tests, the doctor described the minor as “a very pleasant young man, being very transparent.” He found the minor to be somewhat naive, with good communication skills and above average intelligence. He noted a substance abuse problem and recommended counseling to address this issue. The minor told Fairbanks that at the time of the offense he was upset because two of his friends had passed away. He described himself as depressed all the time. He also noted that there were problems at home with family arguments and money issues. Additionally, he admitted that at the time of the incident he had been abusing drugs and alcohol. He admitted to having a fight at school and cutting classes, resulting in him being transferred to another school. Regarding his history, the minor told Dr. Fairbanks that he is the youngest of four siblings. His father was a drug addict and left the family when he was approximately two years old. His mother raised them on her own from then on, working as a house cleaner and getting welfare.

As to fitness, Dr. Fairbanks found the minor to be fit on all five criteria. On the fifth criterion, the doctor noted that while it was alleged that the minor had a weapon, none was found and it is “clear from the statements of the alleged victim that the

companion was the shooter.”

VI

Minors’ case was set for Edsel P. and Fitness Hearing on August 28, 2012, before Judge Pro-Tempore Benjamin Campos, in Department 202 of the Eastlake Juvenile Court. (Transcript of Fitness Hearing attached as “Exhibit G.”) Initially, the court noted that counsel provided a number of documents that were reviewed by the court. The documents from the prosecution included: A transcript of the June 27, 2012 preliminary hearing transcript of the adult co-arrestee, the police report and follow-up reports, and copies of documents showing “predicate acts” for the gang enhancement. (Transcript of the June 27, 2012 Preliminary Hearing attached as “Exhibit H,” Police Reports (Incident Reports and Follow-Up Reports) attached as “Exhibit I.”) The one document presented by the defense was the report prepared by Dr. Fairbanks dated June 15, 2012. In addition, the court reviewed the May 15, 2012 Fitness Report prepared the Los Angeles County Probation Department. (Probation Department Report attached as “Exhibit J.”) The probation report found the minor unfit on three criteria– the degree of criminal sophistication, his prior delinquent history, and the circumstances and gravity of the offense. The minor was not interviewed by probation due to “building repairs.”³

Both counsel submitted on those documents, as to both the Edsel P. issues and the

³The Juvenile Court Register of Actions contains a computerized notation that Probation is ordered not to speak to the minor about the facts of the case.

fitness issues. (Exhibit G, page 2, lines 9-15.) Initially the court noted that the evidence was more than sufficient to find that a crime was committed and that the minor committed the crime. The court then addressed fitness. At the outset the court stated that, "Moving to the question of fitness, it is a troubling case, and in reviewing the probation report and the police reports, there is a degree of conflict." The court went on to disagree with probation as to the degree of sophistication and the minor's delinquent history, finding him fit on those criteria. However, the court found the minor unfit on the circumstances and gravity of the offense, stating, "The real crux of this matter is criteria five, the circumstances and gravity of the alleged offense. And in reviewing all of the material, including Dr. Fairbanks' report, the court can't think of a more serious or grave or heinous kind of offense, and all of that belies the minor's stature and his passive demeanor in court, but this was a vicious attack like hunting humans. And I--it just-- quite frankly, to the court, it's mind boggling that-- the kind of conduct that's alleged, chasing a person down. There were, according to the reports and the transcript, at least four or five other people in the alleyway, and one, maybe two people opened fire indiscriminately. Just horrific events. Based on the court's analysis, the court would find the minor unfit due to the seriousness, the circumstances and the gravity of the alleged offense." (Exhibit G, page 4, lines 13-28.) (Minute Order finding petitioner unfit for juvenile court attached as "Exhibit K.")

VII

On August 29, 2012, a felony complaint was filed against petitioner, Los Angeles Superior Court case number BA401965. ("Exhibit A.") Petitioner is charged in that complaint, with two premeditated attempted murders pursuant to Penal Code section 664/187 and gang and weapons enhancements as to both counts under Penal Code sections 186.22(b)(1)(C), and 12022.53(b), 12022.53(C) and 12022.53(d.)

On August 30, 2012, the Office of the Alternate Public Defender was appointed ("Exhibit B.") The matter is currently set for pretrial hearing on April 30, 2013 in Department 115 of the Los Angeles County Superior Court, in the Clara Shortridge Foltz Criminal Justice Center.

VIII

Upon review of the file, counsel for petitioner obtained the following documents:

- Typed letter from Samuel Kaplan, Berendo Middle School Mathematics Department Chair (Attached as "Exhibit L.")
- Handwritten note from Miss Carpenter, a former teacher (Attached as "Exhibit M.")
- Handwritten note from Dr. F. De La Pena (Attached as "Exhibit N.")
- Declaration of [REDACTED] petitioner's mother (Attached as "Exhibit O.")
- Current Positive Performance Report from Los Angeles County Office of Education, Division of Juvenile Court and Community Schools (Attached as "Exhibit P.")

The letters from the teachers describe positive qualities exhibited by Antonio both as a student and a person. Mr. Kaplan states that he was "an amazing student" and "sweet, intelligent and thoughtful" young man. He stated that he was concerned that Antonio had

no connection with the adults in his life and no male role model. Miss Carpenter simply stated (in a letter to Antonio) that his “awesome personality and intelligence will really get you to positive places in life if you make good decisions– which I know you are capable of doing.” Dr. De La Pena is Antonio’s dentist and has known him for seven years. He stated that Antonio is a mild-mannered child who pays attention to what he says and is generally one of his patients who listens to authority.

The declaration from petitioner’s mother, Antonia C [REDACTED], gave insight into petitioner’s life. She stated that from Kindergarten through 5th grade, Antonio thrived, getting superb grades. Antonio’s teachers told her that he was “gifted” and he consistently received “advanced” scores on his annual assessments in school. He was almost never absent and performed above grade level, according to his school administrators. Comments on his report cards said that he was a “deep thinker,” “an exceptionally bright child,” and a “natural leader.”

In 2010 the family started having problems with the manager of their apartment and Antonio’s older brother started to have problems as well. Ms Casas made the decision to move to Westmoreland St. Before that, they stayed for about two months with her sister in Simi Valley. After the move, Ms. Casas could tell that Antonio resented his older brother for the move. She started noticing that petitioner was hanging out with a different group of people, older kids whom she didn’t have a good feeling about. These kids made

Antonio feel “cool” because they were older, but they did not have any respect for their parents. They didn’t seem to listen to authority and they acted disrespectfully. Ms. Casas felt that Antonio liked being with these older kids because it made him feel better about the fact that he is so small.

The family moved again in August of 2011 to 41st Street and Broadway. During this time, the ex-boyfriend of Antonio’s sister, who was like a member of their family, was shot and killed. This was especially hard on Antonio, since he had been one of Antonio’s only male role-models. As soon as they left Westmoreland St., Ms. Casas could tell that Antonio was depressed and that he missed his old friends. His behavior started to change, and he was getting into fights. His grades began to drop. He began ditching school: His behavior reached a point where the school’s guidance counselor required Ms. Casas to attend weekly meetings with the counselor. Ms. Casas also noticed that Antonio was smoking marijuana.

Antonio told Ms. Casas that he was being threatened by kids in the new neighborhood. He was accused of being in a gang. He started coming home from school scared. Once, when he was walking home from the store with his older sister, another kid approached, picking a fight and making fun of Antonio. The taunting and teasing got so bad that eventually, Antonio’s older brother, Ernesto, started picking Antonio up from school and walking home with him, or waiting for him on their front steps.

In the summer of 2011, Antonio was in a fight in school and was slammed onto the ground, landing on his knee. He couldn't walk for a week and a half and had to stay home from school for a couple of weeks. A few months later, around the beginning of 2012, he was jumped while walking by himself with his bike. Three or four guys took his bike and kicked him to the ground, chipping his tooth and causing him to get an emergency root canal.

At some point, Antonio became friends with "Proz," a 21-year-old. Ms. Casas didn't not like them hanging out together, since Proz was 21 and Antonio was only 14. Proz is Christian Moraga, the co-arrestee in this case.

IX

Counsel for petitioner, Jeffrey S. Cohen prepared a declaration regarding the defense in this case: (Jeffrey S. Cohen declaration attached as "Exhibit Q.") In that declaration he states as follows:

The defense in this case will likely involve the following facts: After his court appearance on April 23, 2012, petitioner, Antonio, left his mom and went to his friend Proz's house. Proz was 21 years old at the time. Antonio was 14. Proz bought some beer. Another friend of Proz's "Bruno" arrived. The older boys bought more beer and they drank all afternoon until Antonio was "wasted." Bruno suggested they go to McDonald's to get something to eat. Antonio thought that Proz and Bruno were acting "suspicious"

but he just figured they were going to do some tagging since he'd been with them when they had done that before. They left Proz's house and encountered a group in an alley. The group consisted of at least ten people and Antonio recognized at least one of them as someone Proz and Bruno didn't like. As soon as they got to the alley, the shooting began. Antonio took the gun afterward, so that he could give his sweatshirt to the shooter and change shoes with him. He then gave back the gun. Until the shooting started, he had no idea that it was going to occur.

X

Maureen T. Pacheco is a professor and clinical director at the Center for Juvenile law and Policy at Loyola Law School, and is an expert in the area of standards of competence in the representation of indigent juveniles in delinquency cases. (Declaration of Maureen T. Pacheco, attached as "Exhibit R") She has practiced in the areas of juvenile and criminal law for over 25 years.

From 1987– 2010 she worked as a Deputy Public Defender for the Office of the Los Angeles County Public Defender. For eight of those years she served as one of two juvenile appellate and training attorneys for the Juvenile Division. In that position, one of her primary responsibilities was to assist the defense attorneys with questions about fitness hearings, and to review every finding of unfitness to determine if appellate relief should be sought. During her last two years in this office she served as special assistant to

the Chief Public Defender as the Juvenile Legislative and Policy Advisor.

In 2010 she joined Loyola Law School's Center for Juvenile Law and Policy. As assistant Director, she teaches juvenile court trial skills and juvenile law and policy. She is also responsible for legislative and policy advocacy for the center. Her current position is Director of a post-conviction project, the Juvenile Innocence and Fair Sentencing Clinic. As part of this work, she evaluates cases for claims of ineffective assistance of counsel and is familiar with the legal standards applicable to such a claim.

She has been a Board member of the Pacific Juvenile Defender Center, a regional division of the National Juvenile Defender Center, for the last 10 years. In 2011, she helped organize and teach a special National Institute of Trial Advocacy delinquency course for California juvenile court practitioners, the first of its kind in the State. She is regularly invited to speak on juvenile law issues in California and nationally. For the last three years she has held the position as Chair of the National Juvenile Defender center's Juvenile Justice Committee. On behalf of the California Public Defenders Association, and for the Center for Juvenile Law and Policy, she has testified as an expert on juvenile delinquency on numerous occasions before various committees of the California Legislature. In 2011, she was chosen along with approximately 20 people from around the country to attend the National Juvenile Defender Center's working group on its forthcoming Guidelines. As background for the Guidelines, she reviewed numerous sets

of juvenile practice standards from around the country, and she is familiar with the California State Bar Standards on Indigent Defense, the Guidelines of the National Council of Juvenile and Family Court Judges, and the "Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense delivery Systems," of the NJDC/NLADA. Finally, in 2012 she co-organized and moderated a panel for the Center's annual Symposium on Ineffective Assistance of Counsel. The day long symposium included experts from around the country on the topic of Effective Assistance of Counsel in juvenile court.

In December 2012, Ms. Pacheco agreed to review petitioner's claim that his trial counsel failed to adequately, effectively and competently represent him in the course of his hearing to determine fitness to be tried in juvenile court. In connection with this, she reviewed everything presented to the juvenile court, as well as the exhibits attached to this petition.

At the outset, she notes that there is no more crucial proceeding in juvenile court than a fitness hearing. The stakes are the absolute highest. In this case, petitioner would face, at most, a commitment to the Department of Juvenile Justice until the age of 25. He could be paroled far earlier based on behavior, and would have access to many services. Given his age (14 years old,) lack of any prior juvenile court "convictions," and given a thorough investigation and development of a disposition plan, there is a likelihood that he

might have received a long term camp commitment. In contrast, a 14-year old in adult court, if convicted as charged would receive multiple life sentences. Because these stakes are so high, Ms. Pacheco states that a reasonable competent attorney must undertake a thorough and far reaching investigation into the facts and circumstances of the youth's life, as well as the circumstances of the crime.

Specifically, she states, "The investigative process includes researching every aspect of the client's background and history. School and health records must be obtained and reviewed, and interviews with family, friends, teachers, and health care providers must be conducted. Once trial counsel has obtained the requisite records, mental health experts are retained to review the records, conduct a comprehensive mental health evaluation of the defendant, and testify, if necessary. In cases such as this one, where there are also gang allegations, a crucial part of the defense would be exploring the youth's level of gang involvement, and retaining a gang expert to explain the forces at play which led to the youth's affiliation. Finally because the gravity of the offense is the focal point of the contention, where the case involves a very young youth (and 14 is the youngest), retention of and consultation with an expert in adolescent brain development, who can testify why the youth's participation was less than a deliberate, reasoned, planned action, and therefore makes his actions less serious, is critical."

In reviewing this case, Ms. Pacheco noted that by failing to litigate the Edsel P.

hearing, the court gave up an opportunity to explore any actions that might demonstrate a lesser degree of culpability. In this case, the lawyer instead allowed the adult co-arrestee's preliminary hearing, which contained damaging testimony, to be admitted against the minor. The minor was not represented at that hearing. The lawyer for the adult actually had a disincentive to minimize the minor's involvement. Because petitioner's counsel did not have an opportunity to challenge the evidence presented at the preliminary hearing, the transcript would not have been admissible in petitioner's Edsel P. hearing or fitness hearing. She further noted that there could be no possible strategic or tactical explanation for submitting or stipulating to the admission of otherwise inadmissible evidence that is damaging.

While the submission on the preliminary hearing transcript was clearly unreasonable, Ms. Pacheco stated that it is further exacerbated by trial counsel's failure to ensure that the probation report and the expert's reports were both accurate (to prevent damaging information) and complete, in that they including all mitigating evidence.

Ms. Pacheco pointed out that the probation report in this case, which is typically the only basis of the prosecution's case, and therefore a crucial part of the fitness hearing— was prepared for a hearing to take place on May 15, 2012. Antonio was arrested on April 23, 2012 and the petition was filed on April 26th. This means that there were only two weeks between the minor's first appearance in court and the preparation of a report

which would form the basis of the prosecution's presentation. She stated that reasonably competent counsel would have asked for a continuance of the probation evaluation so that there was time to investigate, have experts appointed and consult with any experts that could provide mitigating evidence to the probation officer who would be preparing the report. She stated that counsel's performance fell below reasonable competence standards when he failed to do so. Counsel had a duty to share mitigating information with the probation officer, to ask for a new report based on this information, and finally, to challenge the unfounded and incomplete report.

Additionally, Ms. Pacheco asserts that the use of expert witnesses is an almost absolute necessity in a fitness hearing. Here, although trial counsel engaged the use of a qualified witness, he failed to ensure that his witness had the necessary information to provide the compelling story that would convince the court of the juvenile's amenability. Counsel did not ensure that this expert spoke with the parents or review records. Even a simple interview with the mother would have provided mitigating evidence to bolster his opinion. While the report was favorable, it was incumbent upon counsel to provide the expert with the mitigating information that would have been compelling enough to convince the court to find Antonio fit.

Ultimately, however, Ms. Pacheco finds that the crux of the problem is the "inexplicable" decision on counsel's part to simply submit on the documents at hand. She

states that “in a case that one can clearly win— a very small and very young man, not gang-entrenched, in the presence and possibly under the direction of a much older man, with a history of being jumped and attacked by others in his neighborhood, with a loving and supportive family who has encountered the difficulties too common in particular Los Angeles neighborhoods with severe economic difficulties, and with the shooting and death of his only male role model, where the evidence from medical and police records indicate that he was present but leave completely ambiguous whether or not he fired a weapon, I can simply not find *any* legitimate strategical or tactical reason to waive a hearing. There is absolutely no downside, and a very significant upside, in litigating this case fully...In my opinion, this case could likely have been won simply on the basis of a proper Edsel P., a proper cross-examination of the probation officer, and presentation of Dr. Fairbanks. But a reasonably competent attorney would not have stopped there. It is my opinion that the failure to call any witnesses also fell below the standards required.”

In sum, it is her opinion that counsel for petitioner in the juvenile court performed below the standard of practice of a reasonably competent attorney acting as a diligent, conscientious advocate, and that he rendered ineffective assistance of counsel to petitioner to the extent that he (1) failed to litigate the Edsel P. hearing, which would have given the court an understanding of the minimal involvement of petitioner, and instead submitted, in part, on damaging evidence contained in the adult co-arrestee’s preliminary

hearing, which should not have been admissible; (2) failed to conduct an adequate investigation, including failing to obtain records, which led to a failure to provide any mitigating information to either his “expert” or the probation officer, and then inexplicably failed to challenge the unfounded conclusions in the probation report; (3) failed to consult with and have appointed additional experts, including (a) an expert on adolescent development appointed to testify regarding the level of immaturity, lack of comprehension of consequences, and susceptibility to peer influences of a 14-year old, (b) an expert witness on gang involvement, and (c) an expert to testify as to the programs available in the juvenile court system, including the 11 years available to the court if the youth was placed in DJJ.

Furthermore, Ms. Pacheco is of the opinion that, based on her review of the case, and her experience in the field of juvenile defense, had an investigation been conducted, evidence challenged, and evidence presented, there is a reasonable probability that the matter would not have resulted in a finding of unfitness for juvenile court.

XI

Petitioner is in illegal custody because he was denied a fundamental Constitutional right to Effective Assistance of Counsel under the 6th Amendment to the United States Constitution and Art. I, Section 15, of the California constitution and to Due Process under the 5th and 14th Amendment of the United States Constitution, when his juvenile

attorney's representation fell below an objective standard of reasonableness under prevailing professional norms. Furthermore, there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. Petitioner's contentions in this regard are more fully set forth in the accompanying points and authorities which are incorporated herein by reference.

XII

Petitioner is in custody solely on this matter.

XIII

Petitioner has no plain, speedy or adequate remedy at law. An ineffective assistance of counsel claim is properly raised in a habeas corpus proceeding. (*People v. Menoza Tello* (1997) 15 Cal.4th 264, 266-267.)

XIV

On January 7, 2013, a habeas corpus writ on this matter was filed in Department 100 of the Los Angeles Superior Court. (Superior Court Habeas Corpus, attached as "Exhibit S.") It was transferred by Department 100 to the Juvenile Court, where the Hon. Christina L. Hill in Department 203 summarily denied it on March 6, 2013. (Minute Order Denying Writ attached as "Exhibit T.") This writ seeks de novo review.

XV

The following exhibits reflecting the above proceedings are attached hereto and incorporated herein by reference:

Exhibit "A": Complaint BA401965 and Information BA401965

Exhibit "B": Superior Court Minute Orders BA401965

Exhibit "C": Juvenile Court Register of Action FJ50288

Exhibit "D": Juvenile Petition FJ50288

Exhibit "E": Notice of Motion to Find Minor Unfit

Exhibit "F": Dr. Fairbanks Report

Exhibit "G": Transcript of Fitness Hearing

Exhibit "H": Transcript of June 27, 2012 Preliminary Hearing, Christian Moraga

Exhibit "I": Police Reports (Incident and Follow-Up Reports)

Exhibit "J": Probation Report

Exhibit "K": Minute Order Finding Minor Unfit

Exhibit "L": Letter from Samuel Kaplan

Exhibit "M": Letter from Miss Carpenter

Exhibit "N": Letter from Dr. F. De La Pena

Exhibit "O": Declaration of [REDACTED]

Exhibit "P": Positive Performance Report LACOE

Exhibit "Q": Declaration of Jeffrey S. Cohen

Exhibit "R": Declaration of Maureen T. Pacheco

Exhibit "S": Superior Court Habeas Corpus

Exhibit "T": Superior Court Minute Order Denying Habeas Corpus Writ

WHEREFORE, petitioner prays that this court issue its writ of habeas corpus, and vacate the order finding Petitioner unfit and certifying Petitioner to be tried in adult court and return the jurisdiction in this matter back to Juvenile court. Or alternately, petitioner prays that this court enter an order for such other and further relief this court may deem just and proper.

Respectfully submitted,

JANICE Y. FUKAI
Alternate Public Defender
Los Angeles County

By: _____
Felicia Kahn Grant
Deputy Alternate Public Defender

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, declare under penalty of perjury as follows:

I am an attorney at law licensed to practice in all the courts of California, and I am employed as a Deputy Alternate Public Defender for the County of Los Angeles.

In that capacity I am an attorney of record for petitioner in the foregoing petition for writ of mandate, and I make this verification on his behalf for the reason that the facts alleged herein are more within my knowledge than his.

I have read the foregoing petition and the exhibits attached thereto and I know the contents thereof to be true based upon my representation of petitioner.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____th of April, 2013, at Los Angeles, California.

Felicia Kahn Grant,
Deputy Alternate Public Defender

POINTS AND AUTHORITIES

I. PETITIONER'S JUVENILE COURT LAWYER FAILED TO ACT IN A MANNER TO BE EXPECTED OF A REASONABLY COMPETENT LAWYER ACTING AS A DILIGENT ADVOCATE AND, AS A RESULT OF HIS LAWYER'S ACTS AND OMISSIONS, PETITIONER WAS DENIED A POTENTIALLY MERITORIOUS DEFENSE TO TRANSFER TO ADULT COURT.

In *People v. Ledesma* (1987) 43 Cal.3d 171, 215, the California Supreme Court explained that “[u]nder both the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution, a criminal defendant has the right to the assistance of counsel. The ultimate purpose of this right is to protect the defendant’s fundamental right to a trial that is both fair in its conduct and reliable in its result.

Construed in light of its purpose, the right entitles the defendant not to some bare assistance but rather to effective assistance. Specifically, it entitles him to ‘the reasonably competent assistance of an attorney acting as his diligent conscientious advocate.’ (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 726.)

In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel’s performance was ‘deficient’ because his ‘representations fell below an objective standard of reasonableness...under prevailing professional norms.’ (*In re Harris* (1993) 5 Cal.4th 813, 832, citing to, *Strickland v. Washington* (1984) 466 U.S. 668, 687-688.) Second, he must also show prejudice flowing from counsel’s performance or lack thereof. (Prejudice is shown when there is a reasonable probability that but for counsel’s unprofessional errors the result of the proceeding would have been different. A

reasonable probability is a probability sufficient to undermine confidence in the outcome. (*Strickland v. Washington, supra*, 466 U.S. 668, 694.) The United States Supreme Court recently explained that this second prong of the Strickland test is not solely one of outcome determination. Instead, the question is “whether counsel’s deficient performance renders the result of the trial unreliable or the proceedings fundamentally unfair.” (*Lockhart v. Fretwell* (1993) 506 U.S. 364.)

As described above in this petition, the minor was 14 years old at the time of this incident and at the time of the fitness hearing— the absolute youngest age in California that a child can be to face transfer to adult court. As noted by courts, “The result of a fitness hearing is not a final adjudication of guilt; but the certification of a juvenile offender to an adult court has been accurately characterized as “the worst punishment the juvenile system is empowered to inflict.” (*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802, 810, internal citations omitted.) Petitioner had no previous record. Had he stayed in juvenile court he could not be confined past his 25th birthday. Now, in adult criminal court, he is facing multiple life sentences.

And yet, almost nothing was done on his behalf at the very hearing that would determine if he could stay in juvenile court. And there was much that could have been done. There was a mitigating story to tell about this minor, about how he had gotten to the point where he was failing in school and hanging out with adults who he had no business being with. This is a child who had potential— who admittedly lost his way in middle

school but who never had the benefit of juvenile court intervention.

No records of any kind were ordered by his lawyer, or if they were, they were not presented to the court— no medical records, no school records, nothing. If interviews were conducted, they were not presented to the court at the hearing. No experts, other than Dr. Fairbanks, were appointed. And Dr. Fairbanks had to rely on what the minor, a 14-year old, self-reported. He was given no documents by defense counsel and no witnesses were made available for interviews. No experts on adolescent development were appointed, even given this minor's young age. No gang experts were appointed or consulted. No experts on the services available to rehabilitate this juvenile were requested. No information was conveyed to the probation department, even though, as explained by Maureen Pacheco, these reports are generally what the prosecution relies on in this hearing. The probation report wasn't objected to, even though it contained legally and factually inaccurate statements and findings.

Counsel for petitioner decided to simply submit on documents presented by the prosecution and the probation report and Dr. Fairbanks's report. This decision was described as inexplicable and completely lacking in any strategic or tactical strategy by our expert, Ms. Pacheco. One of the documents submitted by the prosecution was the preliminary hearing of the adult co-arrestee. This was from a proceeding that the minor was not represented at, a proceeding where the attorney for the co-arrestee had no incentive to minimize the minor's involvement— in fact, quite the opposite. This

preliminary hearing transcript was damaging and should have been legally inadmissible. Yet, counsel for the minor did not object to its admission.

Nothing was done on the part of minors' counsel to present documents or testimony or argument that the minor's participation was less grave than the charges or incident report would lead the court to believe. And it's very clear from the transcript of the fitness hearing that it was only because the facts were so bad that the court found the minor unfit. It is clear from the transcript that had the court had information that the minor's participation was less than described, either because the minor did not have a gun, or did not know what was going to happen until it did, or even that the co-arrestee was 21 years old and coerced him, that the court would have given weight to those facts. But nothing was presented to mitigate the facts of the offense. Counsel for petitioner didn't even bother to argue based on the records that the court did have. It is hard to imagine anything less being done. As noted by Ms. Pacheco. There was no downside and a very significant upside to litigate this case fully.

Counsel's performance in juvenile court was below any objective standard of reasonableness under the prevailing professional norms. Furthermore petitioner was prejudiced because had counsel actually litigated the Edsel P. hearing and the fitness hearing there is a reasonable probability that the minor would have been found fit for juvenile court. At the very minimum, his performance undermines confidence in the outcome and renders the results of the hearing unreliable, as well as making the

proceeding fundamentally unfair.

For all these reasons, petitioner respectfully requests that this court grant its writ of habeas corpus, reverse the juvenile court's finding of unfitness and remand for a new fitness hearing.

Respectfully submitted,
JANICE Y. FUKAI
ALTERNATE PUBLIC DEFENDER

By: _____
Felicia Kahn Grant
Deputy Alternate Public Defender

Appendix E:

**Office of the Public Defender, Juvenile Division
Training Materials and list of webinars**

Summary of Recent Juvenile Division Training Programs

Recent Trainings:

All Day In-House Seminar (11/29/2012) at Inglewood Courthouse: Trial Advocacy Training: Topics included: Effective Advocacy, Case Preparation, Direct Examination, Expert Witnesses, Cross Examination and closing argument.

All Day In-House Seminar (12/3/2013) at Loyola Law School: Topics included: Competency, Update on DJJ, STAR Court, and Juvenile Mental Health Court; Competency Attainment with Creative Support; Extended Foster Care (AB12/212); Winning Strategies for Contested Dispositions

Annual Delinquency Law Seminars:

Most recent Annual Seminar: March 31, 2015

Webinars offered

March 2015: Ethics

November 2014: Psychotropic Medications

September 2014: Forensic examinations

August 2014: In-Home Counseling Services

July 2014: Internet and social media

June 2014: Collateral consequences

May 2014: Investigators

October 2013: Forensic Audio, video, cellphone and GPS devices

Follow up trainings for new attorneys:

March 2015

August 2014

Branch trainings:

February 2015: Compton – DJJ training

February 2015: Compton – Competency training

January 2015: Sylmar – 317(e) Panel information

December 2014: Sylmar – Methamphetamine

November 2014: Sylmar - Secondary Trauma

November 2014: Sylmar – ADHD

October 2014: Sylmar – Knives 101

October 2014: Sylmar – Crossover cases

September 2014: Sylmar – Attachment disorders

August 2014: Sylmar – Phoenix House Programs

June - August 2014: Trainings at all 9 branches on 9 different days – Confidentiality and privilege issues regarding mental health information

June 2014: Sylmar – JSORRAT – II

Tours of Juvenile facilities organized for staff

April 2015: Boys Republic

April 2015: Ventura Youth Correctional Facility

October 2014: Rosemary's Cottage

September 2014: Dorothy Kirby

September 2014: Camp Rocky

June 2014: Hathaways- Sycamore

May 2014: Vista Del Mar

May 2014: David and Margaret Girls Group Home

April 2014: Ranch San Antonio
March 2014: Phoenix House
February 2014: Camp Scott and Scudder
February 2014: Optimist
January 2014: San Gabriel Children's Center
December 2013: Penny Lane
June 2013: Pacific Lodge

Trainings/monthly meetings for social workers:

February 2015: Writing effective reports for our clients
January 2015: A program presentation for AB109 clients
September 2014: Restorative Justice
August 2014: Speaker from a program at Hollygrove
July 2014: Vera Institute of Justice
June 2014: Updated psychological instruments
May 2014: JAI/TCIS training
February 2014: Field Safety
January 2014: Inside Out Writers and VIP Community Mental Health
November 2013: Hard to Place Youth and AB 12/212
October 2013: Effective Communication Training
October 2013: Common Street Drugs
September 2013: DSM V Training

Trainings/monthly meetings for resource attorneys:

March 2015: Topic: Regional Center Issues

February 2015: Topic: Educationally Related Mental Health Services.

June 2014: Topic: Filing Compliance Complaints

May 2014: Topic: Ins & Outs of IEPs

The Los Angeles County Public Defender's Office
33rd Annual Juvenile Delinquency Law Training Seminar

Tuesday, March 31, 2015

- 8:45 A.M. **Welcome**
Winston A. Peters, Assistant Public Defender
- 9:00 A.M. **2015 Delinquency Case Law & Legislative Update**
Michael Theberge, Appellate Attorney,
Los Angeles County Public Defender's Office
- 10:00 A.M. **BREAK**
- 10:15 A.M. **Unpacking the Culture of Bias:
Exploring the Impacts(s) on Youth of Color**
Dr. Monique W. Morris, Author of "*Black Stats: African Americans by the
Numbers in the Twenty-First Century*"
- 11:15 A.M. **IS THE JUVENILE PRISON OBSOLETE?**
Keynote Speaker: Nell Bernstein
Author of "*Burning Down the House: The End of Juvenile Prison*" and
"*All Alone in the World*." **Special Guest: James P. Anderson** of the Anti-
Recidivism Coalition
- 12:15 P.M. **LUNCH**
- 1:00 P.M. **Undocumented Youth: A Pathway to Citizenship**
Jesus Mosqueda, Equal Justice Works Emerson Fellow, Immigrants' Rights
Project at Public Counsel
- 1:45 P.M. **SB 9 & SB 260: Justice for Juveniles Serving Life or Its Equivalent**
Peter E. Chung & Katherine Bonaguidi, Attorneys,
Los Angeles County Public Defender's Office
- 2:15 P.M. **BREAK**
- 2:30 P.M. **Incorporating Adolescent Brain Development Research into Client
Advocacy**
Maureen Patti & Lisa Brackelmanns, Attorneys,
Los Angeles County Public Defender's Office
- 3:30 P.M. **Your Fitness: Throw Out the Cookie-Cutter**
Julia Know & Robert Krauss, Attorneys,
Los Angeles County Public Defender's Office
Alison Seeger, Psychiatric Social Worker,
Los Angeles County Public Defender's Office
- 4:30 P.M. **Adjournment**

**The Los Angeles County Public Defender's Office
32nd Annual Juvenile Delinquency Law Training Seminar**

Monday, March 31, 2014

- 8:45 A.M.** **Welcome**
Ronald L. Brown, Public Defender
- 9:00 A.M.** **Defending 288 Cases and Cross-Examining Child Witnesses**
Sue Clemens, Deputy Public Defender,
Office of the Public Defender, San Diego County
Kate Coyne, Highly Qualified Expert,
USMC Defense Services Organization
- 10:00 A.M.** **BREAK**
- 10:15 A.M.** **From Behind Bars to the State Bar:
A Discarded Youth's Story of Redemption**
Keynote Speaker: Frankie Guzman
Soros Justice Fellow, Attorney, National Center for Youth Law
- 11:15 A.M.** **Competency Remediation**
Kimberly Larson, Ph.D., J.D.,
Asst. Professor, Psychiatry Department, Law and Psychiatry,
University of Massachusetts Medical School
- 12:15 P.M.** **LUNCH**
- 1:00 P.M.** **Arrested Development: Adolescent Development and Juvenile Justice**
Elizabeth Cauffman, Ph.D.,
Professor & Chancellor's Fellow, Director, Center for Psychology & Law,
University of California, Irvine
- 2:00 P.M.** **BREAK**
- 2:15 P.M.** **2014 Juvenile Delinquency Case Law Updates**
Megan Gallow, Appellate Attorney,
Los Angeles County Public Defender's Office
- 3:15 P.M.** **It Could Happen to You: Ethics Hypos in Juvenile Practice**
Tina Katz, Paralegal, Appellate Division,
Los Angeles County Public Defender's Office
Albert Menaster, Head Deputy, Appellate Division,
Los Angeles County Public Defender's Office
- 4:15 P.M.** **Adjournment**

**The Los Angeles County Public Defender's Office
31th Annual Juvenile Delinquency Law Training Seminar**

*Cathedral of Our Lady of Angels
555 W. Temple St.
Los Angeles, CA 90012*

Monday, April 1, 2013

- 8:45 A.M.** **Welcome**
Ronald L. Brown, Public Defender
- 9:00 A.M.** **2013 Juvenile Delinquency Case Law Update**
Megan Gallow, Appellate Attorney,
Los Angeles County Public Defender's Office
- 10:00 A.M.** **BREAK**
- 10:15 A.M.** **Appellate Perspectives of Juvenile Practice**
Gary Mandinach, Appellate Attorney,
California Appellate Project Attorney, and
Albert J. Menaster, Appellate Head Deputy,
Los Angeles County Public Defender's Office
-
- 11:15 A.M.** **Disproportionate Minority Contact and Confinement**
Keynote Speaker: James Bell, Attorney,
W. Haywood Burns Institute
- 12:15 P.M.** **LUNCH**
- 1:00 P.M.** **Major Crimes and Minor Defenses**
Toral Malik and
William Hovsepyan, Deputies in Charge, Juvenile Division,
Los Angeles County Public Defender's Office
- 2:00 P.M.** **BREAK**
- 2:15 P.M.** **Human Trafficking**
Humberto Benitez, Deputy in Charge, Juvenile Division, and
Haidee Cuasim, MSW,
Los Angeles County Public Defender's Office
- 3:15 P.M.** **Secondary Trauma**
Venise Burwell, LCSW, Supervising Psychiatric Social Worker,
Los Angeles County Public Defender's Office
- 4:15 P.M.** **Adjournment**

30th Annual Juvenile Delinquency Law Training Seminar

Friday, March 30, 2012
Our Lady of Angels Cathedral
555 W. Temple Street, Los Angeles, CA 90012

Agenda

Registration and Reception

Welcome

Ronald L. Brown, Public Defender Los Angeles County

JDB v. North Carolina, Implications for Juvenile Law Practitioners
Marsha Levick, Deputy Director and Chief Counsel Juvenile Law Center, Philadelphia, PA

2012 Juvenile Delinquency Case Law Updates
Michael Theberge, Appellate Attorney
Los Angeles County Public Defender's Office

Break

A framework for Investigating Mental Health Issues
Jennifer Friedman, Forensic Consultant/Asst. Special
Circumstance Coordinator
Los Angeles County Public Defender's Office

Lunch

Convenient Scapegoats: The Dixmoor Five, The Englewood Four, and Juvenile Confessions
Keynote Speaker: Joshua Tepfer, Attorney and Assistant Professor Northwestern
University's Center on Wrongful Convictions of youth

Break

Using Expressive and Receptive Language Disorders In Your Case
Nancy Pina, Speech and Language Pathologist
Los Angeles County Office of Education

Jonathan Cruz, Juvenile Trial Attorney
Los Angeles County Public Defender's Office

Jennifer Walker, Psychiatric Social Worker
Los Angeles County Public Defender's Office

The Ethical Duty to Investigate Your Case
Albert J. Menaster, Head Deputy of the Appellate Branch

Los Angeles County Public Defender's Office Closing Remarks:
Winston Peters, Assistant Public Defender

Los Angeles County Public Defender's Office

Los Angeles County Public Defender's Office
Juvenile Services Division

29th Annual Juvenile Delinquency Law Training Seminar

Saturday, April 9, 2011
555 W. Temple St.
Los Angeles, CA 90012

- 8:30 **Welcome**
 Ronald L. Brown, Public Defender
- 8:35 **Juvenile Delinquency Case Law Updates**
 Michael Theberge, L.A. County Public Defender's Office
- 9:30 **Break**
- 9:40 **School Rules: What You Need to Know About
Litigating Cases Involving Schools**
 Rourke Stacy and Sonjia White, L.A. County Public Defender's Office
- 10:35 **Keynote Speaker**
 California Supreme Court Associate Justice Carlos R. Moreno
- 11:30 **Lunch**
- 12:00 **Identifying Autism Spectrum Disorder in Adolescence**
 Mandy Moradi, Psy.D, Licensed Clinical Psychologist Consulting with
 Lanterman Regional Center; Maureen Patti and Jeff Treloar, L.A. County
 Public Defender's Office
- 12:55 **Child Witnesses**
 Denise Gragg, Senior Assistant Public Defender,
 Orange County Public Defender's Office
- 1:50 **Break**
- 2:05 **The Science of the Courtroom: Juvenile Delinquency and the Brain**
 Kimberly Papillon, Esq., California Judicial Council's Administrative
 Office of the Courts
- 3:00 **Conference Concludes**

**The Los Angeles County Public Defender's Office
28th Annual Juvenile Delinquency Law Training Seminar**

5855 W. Century Boulevard
Los Angeles, CA 90045

Saturday, May 8, 2010

- | | |
|---------------|--|
| 8:15 - 8:30 | Welcome
Michael P. Judge, Public Defender |
| 8:30 - 9:45 | What's Interrogation Gotta Do With It? Litigating Confession Cases in Juvenile Court
Deja Vishny |
| 9:45 - 10:45 | Father Gregory J. Boyle, S.J. , Founder and Chief Executive Officer of Homeboy Industries |
| 10:45 - 11:00 | BREAK |
| 11:00 - 12:00 | Case Law and Legislative Updates
Michael Theberge |
| 12:00 - 1:00 | Lunch |
| 1:00 - 2:00 | Effective Cross-Examination
Pamela Mackey |
| 2:00 - 3:00 | Conducting Effective Competency Hearings for Clients in Juvenile Court
Celia Benitez-Balderrama, Angela Cheung, Donna Gomez, Olivia Wang |
| 3:00 - 3:15 | Break |
| 3:15 - 4:15 | Storytelling Even in Juvenile Court
Steven Harmon |

2009

- **Mike Theberge, Los Angeles County Public Defender's Office: *"Case Law and Legislative Updates"***
 - **KEYNOTE SPEAKER, Rebecca Snyder, Assistant Detailed Defense Counsel for Guantanamo Bay Juvenile Detainee Omar Khadr**
 - **Steve Harmon, Attorney, Riverside, California: *"Storytelling Even in Juvenile Court"***
 - **Cari Caruso, RN SANE-A: *"Deconstructing the SART Exam"***
-
- **Kyana Stephens, The Defender Association, Seattle, Washington: *"No Jury, One Judge: Trying a Sex Offense Case in Delinquency Court"***
 - **Rourke Stacy, Los Angeles County Public Defender's Office: *"My Kid Confessed -- Now What Do I Do?"***
 - **Bill Gallagher, Law Office of Arenstein & Gallagher, Cincinnati, Ohio and Michael Shultz, Center for Juvenile Law and Policy, Loyola Law School: *"Social Networking Sites and Beyond -- Discovery in the Electronic Age"***

The Los Angeles County Public Defender's Office

26th Annual

Juvenile Delinquency Law Training Seminar

Radisson Hotel at Los Angeles Airport

6225 West Century Boulevard

Los Angeles, California

Monday, March 17, 2008

- 8:00 A.M. **Welcome**
Winston Peters
- 8:15 A.M. **Case law and legislative updates**
Michael Theberge
- 9:00 A.M. **Reflections on the Jena Six Case**
Keynote Speaker: David Utter
- 10:00 A.M. **BREAK**
- 10:15 A.M. **Risk Assessment of Youth: What Attorneys Need to Know**
Gina Vincent, Ph.D.
- 11:15 A.M. **Get 'Em Out: Effectively Litigating Detention Issues**
Joseph Burghardt
- 12:00 P.M. **LUNCH**
- 1:00 P.M. **Creative Strategies for Litigating Bench Trials and Engaging the Judge**
Kristin Henning
- 2:00 P.M. **BREAK**
- 2:15 P.M. **So Many Children: Fetal Alcohol Spectrum Disorders in Delinquency Court**
Lyn Laboriel, M.D.
- 3:15 P.M. **Ethical Issues in Delinquency Court**
Murrey Correa and Bella Dilworth
- 4:15 P.M. **Adjournment**

The Los Angeles County Public Defenders Office

25th Annual

Juvenile Delinquency Law Training Seminar

Los Angeles Airport Marriott

Los Angeles, CA

Monday, April 16th, 2007

8:00 A.M.

Welcome

Candis Glover, Jane Newman, Karen Thompson

Opening Remarks

Michael P. Judge, Public Defender, Los Angeles County

8:15 A.M.

Case Law and Legislative Update

Michael Theberge

9:00 A.M.

**Defending the Brainwashed Juvenile:
Dealing with a Child Soldier, Cultic Relationships,
Video Game Desensitization and Much More**

Keynote Speaker, Craig S. Cooley

9:45 A.M.

Break

10:00 A.M.

Are Adolescents Different From Adults?

Biological, Social, and Cognitive Considerations

Elizabeth E. Cauffman Ph.D.

10:45 A.M.

**Incorporating What We Know About
Adolescent Differences at All Stages of Litigation**

Professor Simmie Baer

11:30 A.M.

Revoke, Reinstate, Litigate, Terminate!

Navigating Through 654, 725, 790 and 777

Jan Datorni

12:00 P.M.

Lunch

1:00 P.M.

Representing LGBT Youth In Delinquency Proceedings

Shannan Wilber

1:45 P.M.

CLICK ON THIS - A Guide to Juvenile Justice Resources

Akemi Arakaki

2:00 P.M.

BREAK

2:15 P.M.

One Day is Too Many: Detention's Harmful Effects

Elizabeth Calvin

3:00 P.M.

**"Staying Fit In 2007", Using Rene C. To Help Prepare, Argue
and Win Your 707(b) Case**

Tracie Jones and Lynn Norton

4:00 P.M.

Adjournment

The Los Angeles County Public Defender's Office

24th Annual

Juvenile Delinquency Law Training Seminar

Hacienda Hotel

525 N. Sepulveda Blvd.

El Segundo, California

Friday, April 28, 2006

- 7:30 A.M. **Registration.**
- 8:00 A.M. **Case law and legislative updates**
Michael Theberge
- 9:00 A.M. **Adolescent cutting, suicide and other self injurious behaviors**
Dr. Mark DeAntonio
- 10:00 A.M. **BREAK**
- 10:15 A.M. **There is no such thing as a lost cause**
Keynote Speaker, Joshua DeLeeuw
- 11:00 A.M. **Meet the parents – How to work effectively with our clients' families**
Professor Paul Holland
- 11:45 P.M. **LUNCH**
- 12:45 P.M. **Are juvenile sex offenders tomorrow's adult predators?**
Professor Franklin Zimring
- 1:45 P.M. **CYA to DJJ: Has more than the name changed?**
Humberto Benitez and Shelan Joseph
- 2:15 P.M. **BREAK**
- 2:30 P.M. **Juvenile adjudications: How culpability is impacted by immaturity and adversity**
Dr. Mark Cunningham
- 3:30 P.M. **A look to the future – Juvenile Delinquency Guidelines**
Jennifer Mayer and Maureen Pacheco
- 4:00 P.M. **Adjournment**

The Los Angeles County Public Defender's Office

23rd Annual

Juvenile Delinquency Law Training Seminar

Furama Hotel
8601 Lincoln Blvd
Westchester, California
Friday, April 15, 2005

8:00 A.M.	Registration	
8:30 A.M.	Case Law and Legislative Updates.....	Michael Theberge
9:15 A.M.	Special Education Advocacy for Children In the Delinquency System	<i>Keynote Speaker</i> Joseph Tulman
10:15 A.M.	BREAK	
10:30 A.M.	Justice for Girls: Defense Strategies.....	Sandra Simkins
11:30 A.M.	Representing the Dependent Child in Delinquency Court	Barbara Duey, Maureen Pacheco, Amy Pellman and Lara Holtzman
12:15 P.M.	LUNCH	
1:15 P.M.	Close Encounters of the Adolescent Kind.....	Abigail A. Baird, Ph.D.
2:15 P.M.	Special Immigrant Juvenile Status: A Path to Lawful Permanent Residency for Undocumented Youth in the Juvenile Justice System Who Have Been Abused, Abandoned or Neglected	Kristen Jackson
3:00 P.M.	BREAK	
3:15 P.M.	Ethical Issues in Juvenile Delinquency Practice.....	Cyn Yamashiro
5:15 P.M.	ADJOURNMENT	

Appendix F:
Panel Heads Annual Seminar Materials

**JUVENILE DELINQUENCY ATTORNEYS
JUVENILE DELINQUENCY SEMINAR**

PROVIDER NUMBER: 16650

MARCH 15, 2014

**EMBASSY SUITES GLENDALE- 800 N. CENTRAL
REGISTRATION 8:30**

CREDIT: HOURS- 6 TOTAL/ ETHICS- 1 HOUR

9:00- 10:00- 1 HOUR

SOCIAL WORKERS IN JUVENILE DELINQUENCY COURT

MONICA LUJAN, LCSW; TIFFINI COLEMAN-HUBBARD,MSW

JOAN HUBBELL, LCSW; RAQUEL WARLEY, LCSW

ROSA LESLIE, MSW

10:00-11:00- 1 HOUR

PREPARING FOR AND CONDUCTING FITNESS HEARINGS

TONY GOVEA, J.D., MARLENE KABERT, J.D. ,YVONNE MASSAIS-JOBY, J.D

11:00-12:00- 1 HOUR

CASE LAW UPDATE

CYNTHIA BARNES, ATTORNEY AT LAW

12:00-12:30- LUNCH

12:30-1:30- 1 HOUR

ETHICS ISSUES CONFRONTING DELINQUENCY ATTORNEYS

JARED EISENSTAT J.D. & INGLEWOOD PANEL

1:30-3:30- 2 HOURS

DEPARTMENT OF JUVENILE JUSTICE

GEORGE VALENCIA: PAROLE AGENT

ELEANOR SILVA: ASSOCIATE DIRECTOR

DR. HEATHER BOWLDS: SEXUAL BEHAVIOR TREATMENT

COORDINATOR

rites of passage- SHAWN LENAHAN

**JUVENILE DELINQUENCY ATTORNEYS
JUVENILE DELINQUENCY SEMINAR**

PROVIDER NUMBER: 16650

FEBRUARY 2, 2013

**EMBASSY SUITES GLENDALE- 800 N. CENTRAL
REGISTRATION 8:30**

COSTS: \$80.00 PANEL ATTORNEYS/ \$90.00 NON - PANEL

**CREDIT: HOURS- 6 TOTAL
ETHICS- 1 HOUR**

9:00- 10:00- 1 HOUR

**JED MINOFF: LOS DIRECTOR OF PROBATION-
TRANSITIONAL SERVICES FOR YOUTH**

10:00-12:00- 2 HOURS

JUDGE KURT KUMLI: CASE LAW UPDATE

12:00-12:30- LUNCH

12:30-1:30- 1 HOUR

**ATTORNEY ANDREW A. SERVAIS: ETHICS ISSUES
CONFRONTING JUVENILE ATTORNEYS**

1:30-3:30- 2 HOURS

**PROFESSOR SANDRA GRAHAM: CHAIR IN EDUCATION AT
UCLA- ADOLESCENT DEVELOPMENTAL PERSPECTIVE ON
JUVENILE OFFENDERS.**

**DR. HEIDI ROTHEIM: MENTAL HEALTH SERVICES IN
DETENTION FACILITIES: WITH A FOCUS ON DOROTHY KIRBY
PROFESSOR ANDREA RAMOS: DIRECTOR OF IMMIGRATION
LAW CLINIC SOUTHWESTERN LAW SCHOOL**

JCBA- JUVENILE COURTS BAR ASSOCIATION

JUVENILE DELINQUENCY SEMINAR

PROVIDER NUMBER: 1118

JUVENILE COMPETENCY

1 HOURS MCLE

DATE: September 1, 2011

TIME: 2:00 PM- 3:00 PM

LOCATION: SYLMAR JUVENILE COURT

SPEAKER:

COMM. ROBERT LEVENTER

JCBA- JUVENILE COURTS BAR ASSOCIATION
JUVENILE DELINQUENCY SEMINAR

6 HOURS MCLE

DATE: SATURDAY MARCH 12, 2011

TIME: 9:00 AM- 3:00 PM

COFFEE WILL BE PROVIDED IN THE MORNING AND
LUNCH IS INCLUDED

PLACE: GLENDALE HILTON HOTEL

100 W. GLENOAKS BLVD., GLENDALE (818)551-4021

SPEAKERS:

HONORABLE KURT KUMLI: CASE LAW UPDATE

COMPETENCY TESTING, EXPERT TESTIMONY, CHANGES IN THE
LAW & LEGISLATION AND EFFECTIVELY LITIGATING
INCOMPETENCY BY:

ARTHUR L. BOWIE- SUPERVISING ATTORNEY, SACRAMENTO P.D.

DR. SANJAY SAHGAL- PSYCHIATRIST

DOUGLAS ALLEN, Ph.D. - PSYCHOLOGIST

FOR ATTENDANCE INFORMATION TALK TO YOUR PANEL HEAD

FOR PRIVATE ATTORNEYS PLEASE CONTACT:

Marlene Kabert- Gerson: Sylmar Panel Head (213)389-2266 or
marlenekabert@mccl.com

COST FOR THE CONFERENCE WILL INCLUDE FUNDS TO BUY GIFTS FOR KIRBY

PARKING- THERE IS AN \$8.00 FEE FOR HOTEL PARKING

**JCBA-JUVENILE COURTS BAR ASSOCIATION
JUVENILE DELINQUENCY SEMINAR**

PROVIDER NUMBER: 1118

2 HOURS MCLE CREDIT

JULY 21, 2010

12:00 PM- 2:00 PM.

**LOCATION: SPORTSMEN'S LODGE
STUDIO CITY, CA**

OUR SPEAKERS:

CYNTHIA BARNES: CASE LAW UPDATE

SYLMAR PANEL ATTORNEYS: JUVENILE PROCEDURES

FOR FURTHER INFORMATION & COSTS- CONTACT YOUR PANEL HEAD OR

ATTORNEY MARLENE KABERT-GERSON (213)389-2266

JCBA-JUVENILE COURTS BAR ASSOCIATION

JUVENILE DELINQUENCY SEMINAR

5 HOURS MCLE CREDIT

MARCH 6, 2010

8:30 AM- 2:30 PM.

BREAKFAST & SNACKS PROVIDED

LOCATION: DOROTHY KIRBY CENTER

1500 S. McDONNELL, COMMERCE

OUR SPEAKERS:

HONORABLE KURT KUMLI- CASE LAW UPDATE

**CALIFORNIA SUPERIOR COURT JUDGE FOR THE COUNTY OF SANTA
CLARA**

NATIONALLY RECOGNIZED EXPERT IN JUVENILE LAW & POLICY

MELISSA A. PITTS- DEPARTMENT JUVENILE JUSTICE

DJJ INTAKE & COURT SERVICES LIAISON AND CONSULTANT

ATTORNEY CLAUDETTE BROSSARD-

PANEL ATTORNEY FOR PASADENA 241.1 COURT-

HANDLING CROSS-OVER DEPENDENCY/ DELINQUENCY CASES

VISIT WITH KIRBY KIDS

FOR FURTHER INFORMATION & COSTS- CONTACT YOUR PANEL HEAD OR

ATTORNEY MARLENE KABERT-GERSON (213)389-2266

JCBA—JUVENILE COURTS BAR ASSOCIATION
JUVENILE DELINQUENCY SEMINAR

HONORABLE KURT KUMLI- CASE LAW UPDATE

CALIFORNIA SUPERIOR COURT JUDGE FOR THE COUNTY OF SANTA CLARA

NATIONALLY RECOGNIZED EXPERT IN JUVENILE LAW & POLICY

DIRECTOR OF DOROTHY KIRBY- MIKE VARELLA

ADMISSION PROCEDURES FOR SUITABLE PLACEMENT & TOUR

JANUARY 24, 2009 * 8:30 AM- 12:30 PM

LOCATION: DOROTHY KIRBY- 1500 S. McDonnell, Commerce

CERTIFICATE OF ATTENDANCE
FOR CALIFORNIA MCLE

Eligible California Minimum Continuing Legal Education (MCLE) Credit:

TOTAL HOURS: THREE HOURS

TO BE COMPLETED BY ATTORNEY AFTER PARTICIPATION IN ACTIVITY*

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE hours, including:

TOTAL HOURS: **THREE HOURS**

Legal Ethics: _____ Substance Abuse/Emotional Distress: _____

Law Practice Management: _____

Elimination of Bias: _____ Prevention of Violations of Civil Rights and Hate Crimes: _____

DATED: _____

SIGNATURE: _____

REMINDER: Keep this record of attendance for four (4) years. In the event you are audited by the State Bar, you may be requested to submit this record of attendance to the State Bar. Send to the State Bar only if you are audited.

*If the provider has not granted credit for legal ethics, elimination of bias, substance abuse/emotional distress, law practice management, or prevention of violations of civil rights and hate crimes, you cannot claim credit in those areas.

MCLE PROVIDER NUMBER: 1118

JCBA—JUVENILE COURTS BAR ASSOCIATION.

JUVENILE DELINQUENCY SEMINAR
EDUCATION RIGHTS AND PROCEDURES
FOR MINORS
APPOINTING EDUCATION ATTORNEYS

BY: SUSEL ORELLANA

JULY 10, 2008** 12:00-2:00 PM

At Sylmar Juvenile Court
CERTIFICATE OF ATTENDANCE
FOR CALIFORNIA MCLE

Eligible California Minimum Continuing Legal Education (MCLE) Credit:

TOTAL HOURS: TWO HOURS

TO BE COMPLETED BY ATTORNEY AFTER PARTICIPATION IN ACTIVITY*

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE hours, including:

TOTAL HOURS: TWO HOURS Substance Abuse/Emotional Distress: _____
Legal Ethics: _____ Law Practice Management: _____
Elimination of Bias: _____ Prevention of Violations of
Civil Rights and Hate Crimes: _____

DATED: _____

SIGNATURE: _____

REMINDER: Keep this record of attendance for four (4) years. In the event you are audited by the State Bar, you may be requested to submit this record of attendance to the State Bar. Send to the State Bar only if you are audited.

*If the provider has not granted credit for legal ethics, elimination of bias, substance abuse/emotional distress, law practice management, or prevention of violations of civil rights and hate crimes, you cannot claim credit in those areas.

MCLE PROVIDER NUMBER: 1118

JCBA—JUVENILE COURTS BAR ASSOCIATION

JUVENILE DELINQUENCY SEMINAR

MENTAL HEALTH ISSUES

SPEAKER JODI OGURO

MENTAL HEALTH ADVOCATE

THURSDAY JANUARY 17, 2008

At Sylmar Juvenile Court
CERTIFICATE OF ATTENDANCE
FOR CALIFORNIA MCLE

Eligible California Minimum Continuing Legal Education (MCLE) Credit:

TOTAL HOURS: TWO HOURS

TO BE COMPLETED BY ATTORNEY AFTER PARTICIPATION IN ACTIVITY*

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE hours, including:

TOTAL HOURS: **TWO HOURS** Substance Abuse/Emotional Distress: _____
Legal Ethics: _____ Law Practice Management: _____
Elimination of Bias: _____ Prevention of Violations of
Civil Rights and Hate Crimes: _____

DATED:

SIGNATURE

REMINDER: Keep this record of attendance for four (4) years. In the event you are audited by the State Bar, you may be requested to submit this record of attendance to the State Bar. Send to the State Bar only if you are audited.

**If the provider has not granted credit for legal ethics, elimination of bias, substance abuse/emotional distress, law practice management, or prevention of violations of civil rights and hate crimes, you cannot claim credit in those areas.*

MCLE PROVIDER NUMBER: 1118

JCBA—JUVENILE COURTS BAR ASSOCIATION
JUVENILES DELINQUENCY

AB3632 & IEP

With Speaker Mary Chester

From the Hart School District

Friday, November 16, 2007

At Sylmar Juvenile Court
CERTIFICATE OF ATTENDANCE
FOR CALIFORNIA MCLE

Eligible California Minimum Continuing Legal Education (MCLE) Credit:

TOTAL HOURS: TWO HOURS

TO BE COMPLETED BY ATTORNEY AFTER PARTICIPATION IN ACTIVITY*

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE hours, including:

TOTAL HOURS: **TWO HOURS** Substance Abuse/Emotional Distress: _____
Legal Ethics: _____ Law Practice Management: _____
Elimination of Bias: _____ Prevention of Violations of
Civil Rights and Haté Crimes: _____

DATED:

SIGNATURE:

REMINDER: Keep this record of attendance for four (4) years. In the event you are audited by the State Bar, you may be requested to submit this record of attendance to the State Bar. Send to the State Bar only if you are audited.

**If the provider has not granted credit for legal ethics, elimination of bias, substance abuse/emotional distress, law practice management, or prevention of violations of civil rights and hate crimes, you cannot claim credit in those areas.*

MCLE PROVIDER NUMBER: 1118

Appendix G:

**Los Angeles County Public Defender Attorney
Performance Standards (February 8, 2010)**

<p style="text-align: center;">LAW OFFICES LOS ANGELES COUNTY PUBLIC DEFENDER POLICIES AND PROCEDURES</p>	<p style="text-align: right;">Supersedes Policies Dated 4/15/1991, 2/10/1983 DATE: February 8, 2010 PAGE: 1 of 6</p>
<p>TITLE: ATTORNEY PERFORMANCE STANDARDS</p>	<p>APPROVED:</p> <p style="text-align: center;">MICHAEL P. JUDGE PUBLIC DEFENDER</p>

These Attorney Performance Standards have been developed by the Law Offices of the Angeles County Public Defender to provide raters in the office with a reference guide for observing and evaluating performance and to provide attorneys with information as to how their performance will be rated. They provide a basic for communication about expectations, level of performance being achieved, career development, desirable training and assignment considerations. Although the factors and items described below to not track the categories in the current Performance Evaluation Form (attached) word for word, they embody the standards to be used in evaluating the quality of work done by the Department's attorneys.

APPLICATION

The factors and items contained in the Performance Evaluation for Deputy Public Defenders have been selected to provide a consistent set of subject matter for discussion when rating attorneys in the office.

It is recognized that the great variation in assignments precludes a single definitive statement of expectations that will cover all circumstances. Further, very few aspects of an attorney's performance can be evaluated in quantitative or purely objective terms. For this reason, the "standards" provided for use with the Performance Evaluation form should be applied as general guidelines. Specific expectations must remain a function of the individual assignment situation and the rater's professional judgment in view of departmental requirements.

No effort should be made to establish a set mathematical relationship between "items" or "factors" in order to weigh their influence on either overall factor ratings or overall performance ratings. The significance of a particular aspect of performance must be judged in the context of its importance to the effectiveness of the individual's performance and the circumstances of the specific assignment. An attribute could be of overriding importance in one situation but not in another.

The factors (categories) of "Preparation and Knowledge" and "Advocacy" include most key aspects of the attorney's technical abilities as a lawyer. It is important to reflect how well the attorney's practice meets the demands of a public defender environment. Ratings are specifically of the attorney's performance in the role of Deputy Public Defender in accordance with the attendant classification standards.

In this regard there is some concern with the use of the term "competent" as the phrase "competent counsel" has legal significance of constitutional dimension. An attorney renders adequate assistance of counsel when he acts in a manner to be expected of reasonably competent attorneys acting as diligent advocates. (People v. Pope (1979) 23 Cal.3d 412, 425.) However, it must be assumed that any attorney regularly employed by the Public Defender is "competent" in the constitutional sense. That being the case, "constitutional competence" has little or no relationship to a "Competent" rating on a Performance Evaluation. A Deputy Public Defender who is rated overall "Improvement Needed" or "Unsatisfactory" must be "legally competent" while he continues to represent indigent defendants. "Constitutional competence" is, therefore, the minimum standard for employment as a Deputy Public Defender. It cannot be equated with a "Competent" rating on a Performance Evaluation.

The Deputy Public Defender is evaluated as a county employee working for the Public defender, not as an attorney in a vacuum.

SUPERVISORY ASSIGNMENTS

When an attorney is assigned in a supervisory capacity, technical skills should still be rated. If the assignment does not involve handling cases, the rating can be based on how well the attorney uses knowledge and experience to provide guidance and advice to subordinates in the various skill areas.

A. PREPARATION AND KNOWLEDGE

1. RECOGNIZING LEGAL ISSUES: The lawyer recognizes such items as demurrers, statutes of limitation, joinder and severance, search and seizure issues, issues regarding confessions and admissions, destruction of evidence, and any other issue presented.
2. INTERVIEWING TECHNIQUES: The lawyer guides interviews efficiently and effectively. The lawyer gains the client's confidence, gathers necessary case information, takes an appropriate role in the decision-making process, and allocates time according to assignment demands.
3. LEGAL RESEARCH: The lawyer has a satisfactory working knowledge of resource materials, maintains an adequate trial notebook, and keeps current on the law.
4. INVESTIGATION: The lawyer recognizes those cases in which investigation is required. Requests are reasonable and prepared in a clear and timely fashion, and generally should include the prosecution theory of the case, the defense theory, and the specific actions requested.
5. WRITTEN MOTION PRACTICE: The lawyer prepares clear and succinct written points and authorities and files them timely in

appropriate cases. The lawyer exercises creativity and initiative in preparing motions and does not excessively rely on boilerplate motions.

6. USE OF EXPERTS: The lawyer seeks assistance of experts *only* in appropriate cases. The lawyer provides appropriate information to the expert in a timely fashion and the client is prepared for the expert's examination. The lawyer adequately prepares for presentation of expert testimony.
7. PREPARATION OF WITNESSES: The attorney makes proper evaluations concerning scheduling of witnesses and preparation of witnesses and clients in such areas as courtroom procedures, direct and cross-examination, importance of demeanor, volunteering of information, arguing with prosecutors, and physical appearance.

B. ADVOCACY

1. COURTROOM PRESENCE: In all courtroom appearances, the lawyer seeks, collects, and organizes the facts, and then presents them in a cogent and coherent manner. The lawyer's demeanor and appearance are professional and consistent with effective representation.
2. TRIAL SKILL: As an advocate, the lawyer demonstrates effective trial skills including but not limited to such items as voir dire; direct and cross-examination, introduction of, objection to, and admissibility of evidence. Although each individual skill need not be rated, overall practice is discussed with respect to appropriate application of skills in given assignment situations. This should be based on the attorney's understanding of underlying legal principles and exercise of proper judgment as to when and how skills are utilized. Strengths and weaknesses should be commented upon and an evaluation made of the attorney's performance on balance as a defense advocate.
3. CASE NEGOTIATIONS AND SENTENCING: The lawyer enters into case negotiations conversant with the significant issues and ascertainable facts. The lawyer recognizes plea alternatives and consequences and properly advises the client in a manner which develops a sense of trust and confidence. The lawyer communicates effectively with the other parties involved in the case. The lawyer makes thorough use of sentencing laws, seeking imaginative and creative sentencing alternatives.

C. ATTITUDE, ADAPTABILITY AND PRODUCTIVITY

1. ETHICS AND INTEGRITY: The lawyer is aware of and appropriately observes the Rules of Professional Conduct and other ethical obligations of the defense bar. The integrity of the lawyer positively affects client representation with court personnel and other members of the Criminal Justice System.
2. WILLINGNESS TO TRY CASES: The lawyer takes cases to trial when appropriate after consideration of disposition alternatives.
3. VOLUME AND CALENDAR MANAGEMENT: The lawyer satisfactorily handles the number of cases required by the assignment and manages time and schedule to maximize personal effectiveness and benefit to clients. The lawyer completes cases in a timely fashion without abuse of continuances, recognizing and effectively using case settings, scheduling of motions and court calendar conditions.
4. AVAILABILITY AND ASSIGNMENT FLEXIBILITY: The lawyer willingly accepts unscheduled assignments, including probation violations and bench warrants. The lawyer can perform and does accept assignments that involve varying difficulty, location and functional responsibility.
5. WORKING INDEPENDENTLY: The lawyer demonstrates the skills and confidence to effectively handle the assigned caseload. The lawyer makes those decisions required in cases but seeks consultation when appropriate.
6. PAPERWORK PROCESSING AND TIMELINESS: The lawyer maintains notes and records of pertinent case facts sufficient to provide proper client representation, to facilitate case coverage in the lawyer's absence and to allow for appellate review. The lawyer processes necessary administrative forms and reports in a complete and timely fashion.
7. PUNCTUALITY AND ATTENDANCE: The lawyer's attendance and work hours comply with office policy. The lawyer appears in court punctually and keeps the office and court informed of his or her whereabouts.

D. EFFECTIVENESS OF PERSONAL INTERACTIONS

1. CLIENT: The lawyer interviews both custody and non-custody clients sufficiently to provide competent representation for each court appearance. The lawyer develops and maintains the client's

trust and confidence. The lawyer keeps the client advised as to the status of the case and explains constitutional and statutory rights. The lawyer meets the challenge of handling problems including but not limited to mentally disordered client, hostile clients, and resistive clients. The lawyer maintains effective rapport with client family and friends without compromising client confidence.

2. PUBLIC DEFENDER STAFF: The lawyer's interactions with other lawyers in the office, secretarial and clerical staff, investigators, and other Public defender staff demonstrates a spirit of mutual cooperation and assistance. The lawyer treats colleagues including support staff with due respect. The lawyer is considerate of the time and volume requirements and resource limits of the office.
3. MEMBERS OF THE JUSTICE SYSTEM: The manner in which the lawyer interacts with judicial officers, prosecutors, courtroom personnel, law enforcement personnel, co-counsel, and other members of the Justice System contributes to the effective representation of the Department's clients.
4. OTHERS: The manner in which the lawyer interacts with witnesses, the press, and the public contributes to the effective representation, of the Department's clients.

E. SUPERVISORY SKILLS:

1. PLANNING AND ASSIGNING: The supervisor organizes the work of the office through systems and procedures that are efficient and effective, allowing for individual court requirements and extraordinary situations. The supervisor anticipates workload variations and staffing availability in scheduling work. The supervisor maintains effective coordination with other justice system agencies at the location. The supervisor knows and considers such variables as individual attorney skills, court idiosyncrasies, and case volume and substance so as to achieve effective assignments and minimize unavailability.
2. TRAINING AND DEVELOPMENT: The supervisor identifies training needs both for individual attorneys and overall staff development. The supervisor provides training either personally or through seeking appropriate assistance and acquiring resources and making them available. The supervisor orients attorneys to the court facility and its personnel and provides guidance that will assist individuals in becoming more skillful and effective as public defense attorneys.

3. EVALUATING PERFORMANCE: The supervisor accurately assesses the level of work performance and documents both positive and negative exceptional performance. The supervisor regularly communicates attorney performance to management and the attorney in an objective, comprehensive and effective manner.
4. LEADERSHIP: Through personal example, the supervisor sets a standard for the office in maintaining workload, credibility, and attitude toward the role of a public defender. The supervisor keeps personally informed of both legal and administrative procedures, policies, and developments and informs or instructs office members so as to maintain current, effective operations consistent with the Department as a whole. The supervisor makes timely, informed decisions which reflect judgment, perspective, and exercise of authority appropriate to the supervisory level. The supervisor is available, approachable and is fair and impartial in the treatment of individuals and direction of office activities. When conflicts arise with other justice agency members, the supervisor supports attorneys in appropriately representing the best interests of the Department's clients. The supervisor effectively represents the needs of the office in departmental management and interagency planning and problem, solving. The supervisor maintains effective communication with higher management. The supervisor promotes cohesiveness and cooperation among office members to maintain their morale and productivity as a group.
5. DISCIPLINARY CONTROL: The supervisor stays well informed of employee work progress and level of performance and takes preventive or corrective measures promptly as exceptions develop. The supervisor maintains a positive approach to discipline by emphasizing constructive criticism and an active interest in employee development. The supervisor understands and effectively employs a progressively severe process of disciplinary action when problems are not corrected. The supervisor implements Department rules and regulations, and carries out decisions of higher management effectively. The supervisor handles necessary disciplinary confrontations without delay and in a forthright, objective and firm manner.

**Law Offices of the Los Angeles County Public Defender
REPORT ON ATTORNEY PERFORMANCE EVALUATION**

Overall Rating Included Yes No

Attorney	Employee Number	Position/Grade	Item Number
Evaluation Period to	Assignment(s)		Status

This report is based upon my observation and/or knowledge. It represents my best judgement of the employee's performance.

Name	Title	
Rater's Signature	Date	
Print Reviewer's Name	Reviewer's Signature	Date
Print Reviewer's Name	Reviewer's Signature	Date
Department Head/Authorized Representative	Date	

This report has been discussed with me. I am aware of the appeal procedure. I am aware that county policy requires compliance with insurance and seat belt laws. The required information is as follows:

Home Address	Zip Code	Telephone Number	
State Bar Number	Bar Dues Current (Circle One) Yes No	Driver's License Number	Expiration Date
Auto Insurance Company/Name	Policy Number	Limits	
In Case of Emergency Notify: Name	Telephone Number	Relationship	
Employee's Signature	Date	Supervisor's Signature	Date

A copy of this Report was	<input type="checkbox"/> Mailed To	<input type="checkbox"/> Given to Employee By _____
On:	Address Mailed:	

PERFORMANCE AND EVALUATION STANDARDS

These Performance and Evaluation Standards have been developed for attorney positions in the Law Offices of the Los Angeles County Public Defender. They are intended as a reference guide for observing and evaluating performance and conversely to provide attorneys with information as to how their performance will be rated. They establish a basis for communicating about expectations, level of performance achieved, career development, desirable training, and assignment considerations.

APPLICATION

The components contained in the Performance Evaluation for Deputy Public Defenders have been selected to provide a consistent set of subject matter for discussion when rating attorneys in the office. It is recognized that the great variation in assignments precludes a single definitive statement of expectations that will cover all circumstances. Further, very few aspects of an attorney's performance can be evaluated in quantitative or purely objective terms. Specific expectations must remain a function of the individual assignment situation and the rater's professional judgment in view of departmental requirements.

For ease of rating, a lawyer's evaluation has been divided into three main skill areas. These three skill areas have been further divided into 10 components. Although these divisions exist, no rating will be rendered either for such a skill area or "overall" for the lawyer except when a lawyer is eligible for a merit based pay increase. The significance of a particular aspect of performance must be judged in the context of its importance to the effectiveness of the individual's performance and the circumstances of the specific assignment.

The components include most key aspects of the attorney's technical abilities as a lawyer. It is important to reflect how well the attorney's practice meets the demands of a Public Defender environment. Evaluations are not to be viewed as an attorney in a vacuum, they are specifically of the attorney's performance as a County employee in the role of a Deputy Public Defender in accordance with the Attorney Grade Level (classification) standards.

In the preparation of this evaluation, a rater shall encourage a lawyer to provide direct input, through a meeting and/or memorandum regarding rating period performance in relation to the components. Raters shall consider this input, along with personal observations, Deputy-in-Charge input, and work product. At the conclusion of the rating process the rater shall discuss the current evaluation with the lawyer and strive to set goals for the next rating period. The lawyer should view the process as a continuing one of evaluation and goals.

EVALUATION CATEGORIES

STRENGTH OF PERFORMANCE - Numerical score of 1, 2, 3, or 4 (increasing with the higher number).

IMPROVEMENT NEEDED - A lawyer who needs improvement in the Department standards as defined in the skill area.

UNSATISFACTORY - A lawyer who fails to meet the Department Standards as defined in the skill area.

A lawyer rated "Improvement Needed" or "Unsatisfactory" must be "legally competent" (People v. Pope (1979) 23 Cal.3d 412, 425) in order to continue to represent clients.

STRENGTH OF PERFORMANCE

The components have been drafted as ideals/the desired level of performance for all lawyers. The numerical score (1, 2, 3, 4) reflects the strength of performance with which the lawyer approximates the standard. Strength of performance is measured by any or all of the following:

- The **consistency** and **frequency** of cases in which the lawyer approximates the standards;
- The **degree of excellence** in the work product of the lawyer;
- The **independence** with which the lawyer approximates the standards;
- The **special flairs** used by the lawyer to approximate the standards, such as **creativity, personality, confidence, etc.**

FORM APPLICATION

Each component of a skill is to be assessed by circling the appropriate evaluation category. If the component has been evaluated using the strength of performance criteria, the appropriate number is circled. Space has been provided beneath each component for the rater to enter appropriate comments. These comments should succinctly record particular strengths and weaknesses. These comments are informative for the office and provide feedback to the attorney. In case of an "Improvement Needed" or "Unsatisfactory" rating, raters must provide more detailed comments.

OVERALL RATINGS

Overall performance ratings will be given only to those attorneys who are eligible for a merit based step increase. "Eligible" means a Grade III or Grade IV attorney who is on step 6 or above and has not yet reached the highest level of any merit based step increase. An overall rating will be determined by use of the total numerical score obtained on the component ratings applying the formula as described below.

The only overall rating to be considered is the category of "outstanding". An attorney will receive an overall rating of "outstanding" only if the adjusted final score is 82 points and above, based on a 100 point scale.

To obtain the adjusted final score, the raw point total obtained from the 10 components shall be multiplied by 2. Twenty points shall then be added to this total, yielding a final score.

The raw point total for those attorneys who are in assignments in which they do not receive a rating in every component will be calculated by multiplying the average of the rated components by 10. This result shall be multiplied by 2 and 20 points added to obtain the final score. If the final score is not a whole number, then it will be rounded off to the closest whole number--utilizing one decimal point (e.g., a total of 81.4 and below will be rounded off to 81 and a total of 81.5 and above will be rounded off to 82).

ADVOCACY AND COMMUNICATION SKILLS

CLIENT RELATIONS

The lawyer develops a professional relationship and rapport with the client. This includes gaining the client's trust and confidence, and obtaining from the client the information that is necessary to effectively and efficiently prepare the case for trial and/or disposition. The lawyer fully advises the client of all rights and options, and meaningfully and effectively imparts his or her opinion of those alternatives which best serve the interests of the client.

The lawyer interacts with the client's family in a professional manner, protecting client confidences. The lawyer demonstrates maturity and professionalism when faced with difficult clients.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

COURTROOM EFFECTIVENESS

The lawyer develops a working professional atmosphere in the courtroom. The lawyer gains the respect of, and is able to communicate openly with the courtroom participants. The lawyer has a willingness and a reputation to try cases. The lawyer has a professional demeanor and is appropriately attired.

Prior to court appearances, the lawyer is familiar with the facts and the law relating to the case, and thereafter presents them in a logical and effective manner. The lawyer thinks on his or her feet, makes appropriate decisions under pressure, and shows spontaneity, judgment and common sense in the courtroom.

The lawyer is effective during jury selection, direct and cross examination, and is aware of and applies the laws of evidence. The lawyer argues zealously, but with judgment on behalf of the client.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

CASE NEGOTIATIONS AND SENTENCING SKILLS

The lawyer maintains open lines of communication with the prosecution and bench officers. The lawyer gathers background information, reviews resources and develops appropriate strategy to reach the desired outcome. The lawyer recognizes the strengths and weaknesses of the case, including plea alternatives and with knowledge of sentencing laws, negotiates the best dispositions after appropriately advising the client. The lawyer counsels the client for pre-sentencing interviews and, when appropriate, furnishes additional information to benefit the client. The lawyer participates in the sentencing hearing and demonstrates knowledge of applicable procedural and substantive laws so as to insure protection of the client's rights.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

CASE ANALYSIS AND PREPARATION SKILLS

LEGAL ANALYSIS, RESEARCH, AND WRITING SKILLS

The lawyer recognizes legal issues and has a working knowledge and understanding of resource materials while staying informed of current law. The lawyer exercises creativity and initiative in preparing motions and develops case strategy and alternative approaches to effectively represent the best interests of the client.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

EFFECTIVE USE OF INVESTIGATORS, PARALEGALS, EXPERTS AND WITNESSES

The lawyer recognizes cases in which the use of an investigator and/or paralegal would be appropriate. Requests are reasonable and timely and information is provided that presents clear guidance and specific objectives.

The lawyer seeks the assistance of experts in appropriate cases, exercising judgment in matching the needs of the case with the qualifications, abilities and reputation of the expert. The lawyer provides relevant information to the expert in a timely fashion.

All witnesses, including experts, are interviewed to determine if and in what order they should be called. The lawyer prepares witnesses and clients before presentation of testimony, covering such areas as courtroom procedures, demeanor and appearance and direct and cross examination.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

WORK HABITS AND ORGANIZATIONAL SKILLS

The lawyer demonstrates sound judgment and reasoning in evaluating and allocating time and resources to each case, and makes use as appropriate of methods and tools that achieve productivity and quality. The lawyer meets the challenge and demands of calendar and case management with confidence, skill and effectiveness. Assignments are completed in a timely fashion and reflect a consistently high quality. The lawyer budgets time in a manner that allows for the interview of clients and witnesses, preparation of investigation requests, acceptance and return of telephone calls, and all other steps necessary to provide quality representation for the client. Case files are appropriately documented and the lawyer's office, files, and legal materials are organized in a manner that facilitates retrieval, review, and use by the lawyer and others.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

ROLE ATTITUDE AND EXPERIENCE

EXPERIENCE

The lawyer's level of experience is demonstrated by past and present ability to handle cases of increasing complexity and difficulty at his or her grade level. The lawyer increasingly is more adept and skilled in handling case responsibilities in and out of the courtroom. Experience as defined in this component emphasizes the degree of wisdom, knowledge, judgment, professional care, maturity, and practical abilities with which the lawyer performs the assigned responsibilities.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

PROFESSIONAL RELATIONS AND ROLE ATTITUDE AS A DEFENSE ATTORNEY

The lawyer interacts and communicates with colleagues, court personnel, resource persons, and the community to enhance efforts on behalf of the client. While appreciating the adversarial role of a defense attorney, the lawyer projects a professional image and adheres to the highest ethical standards while using judgment and common sense. The lawyer exhibits a positive attitude towards clients and is understanding and tolerant of all persons, lifestyles, and beliefs.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

COMPLIANCE WITH POLICIES AND PROCEDURES

The lawyer complies with County and departmental directives, policies and procedures. Attendance is regular and proper office hours are observed. The lawyer makes punctual court appearances, keeps appointments and informs the office of his or her whereabouts.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

ROLE ATTITUDE AS A PUBLIC DEFENDER, ASSIGNMENT FLEXIBILITY, AND LEADERSHIP

The lawyer acts professionally and is a credit to the Office of the Public Defender. The lawyer accepts any assignment or special tasks, including the responsibility of representing clients in more complex cases. As a team player, the lawyer accepts emergency assignments of cases, handles a fair share of bench warrant pick-ups and probation violations, assists court partners when necessary and handles matters for unavailable colleagues. The lawyer's interaction with all staff contributes to office morale and demonstrates an attitude and knowledge that commands respect, trust, and cooperation. The lawyer establishes effective working relationships through objectivity, openness, and impartiality. The lawyer is accessible and helpful to others while being a resource and setting an example for other lawyers.

UNSATISFACTORY IMPROVEMENT NEEDED 1 2 3 4 Rating: _

ONLY DPD III (6TH STEP) AND DPD IV (7TH STEP)

OVERALL RATING FORM

<p>Name of Employee:</p> <p>Deputy Public Defender</p>
--

Final Score	<div style="display: flex; align-items: center; justify-content: center;"> <div style="border: 1px solid black; padding: 5px; margin-right: 5px;">0</div> X 2 = <div style="border: 1px solid black; padding: 5px; margin-right: 10px;">0</div> + 20 = <div style="border: 1px solid black; padding: 5px; margin-left: 10px;">20</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px; font-size: 10px;"> Raw Score Final Score </div>
<p>For Rating Period</p> <p>Outstanding</p>	<p>From: </p> <p>To: _____</p>
Rater's Signature	Date

FOR PERSONNEL OFFICE USE ONLY		
1. Current Year Rating	From: _____ To: _____	Outstanding <input type="checkbox"/>
2. Previous Year Rating	From: _____ To: _____	Outstanding <input type="checkbox"/>
3. Previous Year Rating	From: _____ To: _____	Outstanding <input type="checkbox"/>



County of Los Angeles CHIEF EXECUTIVE OFFICE

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Chief Executive Officer

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HILDA L. SOLIS
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MARK RIDLEY-THOMAS
Second District

SHEILA KUEHL
Third District

JANICE HAHN
Fourth District

KATHRYN BARGER
Fifth District

March 23, 2018

To: Supervisor Sheila Kuehl, Chair
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Janice Hahn
Supervisor Kathryn Barger

From: Sachi A. Hamai
Chief Executive Officer

JUVENILE INDIGENT DEFENSE PROGRAM EVALUATION - ONE-YEAR REPORT (ITEM NO. 11, AGENDA OF APRIL 5, 2016)

On April 5, 2016, the Board approved a motion by Supervisors Ridley-Thomas and Kuehl, directing the Chief Executive Officer (CEO) and County Counsel to report back to the Board in one year with a program evaluation following the implementation of a new countywide juvenile indigent defense program. A subsequent motion issued on October 11, 2016, directed the establishment of a new County Juvenile Indigent Defense (JID) structure effective November 1, 2016, whereby the Public Defender, Alternate Public Defender and the Los Angeles County Bar Association (LACBA) would provide legal representation to juveniles. The motion also directed the CEO to amend the existing LACBA contract for the new juvenile defense program no later than January 31, 2017, with the assignment of tertiary case conflicts to the LACBA approved indigent juvenile defense panel attorneys. A report back on the new LACBA program was scheduled for one year after the initial implementation and hiring of key program personnel.

Attached is the one-year evaluation of the new countywide JID program prepared by the LACBA.

Summary of Findings

In recognizing the need to improve the decades-old countywide JID system, the Board commissioned a study that led to the holistic model of juvenile representation described in the attached LACBA report.

The LACBA program director oversees the new panel and sets policies and procedures with the LACBA executive team and in adherence to the County JID Statement of Work. The previous eight panels were consolidated into four new panels, with each sharing responsibility for two juvenile courts. Four LACBA program coordinators oversee daily activities of each area, acts as a court liaison, coordinates attorney resources and collects case data.

Bar Panel Application and Recruiting

Interim panels were established from March 2017 to January 31, 2018, with the understanding that attorney performance would be re-evaluated and there would be no guarantee of panel membership/participation beginning February 1, 2018. Upon selection, panel membership would be renewable every five years going forward. Application and recruitment is open to the public with attorneys recruited through legal publications and web portals.

Panel Resources - Appellate and Resource Attorneys

Pursuant to the holistic model and promoting comprehensive wraparound representation, the County-LACBA contract funds 1.0 writs and appeals attorney and 1.0 resource attorney. Each advises the regular panel attorneys in addition to providing direct representation on certain petitions.

Panel Resources - Investigator and Social Worker

In addition to the 2.0 staff attorneys, the County-LACBA contract funds 1.0 investigator and 1.0 social worker to provide ancillary support for the bar panel.

Panel Resources - Training

During the inaugural year of the new JID program, several training events have been offered:

- January 2017 – How to Handle Juvenile Transfer Cases under Prop 57 by Deputy Public Defender Rourke F. Stacy;
- June 2017 – Utilization of IJDP Human Capital, Immigration Law and Juvenile Dependency by various attorneys;
- August 2017 – Trial Lawyer’s College by TLC faculty;
- October 2017 – The Nuts and Bolts of Experts with an Emphasis on Transfer by various attorneys;
- November 2017 – Minimum Continuing Legal Education (MCLE) training by Phoenix House teaching attorneys about substance abuse;
- Upcoming February 2018 – Training focused on discovery; and
- Upcoming TBD – Training event focused on trauma informed practice.

Selected Data and Metrics

LACBA reports that early outcomes from data-driven attorney assessments are promising when compared to comparable data collected in 2008. Outlined below are key metrics that the LACBA has been tracking.

- Percentage of cases that have an expert appointed has increased by 350.0 percent;
- Dismissal rate of petitions increased 3.1 percent;
- Youth sent to camp decreased 6.0 percent;
- Rate of petitions with contested detention hearings tripled from 3.1 percent to 10.0 percent; and
- 23.5 percent of cases had at least one contested hearing.

Although data collection started in June 2017 and only represents 268 resolved cases, the LACBA program evaluation report that the new IJDP attorneys are more active and have achieved improved outcomes for their clients.

Conclusion

On the first anniversary of the new program, comparisons to baseline data from the earlier study demonstrates improvements and gains in key metrics that drive positive client outcomes. Looking forward, the program seeks continual improvement by augmenting bar panel oversight, monitoring and training. Our office is committed to ensuring that excellence in juvenile defense is achieved and justice for juveniles is promoted through zealous and well-resourced legal representation.

Each Supervisor
March 23, 2018
Page 4

If you have any questions, please contact me, or your staff may contact Sheila Williams at (213) 974-1155 or via e-mail at swilliams@ceo.lacounty.gov.

SAH:JJ:MM:SW
RCP:DR:cc

Attachment

c: Executive Office, Board of Supervisors
County Counsel
Alternate Public Defender
Los Angeles County Bar Association
Public Defender

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**INDEPENDENT JUVENILE
DEFENDER PROGRAM**

LOS ANGELES COUNTY
BAR ASSOCIATION

INDIGENT DEFENSE PROGRAM EVALUATION REPORT

MARCH 19, 2018

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lacba.org/ijdp

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INTRODUCTION

This report is provided pursuant to the Los Angeles County Board of Supervisors' request for an indigent defense program evaluation report.

On October 12, 2016, the Los Angeles County Board of Supervisors (hereinafter BOS) authorized funding for a contract with the Los Angeles County Bar Association (hereinafter LACBA) to create a new office—the Independent Juvenile Defender Program (hereinafter IJDP.) In addition to authorizing the creation of the IJDP office, the BOS mandated an hourly rate of pay for the contracted panel attorneys, rather than a flat fee. Later in October 2016, the directing attorney of LACBA's Indigent Criminal Defense Appointment Program, Ezekiel Perlo, was charged with creating an interim panel that would assume second tier conflicts. That panel began accepting appointments on November 2, 2016. Cyn Yamashiro was hired as the directing attorney for the IJDP and started on January 4, 2017. Between January 4 and February 1, Yamashiro and Perlo negotiated with the County to secure funding for the model of representation described below.

The IJDP oversees a panel of independent attorneys who provide legal services to youth who present a conflict of interest for the public defender and alternate public defender. Since January 2017, IJDP attorneys have been appointed on over 1,600 cases. The IJDP's mission is to provide its clients the highest quality legal advocacy in the juvenile delinquency system. The IJDP believes that to achieve this, its attorneys must not only address the criminal charges, but also attend to the "whole child." To that end, the IJDP employs a best practices model designed to provide comprehensive and holistic representation for youth. The IJDP's directing attorney, Cyn Yamashiro, leads a staff of eight, including an appellate attorney, resource attorney, forensic social worker, lead investigator and four program coordinators.

ADMINISTRATION

STRUCTURE

The panel structure was reconfigured to address a number of policy concerns. The eight existing, separate panels were consolidated into four panels, with each panel sharing responsibility for two separate juvenile courts. This consolidation ensures an equitable distribution of case assignments by pairing high volume courthouses with slower ones. In addition, requiring attorneys to serve in multiple courts encourages cross-pollination of best practices and helps maintain downward pressure on charge and dispositional outcomes between courthouses. The current panels are divided into four geographic quadrants: North–Lancaster & Sylmar, East–Eastlake & Pomona, South–Long Beach & Los Padrinos and West–Compton & Inglewood. In addition, the IJDP adopted a policy of assigning specific attorneys to specialty courts in order to promote attorney specialization, unique to each court. To that end, the IJDP staffs the following specialty courts with a single, assigned attorney: DJF Re-Entry Court, Dual Jurisdiction Court, STAR Court and the Sylmar Drug Court.

PROGRAM COORDINATORS

An IJDP program coordinator oversees each of the quadrants. The program coordinator’s core responsibility is to act as a court liaison, ensuring that attorneys are present in court at their appointed times and that information from the attorneys and the IJDP office flows in a timely and efficient manner. In addition, program coordinators are responsible for collecting all data described in the quality control section below. As part of our ongoing effort to improve our services and assess our staff, the IJDP surveyed judges, judicial assistants and IJDP attorneys on the performance of the program coordinators. The responses by these stakeholders are universally positive. (Exhibit 1.)

APPLICATION PROCESS/RECRUITING

All interim panel attorneys were required to reapply in March 2017 and then again in November 2017. (Exhibit 2.) The application process was open to the public and to attorneys recruited through legal publications and web portals. The first IJDP panel was created with the understanding that attorney performance would be reviewed over an initial six to nine month period. Over a six-month period in 2017, the panel attorneys were assessed, resulting in the replacement of over sixty percent of the original panel. The IJDP actively recruited former public defenders and experienced criminal defense attorneys with a demonstrated interest in, and commitment to, representing youth. Continued participation on the panel after February 2018 will be renewable every five years going forward. The renewal process will require that the attorneys reapply and that their performance be evaluated based on the criteria described below as well as feedback from lead attorneys and mentors. Proof of compliance with California Rules of Court § 5.664 is required to apply and the application process includes an interview with the director.

Attorneys were oriented on IJDP policies in April 2017 and again in January 2018. At these orientations, the attorneys received the IJDP Handbook, which details the structure of the program and enumerates all policies and procedures. (Exhibit 3.) Notably, the IJDP adopted the Los Angeles County Juvenile Delinquency Guidelines (Exhibit 4) as a baseline for practice standards for IJDP attorneys. In addition, the IJDP created a mandatory mentorship program for new panel attorneys and the director and IJDP staff attorneys conduct periodic brown bag lunch meetings to discuss practice and protocol.

ANCILLARY RESOURCES

STAFF ATTORNEYS: APPELLATE & RESOURCE

As this body is well aware, a unifying principle outlined in the BOS motion was that the quality of representation provided youth should not differ meaningfully, whether a youth is represented by an attorney in the Public Defender's office, Alternate Public Defender's office or the IJDP. The contract negotiated with the Los Angeles County Chief Executive Office memorialized staffing that would provide a package of services for IJDP clients symmetrical to those in the Public Defender and Alternate Public Defender's offices. To that end, the IJDP added an appellate attorney and a resource attorney. Both provide ongoing counsel for the panel attorneys in addition to taking on cases as attorney of record. As of September 1, 2017, each has performed approximately 450 hours of direct service.

Writs and Appeals

Notably, we have pursued pre-trial writs on behalf of eight clients and are poised to make a meaningful impact in juvenile practice in Los Angeles. In one instance, we challenged probation's policy to routinely request 18-year-old clients, still within the jurisdiction of the juvenile courts, be removed to county jail. We sought appellate review and when the court of appeal denied our writ, we sought review in the California Supreme Court. The California Supreme Court granted our request for review and remanded the matter with an order to issue a new writ, potentially requiring the juvenile courts end a policy of sending young offenders to county jail. In another case, an IJDP client was wrongly denied a detention hearing. The California Supreme Court agreed that the rules regarding the timeliness of such a hearing were constitutionally based and were established to protect the minor, not the court, and ordered the issuance of an alternative writ, resulting in the Dennis H. hearing the IJDP attorney had requested. Currently, we have one other petition pending in the California Supreme Court, which challenges the use of prior adult court transcripts in juvenile proceedings. The remaining writs we have filed all involved issues critical to ensuring due process in the juvenile courts, including the right to disclosure of exculpatory

evidence, the right to appointment of necessary experts, the right to a competency hearing, and the right to be transferred to adult court only upon substantial evidence. Even in cases where the appellate courts declined to consider the writ, IJDP attorneys were often able to prevail after the issue was carefully crafted and presented in the writ. Thus, our writ practice is a vital support for the IJDP attorneys' practices. The IJDP has also successfully filed objections to a UCLA study that preyed on the vulnerability of minors with open petitions in juvenile court. We won important concessions requiring researchers to amend the language used in their contracts and their approach to recruiting minors to include the advisement to consult counsel before agreeing to participate in research.

Resource Attorney

The resource attorney consults with IJDP panel attorneys regarding placement searches, school placement options and enrollment procedures, strategic consultations regarding referrals to specialty courts, appointment of experts on resource topics, competency to stand trial protocol, and regional center eligibility and referrals. The resource attorney also assists in locating and making resource focused training materials available to the IJDP lawyers. In addition to consultations, the resource attorney provides direct representation to clients, litigating regional center access for intellectually disabled clients, attending IHTP meetings for clients with intellectual disabilities, coordinating delinquency/dependency crossover representation, and cooperating with the Learning Rights Law Firm on IEP and disability assessments. The IJDP's resource attorney seeks out strategic partnerships with placements, school districts, and important stakeholders, including the Children's Law Center and the Public and Alternate Public Defender Offices, and has coordinated stakeholder meetings on issues of relevance to and reform efforts within the juvenile justice community.

INVESTIGATOR & SOCIAL WORKER

In addition to staff attorneys, the IJDP hired an investigator and social worker to provide ancillary support for the panel attorneys. Because a single investigator and social worker cannot provide sufficient support for fifty attorneys spread across the county of Los Angeles, the IJDP investigator and social worker created panels of investigators and social workers to account for IJDP overflow referrals. The IJDP worked directly with Hon. Terry Bork and Hon. Michael Levanas to create the sub-panels of service providers. The IJDP actively recruited investigators and social workers to create new, juvenile-specific panels. Currently the IJDP investigator and social worker administer the referrals and assist the courts in recruiting new panel members. They have a combined active caseload of 33 clients and have provided over 855 hours of direct services. In addition, the director and Judge Levanas worked together to create a simple, single-page investigator or social worker appointment form that can be submitted at arraignment. As of January 2018, the IJDP office has received a total of 86 referrals for Investigators and 55 referrals for Social Workers.

TRAINING

In addition to direct representation, the IJDP has organized a steady stream of training, starting on January 7, 2017, with *How to Handle Juvenile Transfer Cases under Proposition 57*. The seminar was conducted by Deputy Public Defender Rourke F. Stacy. It sought to provide an overview of Prop. 57 and to explain in detail how to handle transfer hearings.

In June, the office organized a second training on *Utilization of IJDP Human Capital, Immigration Law and Juvenile Dependency*. The IJDP staff addressed scenarios in which it would be appropriate and necessary to employ the IJDP resource attorney, writs and appeals attorney, or social worker, with special emphasis on referral procedures, services provided, and ethical considerations. Barbara Duey, Attorney Supervisor and Crossover Director of the Children's Law Center of Los Angeles, presented on juvenile dependency records and the representation of foster youth in delinquency court. Graciela Martinez and Albert Camacho from the Los Angeles County Public Defender Immigration Law Unit covered immigration consequences for juveniles.

The IJDP hosted the Trial Lawyer's College for an exclusive training on August 26, 2017. The organization's Vice President Milton Grimes and Deputy Federal Public Defender Kim Savo, along with other esteemed TLC faculty, presented an interactive seminar dedicated to the Trial Lawyer's College action method for discovering a client's story and preparing criminal cases.

In October, the IJDP organized *The Nuts and Bolts of Experts with an Emphasis on Transfer*, where Jennifer Friedman, Assistant Special Circumstances Coordinator and Forensic Science Coordinator for the Los Angeles Public Defender's Office, and juvenile experts Rourke F. Stacy and Maureen Pacheco provided practical, hands-on training on the effective use of experts, honing in on transfer specific issues.

November saw a specialized competence MCLE training by Phoenix House, a leading substance abuse services agency, aimed at practicing attorneys who themselves may be at risk for substance abuse and for attorneys that serve clients that have been identified as using substances.

Slated for February 2018, the IJDP has created a training focused around issues of discovery. This will be the second event in a mandatory training series designed to provide a comprehensive and fundamental overview of the juvenile delinquency system. Also upcoming, the IJDP's staff social worker has spearheaded a training event focused on trauma informed practice, a burgeoning field within the juvenile delinquency community and a necessity for the population that the IJDP serves. Dr. John Briere, Director of the Psychological Trauma Clinic at the LAC USC Medical Center and Associate Professor of Psychiatry and Psychology at the USC Keck School of Medicine and the USC Dornsife College of Letters, Arts and Sciences, will be one of the featured speakers at the event.

GOVERNANCE

In addition to providing legal resources for the attorneys, the IJDP provides oversight of the attorneys on the panel. The IJDP created a system of governance and review consistent with the pre-existing ICDA program rules. The IJDP formed two committees: the billing and discipline committee¹ and the executive committee². The billing and discipline committee convenes to address departures from IJPD policies and is entirely made up of members of the IJDP panel. The executive committee has discretion to review and implement policies and reviews decisions by the billing and discipline committee. The executive committee has one representative from the panel, but is otherwise populated with judges and members of the criminal bar. As of September 1, 2017, the executive committee has entertained one appeal of the director's decision to suspend a panel member for three months. The director's decision was upheld. In addition to governance, the director meets with the panels on a quarterly basis to maintain an understanding of the needs of the panel and to stay abreast of issues particular to each respective branch court.

¹ See Exhibit 5 for Billing and Discipline roster.

² See Exhibit 6 for Executive Committee roster.

QUALITY CONTROL

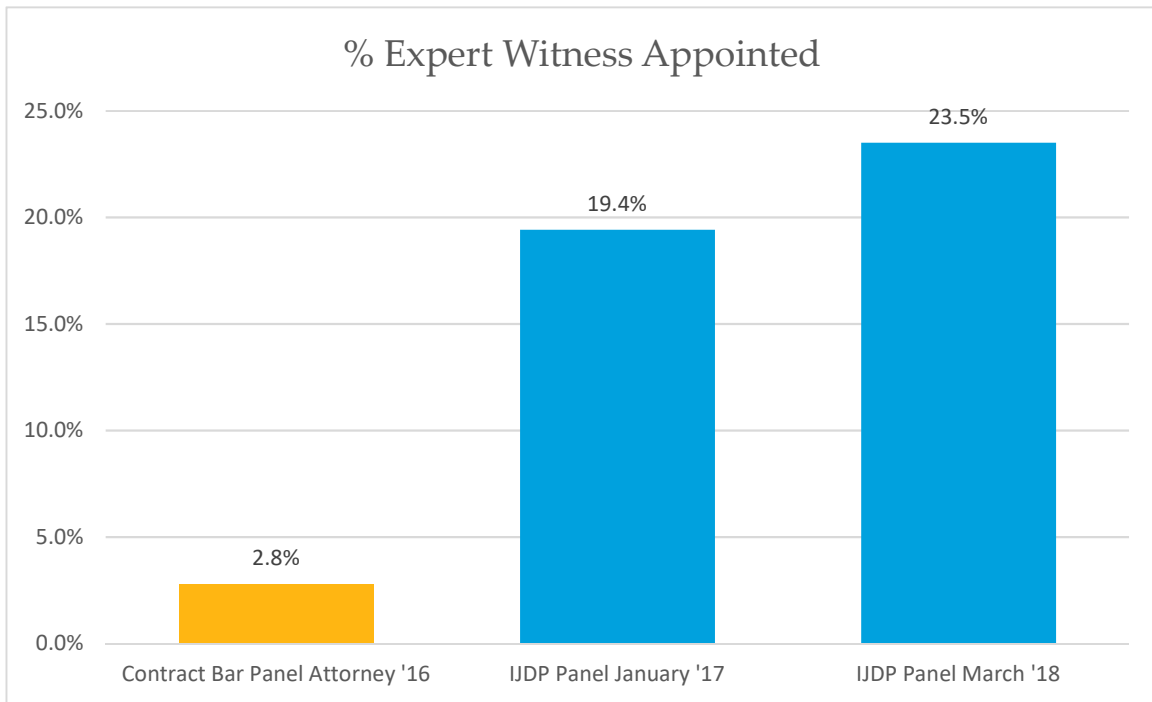
DATA

In addition to systems of governance, the IJDP office monitors and assesses the effectiveness of the IJPD panel attorneys. The IJDP has adopted the *Guidelines for Attorneys Representing Youth in the Los Angeles Juvenile Delinquency Court* as a baseline for zealous advocacy. IJDP panel attorneys understand that departures from those guidelines can be grounds for discipline or dismissal from the panel. To ensure that IJDP panel attorneys are adhering to these standards, the IJDP has created the following devices and protocols to guarantee a new level of accountability and effective review of attorney performance.

- Case Tracking forms – The IJDP employs three data collection devices that the panel members are required to complete. These are available online and all submissions are electronic. (Exhibit 7.)
 - Intake – Attorneys are required to file a case tracking form with the IJDP office within 48 hours of being appointed at arraignment. This requires the attorney to inform the IJDP office of important data points such as the charges and what detention hearings, if any, have been or will be conducted.
 - Case resolution forms – Attorneys are required to submit data on every resolved case. This data includes information on motions filed, the final charges, disposition, and other actions taken on the minor’s behalf.
 - Attorney Progress Sheets – On a monthly basis, IJDP program coordinators provide panel attorneys pre-populated spreadsheets in order to keep track of case progress and provide other metrics for attorney assessment.
- Data-Driven Attorney Assessment
 - Using the data collected and metrics developed by the director, the IJDP conducts ongoing assessment of attorney performance. Each case resolution form, described above, provides data points allowing qualitative evaluations based on actions performed by the attorney and case outcomes. The process provides real-time evaluations of attorneys in the field. This allows the IJDP to focus training, tailor directives and reinforce expectations for attorney

performance. Early results are encouraging. Based on a comparison to data collected in 2008³, the new IJDP attorneys have proven to be more active and have achieved improved outcomes for their clients. While our data is preliminary⁴ and only captures a snapshot of the first eight months, notable improvements include:

- The percentage of cases that have an expert appointed has increased from 2.8% to 23.5%,⁵

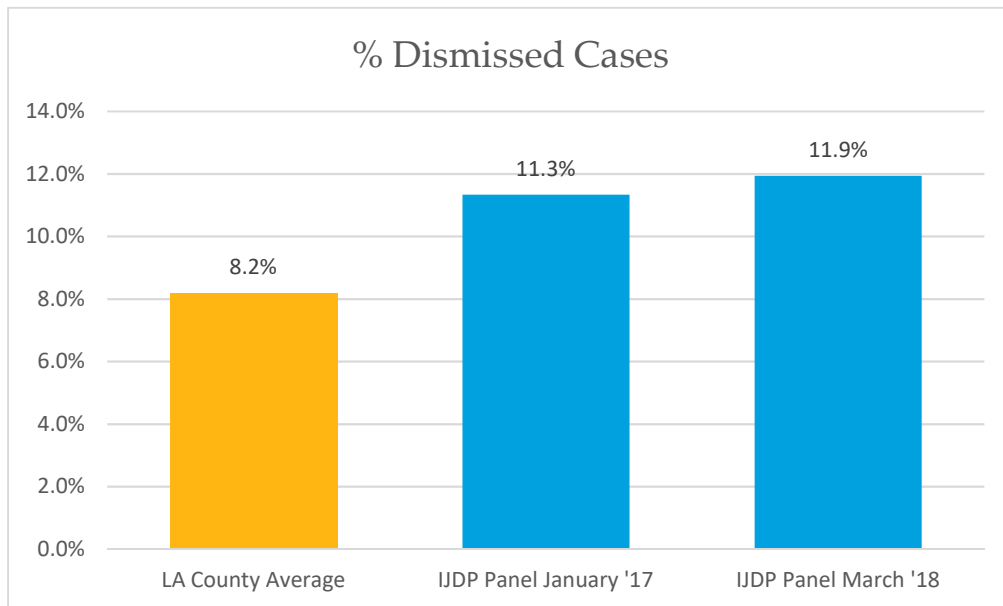


³ The comparison group is descriptive data collected in 2008 as part of the *Kids Counsel and Costs* study. (See Section IX for a link to the full study.) Notably, the comparison group includes data for youth represented by Public Defenders and Bar Panel together; they are not differentiated. Since the study found that Public Defenders outperformed the Bar Panel, the current comparisons, we believe, underreport the improvement in activity and outcomes.

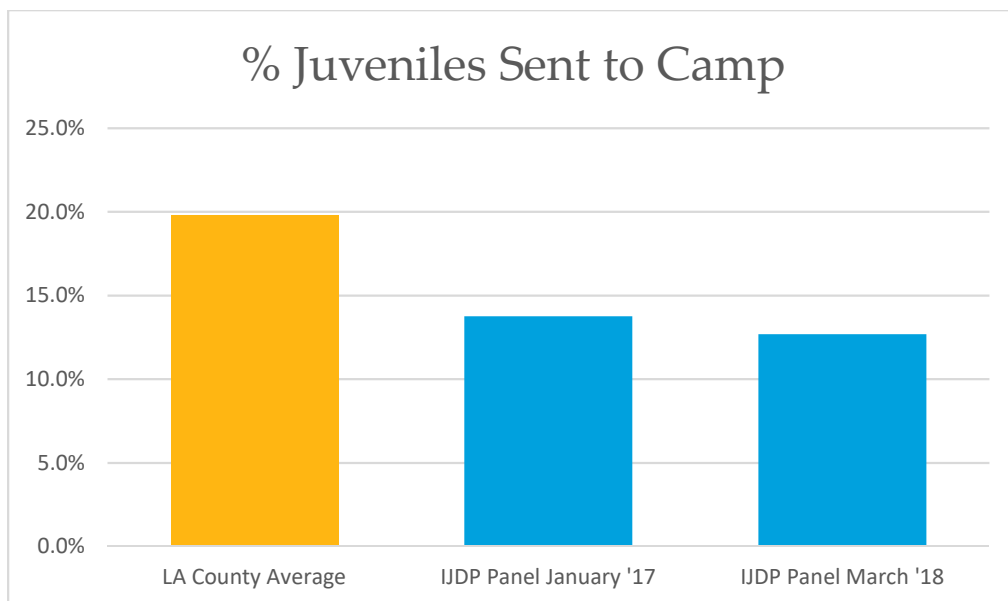
⁴ The IJDP has represented minors in over 1600 cases in the first year, but data collection only began on January 1, 2017. Qualitative data has only been collected since June 2017. Since then, only 268 cases have been resolved.

⁵ See footnote 3.

- Dismissal rate of cases has increased by 3.7%,⁶



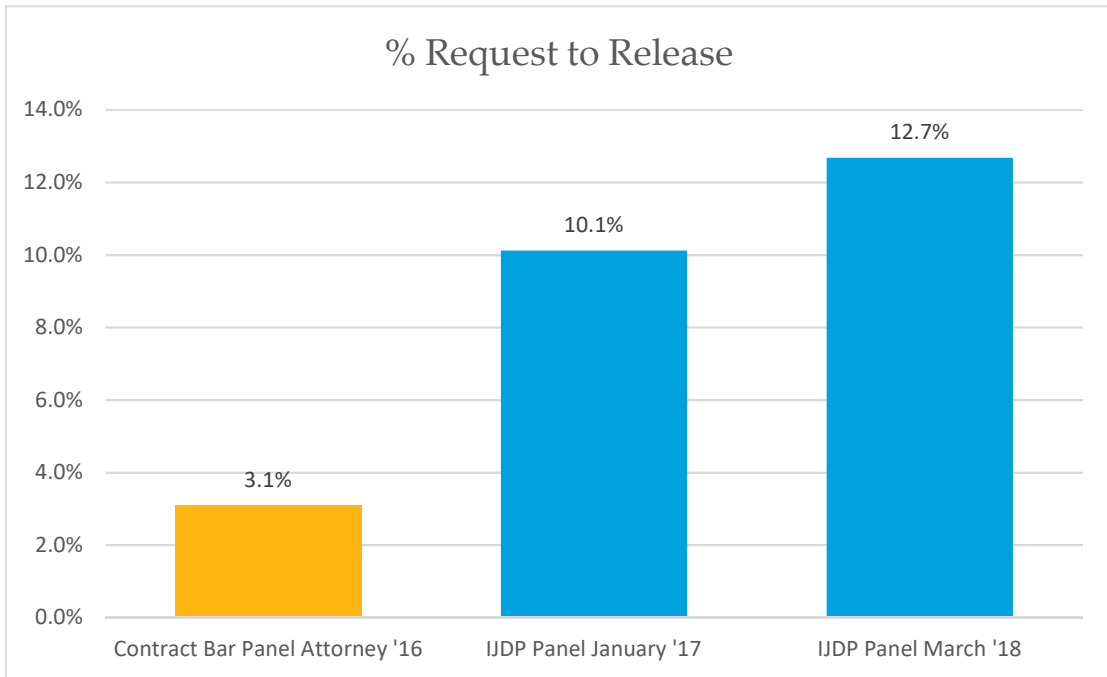
- Percent of youth sent to camp decreased by 7.1%,⁷



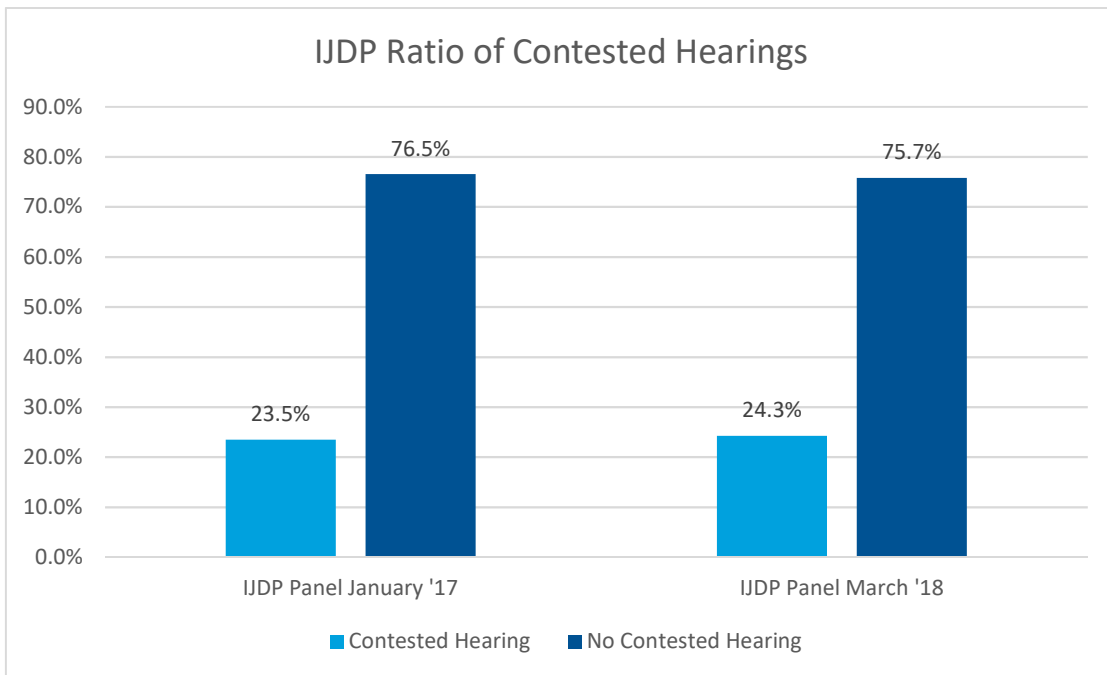
⁶ See footnote 3.

⁷ See footnote 3.

- Rate of cases that had a contested detention hearing quadrupled from 3.1% to 12.7%,⁸



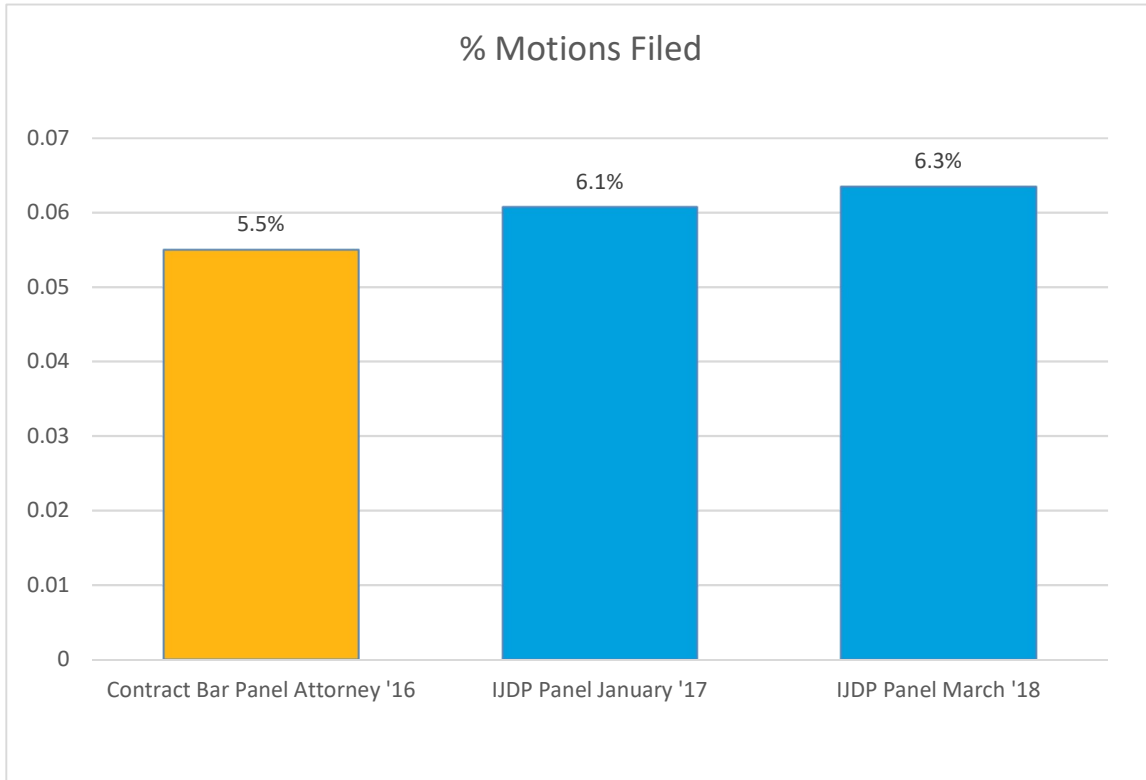
- 24.3% of IJDP cases had at least one contested hearing,⁹



⁸ See footnote 3.

⁹ See footnote 3.

- The rate of written motion filing has increased by .8%.¹⁰



SECURITY

The IJDP interprets its role as part of the defense team and, for that reason, takes significant measures to keep all data secure. Currently, the data is stored on a secure LACBA server requiring internal authentication. In addition, the data is password protected and encrypted. Only IJDP staff are allowed to access the data and are under strict orders not to share information with anyone, regardless of the source or reason for the query.

¹⁰ See footnote 3.

SURVEYS

The IJDP also employs a quality assurance survey for clients, families and stakeholders. On August 25, 2017, the office distributed a survey to the courts and the Public Defender and Alternate Public Defender's offices. Regrettably, the Public Defender's office and courts declined to offer any feedback on the panel attorneys. Starting in September, the IJDP also began to survey clients and their families after a case is resolved. Within two weeks of a case resolving, IJDP program coordinators call the client and his/her family to administer a questionnaire regarding their experiences with their IJDP panel attorney. (Exhibit 8.) Responses have regularly reflected a strong rapport between attorneys and clients, trust and collaboration in the decision-making process and general satisfaction with the quality of representation.

MENTORSHIP PROGRAM

The IJDP office has implemented a mentorship program for attorneys that are new to the panel or lack substantive juvenile experience. These attorneys shadow a designated lead attorney in each courthouse in their assigned quadrant before beginning duty days. The IJDP mentorship program familiarizes new attorneys with IJDP and courthouse duty day procedures and provides individualized training and internal checks on new attorney performance. In addition, the IJDP is developing a partnership with Loyola Law School's Center for Juvenile Law and Policy to incorporate our program with their delinquency clinic's academic component as a means of training new attorneys.

POLICIES AND PROCEDURES

ATTORNEY ONBOARDING

Once an applicant is accepted to the IJDP panel, he or she undergoes an onboarding process and is briefed on all relevant policies and procedures. The process begins with the attorney receiving a customized onboarding packet, which summarizes all of the information and communication that the panel has received up to the date of the new attorney's acceptance. Along with the onboarding packet, the attorney receives an electronic version of the IJDP handbook, the panel roster, the New Member Acknowledgement Form and the Independent Juvenile Defender Program Attorney Agreement. The latter two are signed and returned to the IJDP office after review of the materials and before the attorney's first duty day.

DUTY DAYS

IJDP's program coordinators are always available to the attorney panel via phone or email. A timely response can be expected for any inquiries, submissions, or requests made to the IJDP office. On an attorney's duty day, he/she must check in with a program coordinator and with each department at his/her assigned courthouse by 8:30 AM. Upon dismissal from each department, the attorney must check out with the program coordinator and inform him/her of any new cases that may have been picked up. This allows the program coordinators to keep an accurate count of caseloads and provides an additional check on the intakes that the office receives. The clerks and attorneys are aware that all multiple co-minor cases must be assigned through the IJDP office to ensure equitable distribution of cases across attorneys. Additionally, all murders, felony sex offenses and transfer cases will be specifically assigned by the director according to a pre-existing order that accounts for attorney capacity and ensures equitable distribution of these more complex cases.

CASE REFERRALS

If a panel attorney wants to take advantage of any of the available ancillary resources, he/she submits an IJDP case referral form to the appropriate program coordinator. This form details the case status, circumstances leading to the referral and the requested services. The lead social worker and investigator assess the nature of the referred case and, if they are unable to take the case themselves, assign it to an appropriate social worker panel or investigator panel member.

CONFLICTS

IJDP staff attorneys created a conflict policy for internal case review. If there is a potential conflict with a client, the IJDP attorneys assess the nature of the conflict and whether it is waivable. Based on the nature of the conflict, the staff evaluates what level of assistance can be provided. The staff attorney can provide any needed assistance, ranging from simple consultation through direct representation. The resource and writ attorneys have developed a referral process for those instances where a conflict precludes representing the minor.

CLIENT RELATIONS

The IJDP provides an orientation packet (Exhibit 9) to every minor and his/her family, which includes IJDP administration contact information and materials regarding the Los Angeles Juvenile Delinquency Court system. These materials are designed to empower parents, family and guardians to more effectively assist their sons or daughters. These materials are provided in English and Spanish.

BUILDING COMMUNITY

NEWSLETTER & APPELLATE UPDATES

One clear deficit in the prior incarnation of the panels was the lack of a cohesive community of support. To remedy this, the IJDP has embraced a technology-based support system, starting with our member's only webpage. The webpage provides IJDP panel attorneys access to topical forums and resources, including research materials, white papers and a brief bank where attorneys can share their work. As part of our effort to provide a cohesive community of support, attorneys are provided with weekly appellate case updates and a bi-monthly newsletter to keep panel attorneys up to date with trainings, events and other trends in juvenile court. (Exhibit 10.)

STAKEHOLDER OUTREACH

Beginning in January 2017, the IJDP director met with all juvenile court stakeholders, including all juvenile delinquency bench officers, division chiefs of the Public Defender and Alternate Public Defender, as well as each of the legacy panel members. In addition, the IJDP reached out to the Court of Appeal and the California Appellate Project to attempt to address gaps in service. The IJDP is currently represented at the Probation Commission (the director is a Commissioner), the Juvenile Courts Roundtable, Edelman Dependency Court Regional Center meeting, Regional Center Advisory Board, OYC Quarterly meeting, Edelman AB12 Judges training, Edelman Crossover Meeting at the CLC Office, and 241.1 Pilot Courtroom Intake Procedures Participation. In addition, the IJDP program coordinators meet with each of their courts' judicial assistants twice a year. The IJDP also maintains a presence at conferences and seminars on juvenile justice across the country, both to maintain awareness of the newest developments and legislation as well as present our story to juvenile defenders everywhere. The IJDP attended the 2017 National Juvenile Defender Center Leadership Summit in New Mexico, where the director presented on his research that led to the creation of the IJDP to a national audience. The writ and resource attorneys participated in numerous sessions concerning their respective areas

of expertise. The IJDP writ attorney has also participated in the Pacific Juvenile Defender Center statewide roundtable in Berkeley, California as well as the PJDC statewide convening on SB 394, several programs of the Los Angeles County Bar Association Appellate Courts Section, and the criminal appellate training offered by California Attorneys for Criminal Justice.

WEB

The IJDP has established an online presence at <https://www.lacba.org/ijdp> to provide clients and their families a direct means of contacting their attorneys as well as helpful information about the court process and directions and travel assistance to each of the juvenile delinquency courts.¹¹ (Exhibit 11.)

ATTORNEY RESOURCES

The director negotiated group rates for legal research platforms including the online CEB OnLAW criminal law library and Lexis/Nexis. The IJDP has also provided a comprehensive training curriculum for IJDP panel members.¹² (Exhibit 12.)

The IJDP social worker has created a research database for the panel that includes over 100 current scholarly articles addressing topics such as the effects of complex trauma and behavior, forensic assessments (psychometrics, validity, malingering, etc.,) neurobiological implications of trauma, human trafficking and juvenile competency.

The IJDP forum hosts an onboarding thread, which includes an aggregation of materials that are especially pertinent to attorneys who are new to juvenile law or who want to brush up on best practices in juvenile court. The thread includes the NJDC 2017 Resource Guide and the NYU Law School Juvenile Trial Manual.

¹¹ See “Web” under Section VIII for complete discussion of the member’s only page.

¹² See “Training” under Section IV for detailed schedule of trainings.

CASE MANAGEMENT SYSTEM

Notwithstanding the ongoing efforts by the County to create an integrated case management system, the IJDP determined that it could not wait for implementation in 2019/2020. Instead, the IJDP contracted with a vendor to create its own case management system. This system allows the IJDP to track attorney work, creates an electronic case file where documents can be uploaded, and allows the users to document their hours. The IJDP is working towards integrating this system into the PACE system to streamline hourly billing.

GOING FORWARD

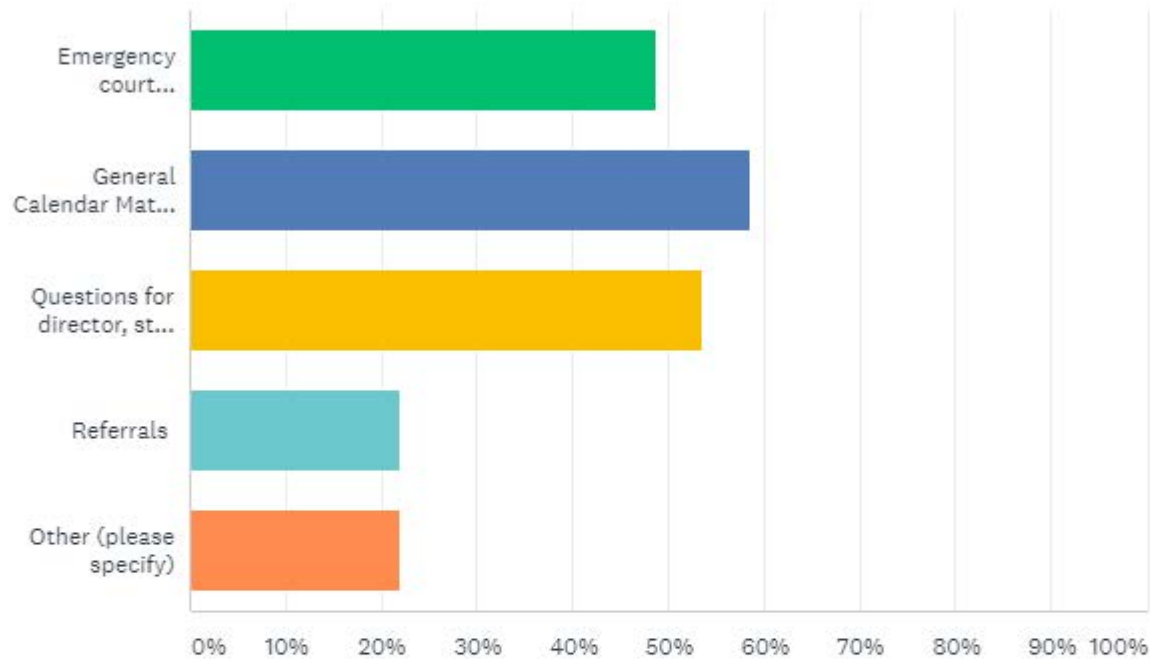
The hallmarks of the IJDP are intensive support and data driven oversight. Our office oversees 50 attorneys who, in the first year, represented more than 1,600 clients in a county the size of New Jersey. Using baseline data from the study cited earlier,¹³ we believe we have made significant improvements in the quality of representation in the first year. We are looking forward to improving on the gains made by creating a more robust in-court supervision and training component. In addition, we are in the process of developing a partnership with Loyola Law School to provide an intensive training program for less experienced attorneys who are, nevertheless, committed to juvenile advocacy.

¹³ [Kids, Counsel and Costs: An Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts.](#)

EXHIBIT 1

What are your reasons for contacting the program coordinators? Please select all that apply.

Answered: 41 Skipped: 0

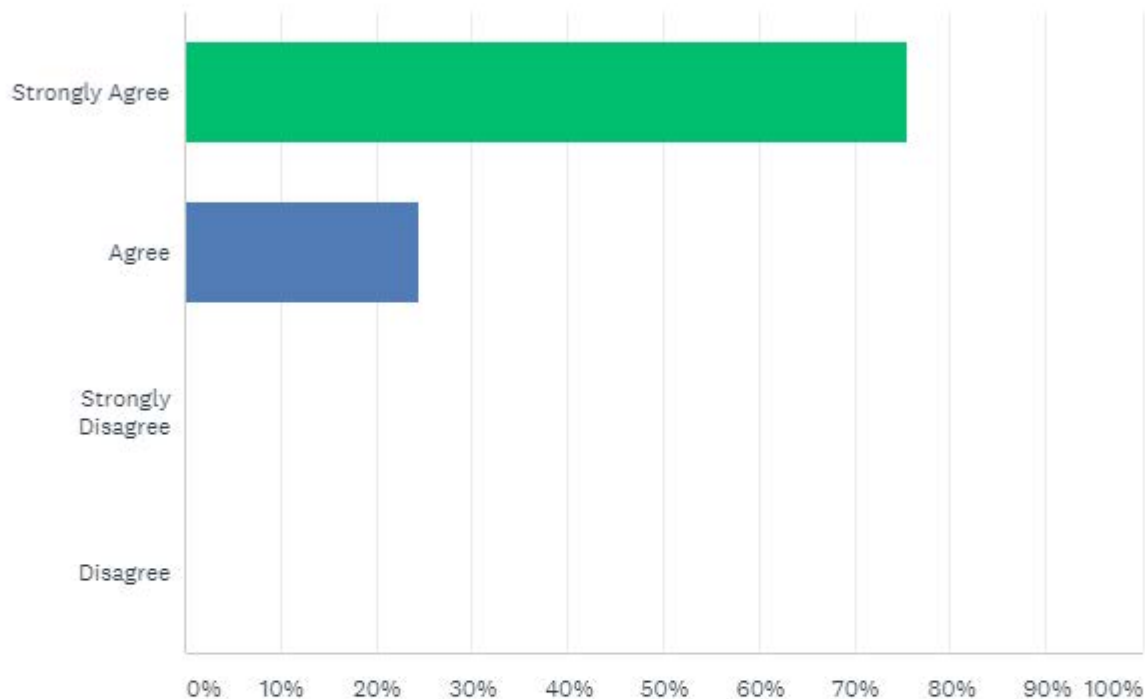


ANSWER CHOICES	RESPONSES
▼ Emergency court staffing/duty day Matter	48.78% 20
▼ General Calendar Matter	58.54% 24
▼ Questions for director, staff attorneys or staff	53.66% 22
▼ Referrals	21.95% 9
▼ Other (please specify)	Responses 21.95% 9

Total Respondents: 41

Our responses to your calls/emails are professional.

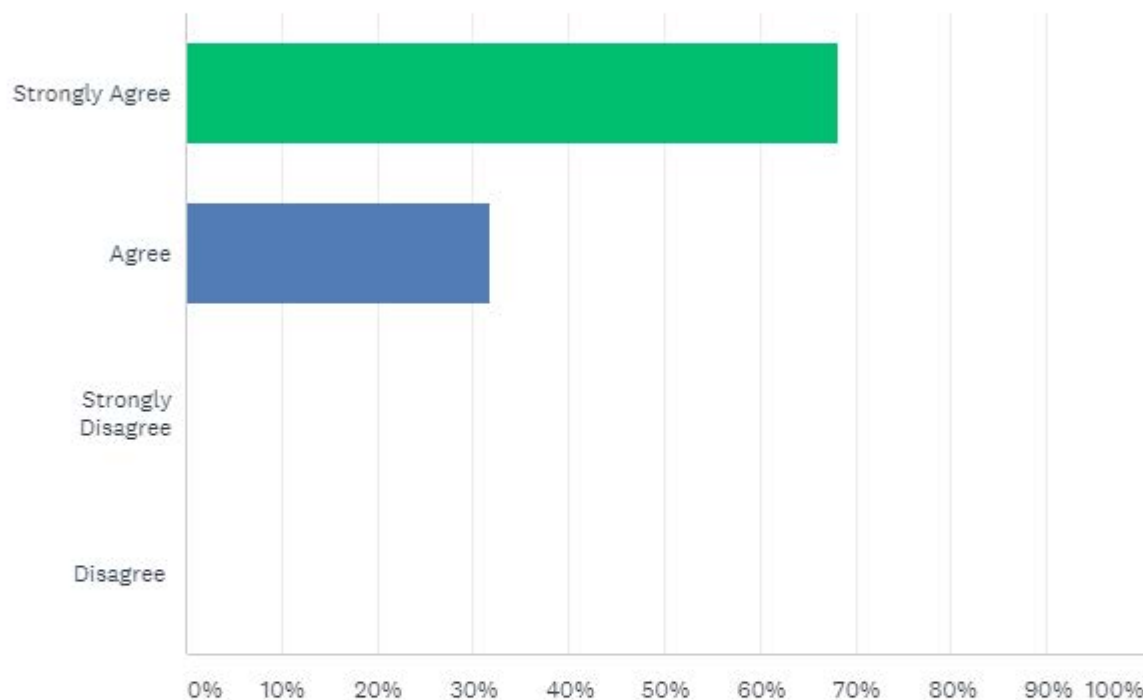
Answered: 41 Skipped: 0



ANSWER CHOICES	RESPONSES
Strongly Agree	75.61% 31
Agree	24.39% 10
Strongly Disagree	0.00% 0
Disagree	0.00% 0
TOTAL	41

When a follow up is required, it is completed in a thorough and comprehensive manner.

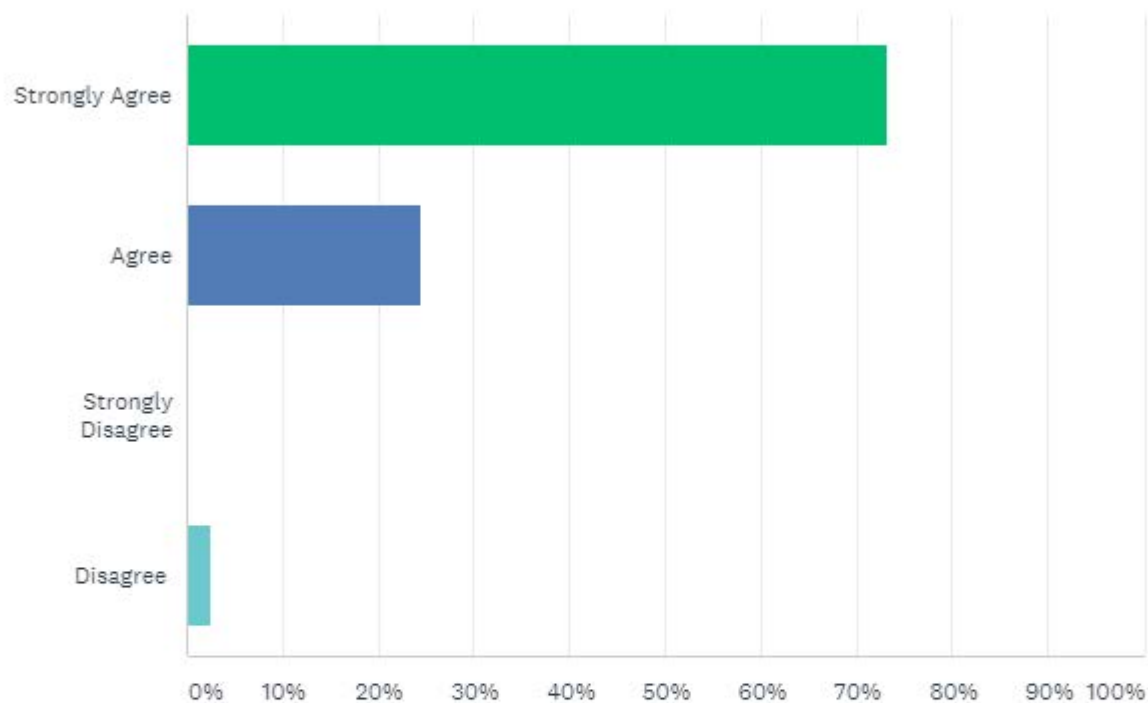
Answered: 41 Skipped: 0



ANSWER CHOICES	RESPONSES
Strongly Agree	68.29% 28
Agree	31.71% 13
Strongly Disagree	0.00% 0
Disagree	0.00% 0
TOTAL	41

Overall, your interaction with IJD staff is professional and productive.

Answered: 41 Skipped: 0



ANSWER CHOICES	RESPONSES
Strongly Agree	73.17% 30
Agree	24.39% 10
Strongly Disagree	0.00% 0
Disagree	2.44% 1
TOTAL	41

Q8

If you would like to share any additional comments about your experiences, please enter them below.

My experiences with the program director have been positive. They are helpful, and, in those instances where I may need their assistance they have proven up to the task.

The IJD staff is doing an excellent job!

9/6/2017 1:29 PM

[View respondent's answers](#)

[Categorize as...](#) ▼

I think the support staff is doing a great job so far. I have not fully utilized the attorneys on staff but plan to in the future.

8/28/2017 4:00 PM

[View respondent's answers](#)

[Categorize as...](#) ▼

The staff is extremely pleasant and professional. I am so happy to have this respurce.

8/28/2017 7:58 AM

[View respondent's answers](#)

[Categorize as...](#) ▼

EXHIBIT 2

LACBACMS

<https://www.lacba.org/LACBACMS>

New form submission

[Juvenile Defender Application](#)

Submitted on (DATE)

Last Name	
First Name	
Middle Initial	
State Bar Number	
Date of this Application	
Office Address	
Mailing Address (if different from office)	
Phone Number	
Cell Number	
FAX Number	
Email	
Law School	
Date Graduated	
Date Admitted to Bar	
Date Began Criminal Defense Practice	
Are you a LACBA member?	

Have you been the subject of discipline by the State Bar of California or by the Bar of any other state?	
If yes, please include a detailed description of the nature, date, and result of the disciplinary proceeding.	
I agree to waive confidentiality for the sole purpose of enabling the State Bar of California to notify the Los Angeles County Bar Association's Independent Juvenile Defender Program of the status of any disciplinary proceeding pending against me.	
References: List three attorneys and three judges (with current telephone numbers) as references. Please indicate the nature of your relationship with each.	
Please list all the criminal defense jury trials you have completed in the last 10 years, starting with the most serious. Be sure to include the court, the case number, the charges and the date. You may be asked to provide proof in the form of court minute orders when the application is being reviewed for possible membership on the Independent Juvenile Defender Panel.	
Please list the 10 most serious juvenile adjudications or Edsel P. hearings you have litigated. (Be sure to include the nature of the hearing, trial, etc., the court, the case number, the charges, and the date) Please indicate whether you called any witnesses and the outcome of the proceeding. You may be asked to provide proof in the form of Court minute orders when the application is being reviewed for possible membership on the Independent Juvenile Defender Panel.	
Please list all juvenile trials and adult jury trials you have conducted in the last year. (Be sure to include the nature of the hearing, trial, etc., the court, the case number, the charges, and the date) Please indicate whether you called any witnesses and the outcome of the proceeding. You may be asked to provide proof in the form of Court minute orders when the application is being reviewed for possible membership on the Independent Juvenile Defender Panel.	
Please list all motions to suppress in adult or juvenile court you have litigated in the past year. (Be sure to include the nature of the hearing, trial, etc., the court, the case number, the charges, and the date) Please indicate whether you called any witnesses and the outcome of the proceeding. You may be asked to provide proof in the form of Court minute orders when the application is being reviewed for possible membership on the Independent Juvenile Defender Panel.	

If you have any other attributes and/or experiences which you feel make you a better criminal defense lawyer or you feel the office of the Independent Juvenile Defender should be aware of in evaluating you, please provide such information here:

Please note, applicants must have completed twelve (12) hours of relevant State Bar approved Continuing Legal Education (CLE) annually and must continue to do so while a member of the Independent Juvenile Defender Panel. A minimum of twelve (12) hours annually must be in the field of criminal law or juvenile delinquency, preferably a combination of both. At least nine (9) hours must be classroom-participation (no tapes or other self-study accepted). However, up to three (3) participatory hours will be acceptable (tapes or other self-study. You will be asked to provide proof of completion when the application is being reviewed for possible membership on the Independent Juvenile Defender Panel.

If you are invited to participate on the Independent Juvenile Defender Panel, you must be compliant with the requirements of AB 703 and California Rules of Court, rule 5.664 prior to accepting any appointments by the court.

Membership in the Los Angeles County Bar Association or other bar association is not a precondition to service on an Independent Juvenile Defender Panel. If requested, all Applicants will be required to furnish a detailed history of their background and experience in criminal law for the purpose of classification by the Independent Juvenile Defender Committee.

Resume: Please attach a resume including your education and prior work experience. Please include dates.

Click "Select" to choose a resume file from your computer. It will then be uploaded when you click "Submit" below."

OPTIONAL: Attach additional document here.

Click "select" to choose an additional file from your computer. It will then be uploaded when you click "Submit" below.

Dear IJD Panel Applicant,

Your application is under consideration, but in order to go any further in the process, you must understand and agree to the following requirements for membership:

- Panel Location

Each panel will be responsible for duty days in two courts rather than one. We will be dividing the County into four quadrants: North (Sylmar and Lancaster,) East (Eastlake and Pomona,) South (Long Beach and Los Padrinos) and West (Inglewood and Compton.) We cannot promise your panel of choice, but will do our best to honor your request. You will be assigned to only one panel. Please let us know your order of preference below:

1. _____
2. _____
3. _____
4. _____

- Each panel member will likely have at least 3 duty days each month with at least one of those duty days in each of the courts serviced by the panel. Of course, you may give up duty days or switch as we have the in past, however, you may not use the swapping process as a means of limiting your appearances to one courthouse. Please indicate how many duty days per month you would prefer:

- Prior to appearing in juvenile court as a member of the IJD panel, you must be compliant with California Rule of Court 5.664. This

1055 West 7th Street
Suite 2700
Los Angeles, CA 90017

Tel:
213.896.6429

Fax:
213.833.6796

www.lacba.org

means at a minimum, you must have viewed the PJDC training video available here:

<https://pjdc.inreachce.com/Details?groupId=afcf97b7-37fb-4877-933c-647a2d6e1c3c>

- Your placement on the IJD panel will be for 2018 year, subject to compliance with our policies and procedures as well as our ongoing assessment of your performance. Your placement on the following year's panel is presumed barring any departures from policies or performance standards.
- You may be required, particularly if you lack a substantial amount of juvenile experience, to participate in a mentorship program that will require that you shadow a more experienced juvenile attorney from your panel for a number of days in court prior to your accepting appointments on a duty day. Likewise, if you are an experienced juvenile attorney, you may be called upon to mentor a less experienced attorney.
- There will be at least two mandatory meetings per year at LACBA for each panel. More may be required if events or circumstances demand it.

These parameters may change based on the needs of the courts and LACBA/IJD and is not an exhaustive list of our requirements going forward.

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Suite 2700
Los Angeles, CA 90017

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Fax:
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www.lacba.org

EXHIBIT 3

**INDEPENDENT JUVENILE
DEFENDER PROGRAM**

LOS ANGELES COUNTY
BAR ASSOCIATION

IJDP 2018 HANDBOOK

January 20, 2018

1055 W. 7th Street
Suite 2700
Los Angeles, CA 90017

p. 213-896-6429
f. 213.833.6796

lacba.org/ijdp

IJDP PANEL MEMBER ACKNOWLEDGEMENT FORM

I, _____, HAVE RECEIVED THE IJDP HANDBOOK (2018). I HAVE READ THIS HANDBOOK IN ITS ENTIRETY AS WELL AS ALL SUPPLEMENTAL MATERIAL PROVIDED BY THE IJDP STAFF. I UNDERSTAND AND ACKNOWLEDGE THAT I AM RESPONSIBLE FOR FOLLOWING ALL PROCEDURES AND POLICIES CITED HEREIN AS PART OF MY DUTIES AND RESPONSIBILITIES AS A MEMBER OF THE INDEPENDENT JUVENILE DEFENDER PROGRAM PANEL. FURTHER, I UNDERSTAND THAT ANY DEPARTURES FROM THE POLICIES OUTLINED IN THE HANDBOOK ARE GROUNDS FOR DISCIPLINE OR TERMINATION FROM THE IJD PROGRAM.

DATE: _____

SIGNATURE: _____

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**Independent Juvenile Defender Program
Office Contact Information**

Los Angeles County Bar Association
Independent Juvenile Defender Program
1055 W. 7th Street, Suite 2700
Los Angeles, CA 90017

IJD Main Line:
(213) 896-6429

IJD Fax Line:
(213) 833-6796

Directing Attorney
Cyn Yamashiro
(213) 896-6407
cyamashiro@lacba.org

Writs & Appeals Attorney
Markéta Sims
(213) 896-6456
msims@lacba.org

Resource Attorney
Erik Rodstrom
(213) 896-6530
erodstrom@lacba.org

Lead Social Worker
Dr. Angela Zartuche, Psy D., LCSW, MJ
(213) 896-6488
azartuche@lacba.org

Lead Investigator
Karin E. White
(213) 896-6410
kwhite@lacba.org

Program Coordinators

SOUTH
Tracy Andrade
(213) 896-6505
tandrade@lacba.org

WEST
Sarah Fiskin
(213) 896-6430
sfiskin@lacba.org

NORTH
Bethany Judson
(213) 896-6472
bjudson@lacba.org

EAST
Shanice Hawthorne
(213) 833-6706
shawthorne@lacba.org

IJDP OPERATIONAL POLICIES

Organization

1) Statutory Basis

- a) California Penal Code § 987.2(e) provides that the Court shall first use the services of the Public Defender to provide criminal defense services for indigent defendants. In the event the Public Defender is unavailable, the County has created an Alternate Public Defender’s Office and contracted with a panel of lawyers to provide criminal defense services for indigent defendants. The court shall first use the services of the Alternate Public Defender’s Office and next use the services of the panel attorneys.

The County contracted with the Los Angeles County Bar Association (“LACBA”) to provide such a panel of lawyers as contemplated by § 987.2(e).

- b) The Independent Juvenile Defender Program (“IJDP”) oversees a panel of approximately 50 independent attorneys who assist in the representation of indigent juvenile criminal defendants at an hourly rate of pay.

2) Panel Structure

- a) The eight juvenile courts across L.A. County are consolidated into four panels, with each panel sharing responsibility for two, separate juvenile courts. The current panels are divided into four geographic quadrants as follows:

<u>North</u>	<u>East</u>	<u>South</u>	<u>West</u>
Lancaster	Eastlake	Long Beach	Compton
Sylmar	Pomona	Los Padrinos	Inglewood

Once assigned to a panel, IJDP attorneys are responsible for duty days distributed evenly across both courts in their quadrant.

- b) Additionally, IJDP staffs the following specialty courts with a single, assigned attorney:

DJF Re-Entry Court
Dual Jurisdiction Court

STAR Court
Sylmar Drug Court

3) IJDP Staff

- a) The IJDP is administered by a directing attorney who leads a staff of eight, including an appellate attorney, resource attorney, forensic social worker, lead investigator and four program coordinators.
- b) An IJDP program coordinator oversees each of the four quadrants. The program coordinator's core responsibility is to act as a court liaison, ensuring that attorneys are present in court at their appointed times and that information from the attorneys and the IJDP office flows in a timely and efficient manner. Program coordinators are responsible for collecting and managing all of the data that the IJDP uses to aggregate statistics and govern the panel.
- c) The IJDP is contracted to provide a package of services for our clients that is symmetrical to those in the Public Defender and Alternate Public Defender's offices. To that end, the IJDP staff includes an appellate attorney, resource attorney, an investigator and a forensic social worker. Both staff attorneys provide ongoing counsel for the panel attorneys, in addition to taking on cases as attorney of record.
 - i) The IJDP writs and appeals attorney supports the panel on issues of appellate protocol and timelines, provides consultations regarding potentially litigable issues, and pursues pre-trial writs on behalf of our clients in both the Court of Appeal and the California Supreme Court.
 - ii) The IJDP resource attorney consults with IJDP panel attorneys regarding placement searches, school placement options and enrollment procedures, strategies concerning referrals to specialty courts, appointment of experts on resource topics, competency to stand trial protocol, and regional center eligibility referrals.
 - iii) The IJDP staff social worker and investigator provide ancillary support for the panel attorneys. Each provides direct service based on referrals submitted to the IJDP office. They assess the nature of referred cases and, if they are unable to work on the case themselves, administer overflow referrals to the Superior Court panels of social workers and investigators.

- (1) Please note that while the IJDP staff members do not need to be appointed on cases, social work panel and investigator panel members must go through the court appointment and PACE payment processes. The IJDP has created a single-page, fillable motion for appointment of social workers and investigators that can be submitted at arraignment and used to streamline the appointment process.¹
- d) The IJDP has created and enacted a comprehensive conflict policy to ensure appropriate and ethical conduct where IJDP staff are directly involved in any case.² If there is a potential conflict with a client, the IJDP attorneys, staff investigator, and forensic social worker follow a protocol to assess the nature of the conflict and whether or not it is waivable. After a determination is made, assistance may range from simple consultation through direct representation.

Scope of Work

1) Representation

- a) In accordance with California Rule of Court 5.663, the IJDP panel shall provide complete legal defense services for all defendants whom they are appointed to represent under the terms of this contract.

Such services shall include, but are not limited to, all legal defense services typically provided by the PD and APD, both pre-disposition and post-disposition. These legal defense services include, but are not limited to, interview and preparation time; an investigative process that includes researching the facts and circumstances of the minor's life as well as the circumstances of the crime; all necessary court appearances for petitions, hearings, progress reports, motions, post-disposition violations, court waiting time, trials at the trial court level and for writ proceedings and the filing of any notice of appeal that may be required by California Penal Code § 1240.1 or otherwise, including legal research and the preparation of documents.

Services shall also include, but are not limited to, providing or arranging for services to address the client's needs with respect to immigration, education/special education, school discipline, housing, child welfare and extended foster care services, mental health or regional center services, and

¹ See Exhibit 1, IJDP Motion for Appointment of a Social Worker/Investigator

² See Exhibit 2, IJDP Conflict Policy.

reduction of collateral consequences; keeping the client reasonably informed about significant developments relating to the representation, including promptly complying with reasonable requests for information and copies of significant documents; promptly responding to any calls or other communications from the client, within one business day if possible; visiting the client if the client is detained; promptly communicating any plea offers; committing to full post-dispositional representation for all client needs, including, but not limited to, monitoring implementation of the court's orders, maintaining contact with clients, monitoring clients in placement or DJJ, taking affirmative action when needed to address problems, assisting AB 12-212 clients, and responding to the client's needs in any placement. Services provided to clients are subject to change in response to evolving legal and juvenile policy and program changes.

- b) IJDP attorneys must follow the ethical parameters as outlined in Chapter One, §A-B of the *Guidelines for Attorneys Representing Youth in the Los Angeles Delinquency Court*.³
- c) IJDP attorneys' scope of work is further defined in Chapter 2 of the *Guidelines for Attorneys Representing Youth in the Los Angeles Delinquency Court*.

2) Requirements

- a) All IJDP attorneys must be compliant with California Rule of Court 5.664 and maintain subject matter expertise in the area of juvenile delinquency law. Proof of compliance with CRC 5.664 must be provided upon request to the IJDP office. Such proof will be held in the attorney's file.
- b) All IJDP attorneys must complete a minimum of 12 units/hours of MCLE training each year in the field of juvenile delinquency. At least 9 hours must be classroom participation, *not* self-study.
 - i) The IJDP provides curriculum throughout the year that will satisfy this requirement. Attorneys may also seek external opportunities to complete the necessary hours.
- c) The IJDP requires the use of the following industry-standard applications:

³ See Exhibit 3, *Guidelines for Attorneys Representing Youth in the Los Angeles Delinquency Court*.

- i) Adobe Reader—This basic version of Adobe is free to download and allows the user to utilize fillable PDF forms. (<https://get.adobe.com/reader/>)
 - ii) Microsoft Excel—Included with the Microsoft Office Suite of products, Excel is the standard tool for interacting with spreadsheets and will be required to complete the monthly Case Progress Sheets.
- d) Each panel will meet with the IJDP office a minimum of two times per year.
- e) All IJDP panel members will be issued identification badges. The badges are for your convenience and should be kept on your person when entering a juvenile court or detention facility.
- f) The IJDP Client Resource Packet is available in English and Spanish in each of the courthouses that IJDP serves. Upon appointment to a new case, it is expected that the attorney will provide the packet to the client and his/her family, review the content with them to the degree necessary, direct them to any sections of particular relevance, and complete the fields on the packet's cover page for their reference. The IJDP will be responsible for replenishing the packets.
- g) Attorneys must maintain a balance of duty days between the two courthouses they staff. Please do not use duty day switches to avoid appearing in a specific court. If your program coordinator determines that you have incurred an imbalance beyond IJDP parameters, you may be prevented from switching days until the balance is restored.

3) Mentorship

- a) The IJDP has implemented a mentorship program for attorneys who are new to the panel or lack a substantive amount of criminal and/or juvenile experience. The program is designed for attorneys who lack the requisite training and experience to handle a delinquency case on their own. Participation in the mentorship program is at the discretion of the director.
- b) Attorneys participating in the IJDP mentorship program must complete the following minimum requirements:
 - i) submit a complete IJDP application
 - ii) be compliant with California Rule of Court 5.664
 - iii) be a member in good standing of the California Bar

- iv) have participated in a minimum of five criminal jury trials, at least as second chair
 - v) read all IJDP onboarding materials
 - vi) attend all IJDP training available during the mentorship period
- c) Successful completion of the IJDP mentorship program is contingent on the mentee attorney reaching the following benchmarks:
- i) Second-chair at least five juvenile petitions, from arraignment to disposition, making all appearances
 - ii) Second-chair at least two juvenile adjudications
 - iii) Demonstrate competent, zealous advocacy and a commitment to criminal/juvenile delinquency defense
 - iv) Receive a sign-off from both designated lead attorneys signifying successful completion of mentorship

4) Communication

- a) For confidentiality reasons, email and posts on the IJDP forum will be the default manner of communication between the IJDP office and the panel at large. If the IJDP has sent an email or posted on the IJDP forum, you will be deemed notified.⁴
- b) The IJDP website (lacba.org/ijdp) is a portal for clients and families, juvenile justice stakeholders, and youth advocates to find up-to-date information on the program as well as news and resources.
- c) The IJDP forum (<https://talk.ijdla.org/>) is host to all IJDP materials, resources and announcements as well as being a virtual roundtable for all IJDP attorneys to come together and question, discuss, and share the best juvenile court practices. Use of the forum is a requirement of participation on the IJDP panel. The IJDP forum operates under its own set of rules, the IJDP User Agreement, which must be signed and submitted before a user may access the forum.⁵ Misuse of the forum may result in disciplinary action.

⁴ It is the attorney's responsibility to ensure that his/her profile information is current and correct. Contact information must include the panel member's email address, office address and cell phone number. User settings on the forum can be manipulated to send an email to a specified address when new material is posted.

⁵ See Exhibit 4, IJDP Forum User Agreement.

5) IJD Internal Policies

- a) When a multiple co-minor case gives rise to a need for additional panel attorneys, the IJDP office is solely responsible for assigning any petition, beyond that which is allocated to the duty day attorney.
- b) All murders, felony sex offenses, and transfer cases must be specifically assigned by the director. If you are on duty and receive notification that one of these cases will be arraigned on your duty day, please notify your panel's program coordinator. The IJDP office will assign the case according to a pre-existing order that accounts for attorney capacity and ensures equitable distribution of these more complex cases. You may be required to handle the initial appearance or put the matter over in order for the attorney of record to be present.
- c) In all Prop. 57 cases and cases where the District Attorney has filed a motion to transfer, attorneys may be required to meet with the director and/or IJDP staff attorneys to discuss the progress of the case. The frequency and number of meetings will be determined by the director and will be a function of the experience of the attorney and the complexity of the case.
- d) Following the transfer of a client to adult court, the IJDP policy is to coordinate with the adult attorney to ensure that the client's arraignment is continued in adult court, or "TWAP'ed" (Time Waived for Arraignment and Plea,) or that you obtain a stay of the transfer order in juvenile court. This is vital as California Rule of Court 5.770(g) provides that errors in a transfer hearing cannot be challenged in a direct appeal; a writ immediately following the hearing is the only means by which to issue a challenge.⁶ Any issues not presented at that point are effectively waived for all purposes. If there are litigable issues, it is expected that the attorney will order a transcript to review the hearing and file a writ, or engage the IJDP office for assistance. As issues not raised are waived, it is recommended that attorneys seek assistance from IJDP as "another set of eyes" in making the determination as to whether there are litigable issues.

⁶ *California Rule of Court 5.770(g)*: "An order that a child is not a fit and proper subject to be dealt with under the juvenile court law is not an appealable order. Appellate review of the order is by petition for extraordinary writ. Any petition for review of a judge's order determining the child unfit, or denying any application for the referee's determination of unfitness, must be filed no later than 20 days after the child's first arraignment on an accusatory pleading based on the allegations that led to the unfitness determination."

e) The IJDP promotes and expects continuity of representation for clients, with the caveat that the primary directive, “what is best for the client,” is being upheld. When issues related to continuity of representation arise, the following analysis is a guideline for proceeding.

i) If an existing client picks up a new petition, not in his/her home court, assess the following (note that this analysis assumes that the attorney has already tried the case and the petition has been sustained):

(1) Would the client be better served in front of the current judge, or better off in the home court?

Note that this can rarely be answered without at least a call to the minor’s attorney in the home court and a conversation with the client. This should be clearly documented in the client’s file.

(a) If the disposition should be litigated where the new case is filed, the Court must be alerted that the client is not waiving *Arbuckle*.⁷ The transaction of ceding the dispositional decision to a different court requires a waiver.

(b) If the client will be better off in the home court, the presumption is that the attorney should travel with the open disposition and litigate it, unless the attorney has already worked out a disposition with the DA in the home court.

(i) If the client’s interests would be better served in the home court and a) a disposition has been agreed upon or b) the attorney has made a calculated decision to allow the home court attorney to handle the disposition, it is the attorney’s responsibility to contact the home court attorney and ensure that he/she has all of the necessary information to fully prepare for a disposition hearing. Such information may include, but is not limited to, the case file and all material documents, such as psychological or educational

⁷ *Arbuckle* (1978) 22 Cal.3d 749 is restated by the California Supreme Court in this ruling: “In every plea in both adult and juvenile court, an implied term is that the judge who accepts the plea will be the judge who pronounces sentence.” *K.R. v. Superior Court* (2017) 3 Cal. 5th 295, 312, citing, *People v. Arbuckle* (1978) 22 Cal.3d 749.

assessments, and/or any reports that could play a role in a judge's decision.

ii) If a client appears on your duty day without the previous attorney of record, assess the following with the understanding that the underlying presumption is that the attorney of record should be the attorney handling all matters:

(1) Does the nature of the current procedural posture suggest that the original attorney should be handling the case?

(a) If so, the attorney should determine whether the previous attorney of record is on the current IJDP panel.

(i) If he/she is, put the matter over for a date when that attorney will be available.⁸

1. If putting the matter over means that the client will spend additional time in custody that could be avoided, the attorney should see to the matter him/herself and then put it over to a date when the attorney of record will be available.

(ii) If the attorney of record is no longer on the IJDP panel, the duty attorney should be appointed on the case and handle all court appearances going forward.

iii) Despite the countless permutations that an attorney may encounter, the guiding principle remains, "what is best for the client?" In most cases, the client will be best served with one attorney working on a case. Routinely passing cases between attorneys is not acceptable.

f) IJDP internal policies and documents

i) The IJDP promulgates certain documents and policies, including those on the IJDP forum. These policies encompass legal advice and, in some cases, articulate strategies and attorney work product. Moreover, they illustrate legal values and approaches to the practice of law that are unique to the IJDP. These policies and documents are for IJDP staff and panel attorneys only.

⁸ A full roster of IJDP panel attorneys and their contact information is available online at lacba.org/ijdp and on the IJDP forum. Duty calendars for all panels can also be accessed on the IJDP forum.

Distribution to third parties without permission from the IJDP directing attorney is a violation of IJDP rules and policies and will subject the attorney to discipline and/or dismissal from the panel.

- ii) IJDP staff attorneys and IJDP panel attorneys regularly communicate about cases and/or internal policies. Where these communications cover items of internal IJDP policy, they are meant solely for use by IJDP staff and panel attorneys and distribution of these communications to third parties is unprofessional, potentially unethical and against IJDP policy.

Governance and Oversight

1) Confidentiality

- a) The IJDP staff is considered a member of the defense team for purposes of the protection of confidential information collected during the representation of IJDP attorney clients. Likewise, the IJDP has an express duty to treat all information shared and collected from the IJDP attorneys as confidential.
- b) This contract and the IJDP contract with the County of Los Angeles authorizes and mandates oversight of IJDP panel casework. This includes the sharing of demographic data, case information, or the review of any necessary elements of the client file.

2) Oversight

- a) The IJDP has established a system of governance and review consistent with the pre-existing ICDA program rules.
- b) The Billing & Discipline Committee convenes to address departures from IJDP policies, including complaints from any source, including complaints of incompetence or sub-standard legal conduct, excessive and/or inappropriate billing practices, or any other situation where the potential standing of the lawyer is at issue. The committee is composed entirely of members of the IJDP panel.
- c) The Executive Committee has discretion to review and implement policies and reviews decisions by the Billing & Discipline Committee. This committee acts as a supervisory body, reviewing and evaluating applications for admittance to the panel as well as qualifications and standards of competence for existing

members. The Executive Committee has one representative from the panel, but is otherwise populated with judges and members of the criminal bar.

d) Pursuant to the IJDP contract with the County of Los Angeles, the IJDP mandates that attorneys complete essential forms and surveys as described below. In addition, the IJDP may review an IJDP attorney's file at any time, or observe court proceedings at any time. The IJDP may review any of the following information in the course of evaluation:

- i) Case Resolution Forms
- ii) Case Progress Sheets
- iii) Updates on compliance from program coordinators
- iv) All transactional content (e.g. emails, TCIS reports)
- v) Internal evaluation tools

3) Data Collection

a) The IJDP employs three data collection devices that the panel members are required to complete. All submissions are electronic.

- i) Intake Form—Attorneys are required to submit opening case statistics within 48 hours of being appointed at arraignment. All fields must be completed.
- ii) Case Resolution Form—Attorneys are required to submit data on every resolved case within 48 hours of the disposition.

(1) Within 48 hours of the disposition, the appointed attorney will file a notice of appeal unless it is evident to trial counsel that by doing so there would be some adverse consequence to the client. If trial counsel chooses not to file a notice of appeal, the rationale and adverse consequences should be documented clearly in a memorandum to the file.

(2) Attorneys that are appointed on a case post-disposition are not required to submit a Case Resolution form.⁹

⁹ Attorneys assigned to the Specialty Courts are required to submit Case Resolution forms, even when their appointment was post-disposition.

iii) Case Progress Sheets—On a monthly basis, IJDP program coordinators provide panel attorneys pre-populated spreadsheets in order to keep track of case progress. These sheets must be filled out per IJDP guidelines and submitted within two weeks of receipt.

b) The IJDP will employ and panel members will adopt an electronic, web based case management system. All IJDP cases will be entered into the system for appropriate monitoring.

i) Application of this system may or may not affect the need for any of the aforementioned data collection procedures. Communication from the IJDP office will serve to supplement and, where appropriate, override the requirements laid out in this handbook.

ii) A Los Angeles County initiative to create an integrated case management system is ongoing. Implementation of a countywide system is projected for 2019-2020. When such a program is online, there will be core functionalities that all attorneys must utilize.¹⁰ At that time, IJDP will make any necessary procedural and administrative adjustments.

c) The IJDP also employs a quality assurance survey for clients and families. Within two weeks of a case's resolution, IJDP program coordinators call the clients and their families to administer a questionnaire regarding their experiences with their IJDP panel attorneys. It is important to note that this is not a "satisfaction" survey. The IJDP will not solicit, nor will we accept, any information about the cases, only impressions of the attorney.

4) Panel Tenure

a) Starting in 2018, any applicant to the IJDP panel will be subject to the following onboarding scheme:

i) Tiered tenure on the IJDP panel

(1) Applicants who have been invited to participate on the panel will be subject to a six-month probationary period. During that six month period, the attorney must demonstrate

¹⁰ This case management system will incorporate a time keeping element and likely will be integrated with PACE in the future.

- (a) Sufficient capacity for holistic representation and zealous advocacy,
 - (b) Adoption of IJDP policies and procedures,
 - (c) A lack of specific transactional concerns over the six month period,
 - (d) A pattern of zealous advocacy,
 - (e) A pattern of legal competence.
- (2) If the attorney has not had the opportunity to, or was unable to, demonstrate to the director and/or the executive committee a sufficient degree of competence and zealousness during the initial six-month period, it is within the discretion of the director to extend the six-month period or terminate the attorney from the panel.
- (3) Once a new applicant has successfully completed the six-month probationary period, he/she will be offered a three-year contract with the IJDP panel.

b) Reapplication

- i) After the initial three-year period, panel members will be required to submit a supplemental application. The contract may be renewed for an additional three-year period, or some time period less, pursuant to the language in section i above. The renewal of the contract will be based on a review of the attorneys work over the previous three-year period, considering factors not limited to (a) through (e) above.

DUTY DAYS

Overview

- 1) The procedure for appointment of an IJDP attorney is as follows: the Court must first assign all indigent criminal defense cases to the Public Defender's Office (PD). That office determines whether it will and/or can accept the case. If, for any reason, the PD's Office cannot accept the case—usually because of a legal conflict of interest—the Alternate Public Defender's Office (APD) will be appointed. That office will review the matter and, in the event that the APD's Office cannot accept the case, the IJDP will be appointed.

As indicated, the Court is required, under Penal Code § 987.2(e), to appoint the IJDP only after first inquiring of the PD and the APD. The code section does allow for exceptions in some unusual cases when the court can appoint a non-IJDP attorney. The section sets forth procedure for that to occur.

- 2) The IJDP provides attorneys on a daily basis to the eight Juvenile Delinquency courthouses in Los Angeles County.

An IJDP lawyer is assigned to each of the eight courthouses every day. That person is referred to as the "duty day attorney." The duty day attorney's function is to be available to any court in the facility that appoints an IJDP lawyer.

- 3) The duty day assignment calendar is published once a year and identifies the lawyer responsible for any particular day and any particular court. The current month's calendar is updated every Friday on the IJDP forum to reflect the most recent changes.

Standards

- 1) The duty day attorney handles all IJDP business in his/her assigned courthouse for that day. He/she is allowed to keep all cases assigned to the IJDP so long as there is no conflict between the cases and the attorney's existing caseload.¹¹
- 2) The duty day lawyer is solely responsible for making all appearances.

¹¹ See Page 10, Section 5b for exceptions regarding transfer cases and cases involving certain felonies.

- 3) Duty day lawyers are not to assign cases to other lawyers. If the duty attorney discovers a multiple minor case has been filed, the duty attorney is to notify the program coordinator to arrange for coverage. Neither the duty attorney nor the judicial assistant, court clerk or judge are to assign cases to a specific panel attorney. This is exclusively the responsibility of the IJDP office.
- 4) You should not allow non-IJDP lawyers to stand in for you on appearances. If there is a special circumstance, please contact your IJDP program coordinator before making these arrangements.
- 5) The duty day lawyer should not schedule any other matters on their assigned duty days in any courthouse. On a duty day, your primary obligation is to service the courts where you are assigned. You are expected to be available to any court in the building. Lawyers who neglect duty day obligations for any reason will be subject to discipline.
- 6) Duty attorneys cannot be appointed as witness counsel unless the appointing court provides explicit and express assurances that it will work around the attorney's duty day obligations. Remember, as the duty attorney, your primary obligation is to all of the courts at the duty site.

Checking In/Checking Out

1. The duty day attorney must check into each of the covered courts in-person, no later than 8:30 AM. The duty attorney must also check in with the appropriate IJDP Program Coordinator to let him/her know that you are **in** the courthouse. You must provide us with whatever cell phone number you are using if it is different from the one we have on file.
2. The duty day attorney may not leave the courthouse until released by all courts. You must contact the IJDP program coordinator to let him/her know that you are leaving and whether or not you were appointed on any cases during the duty day.

Reporting Cases to the IJDP

1. If you are appointed on or resolve a case, you must submit the appropriate, completed form to your IJDP program coordinator within 48 hours.

Scheduling and Reassigning Duty Days

1. Lawyers are responsible for reassignment of duty days. The duty day attorney must secure a replacement for him/herself and notify the IJDP program coordinator of the identity of the new lawyer via email, CCing the new attorney. The duty day is not considered reassigned unless there is written confirmation from the program coordinator to both attorneys. If this procedure is not followed, both lawyers may be subject to discipline.
 - a. You may not use this process to avoid duty days in a particular court.¹²
 - b. In the case of a reassignment, the newly assigned lawyer is responsible to make sure that he/she gets any necessary discovery.
2. Attempts to reassign a duty day should be made as far in advance as possible. If, after making a reasonable effort, you are unable to find coverage for a duty day, contact your IJDP program coordinator for assistance.
 - a. We appreciate that there is a degree of uncertainty when it comes to managing your calendars. Last minute reassignments present meaningful challenges for our office and the courts. Please do your best to avoid last minute changes. If this is a frequent problem and there were no demonstrable efforts to mitigate, you may be subject to discipline.
3. A failure to appear for a duty day will result in a written warning to be kept in the attorney's file. Subsequent occurrences may result in an immediate 90-day suspension.
 - a. If we cannot find you and have to find a replacement and then you call in late, that will be treated as a no-show.
 - b. If we have to look for you, because a court has called looking for you and you respond late, you will receive a warning and subsequent occurrences may result in a 30-day suspension.

¹² The maximum allowable disparity between duty days at each court is four. Program Coordinators will not confirm duty day switches that unbalance any attorney's duty schedule.

DISCIPLINE

- 1) Billing & Discipline Committee
 - a) All members called before the Billing & Discipline Committee will be provided with all relevant information related to the incident alleging misconduct.
 - b) Members will have sufficient time to review and prepare for the hearing.
 - c) Billing & Discipline Committee members will be provided with copies of the same materials provided to the member.
 - d) Following the hearing and decision by the committee, a memo of the hearing and recommendations will be prepared and provided to the member. A second copy will be placed in the member's file.
- 2) Penalties for violating IJDP rules may result in a range of sanctions, from loss of future duty days to termination from the program.
 - a) Complaints that do not warrant an appearance before the Billing & Discipline Committee will be documented and placed in the member's file. An accumulation of these complaints may result in an appearance before the Billing & Discipline Committee.
- 3) If a Marsden motion is granted, the lawyer who is relieved must notify the IJDP office and will be asked to appear before the Billing & Discipline Committee.
- 4) The IJDP membership and court staff may be notified of member suspensions, including the basis for the suspension and the length of the suspension. The suspended attorney's name will not be made public.
- 5) Judges will be advised when an IJDP panel member is suspended along with the basis and length of the suspension.
- 6) If an attorney's prosecution of a juvenile case falls below the standards set forth in the *Guidelines for Attorneys Representing Youth in the Los Angeles Delinquency Court*, without reasonable justification, this may be considered by an IJDP Committee as evidence of non-compliance with the IJDP operating rules and procedures and the member may be subject to sanctions.

BILLING GUIDELINES

- 1) Once an attorney is assigned to a case, all compensation for that case is handled between the lawyer and PACE. The IJDP does not compensate any lawyer for work done. The sole function of the IJDP, with regard to attorney compensation, is to monitor the process, assist attorneys when necessary, and investigate any alleged improprieties.
- 2) The IJDP billing rate is \$95/hour. The per diem for a duty day is \$400.

What you cannot do:

- 1) Double bill for your time; i.e., if you read the police reports for one case, while waiting in court on another, you may only bill for that time on one of the cases.
- 2) Bill for work not performed.
- 3) Bill for the cost of a telephone call and for the time spent on the call.
- 4) Bill above the agreed upon rates as set forth in our contract.
- 5) Double bill for research performed on one case that is also used in another.
- 6) Bill above the approved guidelines for daily work and daily court time without specific approval from the judge to whom the case is assigned.
 - a) The daily hourly billing limit is 10 hours, including court time. The court day is 6.5 hours.
- 7) Bill separately for appearances made on previously appointed cases during a per diem duty day. Billing for those appearances constitutes double billing.
- 8) Bill for parking or gas expenses.¹³
- 9) Bill for waiting time other than time actually spent in the courtroom waiting for a specific case to be called. Time spent outside the courtroom may not be claimed as waiting time.

¹³ Billing for travel is allowed one way for the Lancaster Courthouse. The rate is \$0.545 per mile.

What you must do:

- 1) Utilize the electronic PACE detail of services form.¹⁴
- 2) Bill in time increments of 6 minutes (1/10 of an hour).
- 3) Be personally present for any billable court appearances on an IJDP assigned case; i.e., **do not** submit a bill for an appearance made by another lawyer.
- 4) Retain receipts for all expenses and attach copies to the Detail of Services form.
- 5) When requesting supplemental funds for an investigator or expert, submit your request in writing, detailing what work has been done, what remains to be done and the estimated cost.
 - a) If you have to disclose privileged information, file the request under seal.
- 6) Submit all claims for services **within 30 days** of the last activity on that case.
- 7) Submit only one Detail of Services form for a minor with multiple, simultaneous petitions. If the service dates on claims overlap, albeit for different petitions, the claim will be rejected by the PACE system.
- 8) Keep adequate notes of all work performed so you can justify your bill.

PACE Management
Hall of Records
320 W. Temple Street, Room G25
Los Angeles, CA 90012

(213) 830-0199

Hours:
M-F 7:00 AM-9:30 AM

¹⁴ This is not yet required by PACE Management, but it is highly recommended and will likely decrease errors and minimize the time to payment.

EXHIBIT 4

**GUIDELINES FOR
ATTORNEYS REPRESENTING
YOUTH IN THE LOS ANGELES
JUVENILE DELINQUENCY
COURT**

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FOREWORD

Rule 5.663 of the California Rules of Court is entitled, “Responsibilities of Children’s Counsel in Delinquency Proceedings.” It was adopted by the California Judicial Council in 2004. It broadly states that an attorney who represents a child in delinquency proceedings has a dual function. First, the attorney is charged with defending the child against the allegations in all petitions filed in delinquency court. Second, the attorney must advocate in the delinquency proceeding that the child receive care, treatment, and guidance consistent with his or her best interest.

These Guidelines have been written to assist attorneys who practice in delinquency court in Los Angeles to understand how to best meet their obligations as defense attorneys and child advocates. It is also intended to help the presiding judge of the juvenile court comply with California Judicial Administration Standard 5.40 (c)(3) which states “The presiding judge of the juvenile court should establish minimum standards of practice to which all court-appointed and public office attorneys will be expected to conform. These standards should delineate the responsibilities of attorneys relative to investigation and evaluation of the case, preparation for and conduct of hearings and advocacy for their respective youths.” Further, the presiding judge of the juvenile court in Los Angeles should periodically convene system stakeholders to review and update these Guidelines to keep them current.

We hope that all who work in the juvenile justice system will find these Guidelines useful. This several year project is the result of an ongoing commitment and effort of some special stakeholders in the Los Angeles juvenile justice and child welfare community including Alternate Public Defender Sherry Gold, Juvenile Justice Attorney and Consultant Maureen Pacheco, and Children’s Law Center Attorney Barbara Duey. While other representatives from other organizations have come and gone during this process, this group has been the heart and soul of this effort from its inception.¹ I owe them a great debt of gratitude for their time and their effort, and all of us are in turn especially indebted to Los Angeles Juvenile Court Research Attorney Susel Orellana who took notes, did research and translated our often complex and intense discussions and organized all into the cogent document these Guidelines have become. Lastly thank you to Los Angeles Juvenile Court Research Attorney Lilia Alvarez Romo, who served as final editor of this long term project.

Michael Nash, Presiding Judge
Los Angeles Juvenile Court

¹ While “agreeing with many of the principles articulated in the Guidelines,” the Los Angeles County Public Defender does not endorse these Guidelines on the basis that “The Guidelines would inevitably create local expectations that cannot realistically be met with existing resources.”

INTRODUCTION

This document is designed to serve as a practice guide for lawyers representing children in delinquency courts in California, with an emphasis on Los Angeles. The initial inspiration for this project arose from the 2005 publication of the Juvenile Delinquency Guidelines published by the National Council of Juvenile and Family Court Judges (“NCJFCJ”). The Juvenile Delinquency Guidelines is a bench book of best practices that was developed by a committee of judges, a Chief Justice, prosecutors, defense attorneys, juvenile justice practitioners, and other professionals representing key stakeholders in the juvenile justice system. In an effort to set forth essential elements of effective practice in juvenile delinquency cases, the publication identifies 16 key principles for juvenile delinquency courts, as well as recommended best practices throughout the juvenile delinquency court process.

These guidelines were drafted using the NCJFCJ Guidelines, guidelines and practice standards from many different jurisdictions,² pertinent statutory and case law, California Rules of Court, California Rules of Professional Responsibility, California State Bar Guidelines on Indigent Defense, National Juvenile Defender Center (“NJDC”) and National Legal Aid and Defender’s Association’s “10 Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems,” and the National Juvenile Defense Standards published in 2012 by the National Juvenile Defender Center. These resources, and the legal and ethical obligations stemming there from, were reviewed and incorporated into this document.

As a guide, this document performs four separate functions. First, it catalogues the specialized training and knowledge that a defender should possess to competently represent children in delinquency court. Second, it carefully identifies substantive issues and procedural considerations that may arise at each stage of the delinquency proceedings, and thus reduces the risk that they may be overlooked or forgotten. Third, as a training tool for defense counsel it increases the likelihood that children will receive diligent, effective representation. And fourth, it educates an audience that includes all participants in the juvenile delinquency system. These guidelines inform “judges, prosecutors, probation officers, and other juvenile justice stakeholders [about] the specifics of the role of defense counsel in the delivery of zealous, comprehensive [holistic] and quality legal representation to which children charged with crimes are constitutionally entitled.”³

This guide will undoubtedly have significant influence in the future for defenders who represent children in delinquency court. However, in spite of its potential worth there are certain ends it will never achieve. First, it cannot instruct counsel how to represent a particular youth in a particular case; counsel will have to determine when and how the guide’s specific provisions apply. Next, this

² District of Columbia: *Attorney Practice Standards for Representing Juveniles Charged with Delinquency or as Persons in Need of Supervision*; Ohio: *Standards of Representation of Youths in Juvenile Delinquency Proceedings*; Georgia: *State of Georgia Performance Standards for Juvenile Representation in Indigent Delinquency and Unruly Cases*; North Carolina: *Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level*; Nevada: *In the Matter of the Review of Issues Concerning the Representation of Indigent Defendants in Criminal and Juvenile Delinquency Matters*; California: *Guidelines on Indigent Defense Services Delivery Systems*; Pennsylvania: *Performance Guidelines Quality and Effective Juvenile Delinquency Representation*; North Dakota: *Commission on Indigent Defense Standards*.

³ National Juvenile Defender Center: *Role of Juvenile Defense Counsel in Delinquency Court*, p. 7.

guide does not create any new legal mandate, responsibility, or duty that does not otherwise already exist.

Finally, although implementation of these guidelines is intended to promote competent representation of all children in the juvenile justice system, the goals embodied in this guide will be difficult to achieve without sufficient funding and resources.

This guide is a result of the work of the Delinquency Guidelines Committee whose members included representatives from the following agencies and entities: The Los Angeles County Superior Court, Juvenile Division; Los Angeles County Law Offices of the Alternate Public Defender; Los Angeles County District Attorney's Office; Children's Law Center of Los Angeles; Los Angeles County Probation Department; Los Angeles County Probation Commission; Los Angeles County Commission for Children and Families; Los Angeles County Department of Children and Family Services; Alliance for Children's Rights; Los Angeles Delinquency Panel representatives; Loyola Law School Center for Juvenile Law & Policy and others.

CHAPTER ONE: ETHICAL DUTIES OF LAWYERS REPRESENTING YOUTH IN DELINQUENCY COURT

A. General sources of authority governing the ethical duties of lawyers include:

1. California Business and Professions Code (Sections 6000 et seq.), (hereafter "Cal. Bus. & Prof. Code")
2. California Rules of Professional Conduct, (hereafter "Cal. Rules of Prof'l. Conduct")
3. California Rules of Court, (hereafter "Cal. Rules of Court")
4. The Juvenile Justice Standards, by the Institute of Juvenile Administration and American Bar Association, (hereafter "IJA-ABA Juvenile Justice Standards")
5. American Bar Association Model Rules of Professional Conduct, (hereafter "ABA Model Rules of Prof'l. Conduct")

B. Ethical Duties

1. Counsel's client is the Youth Charged in the Delinquency Petition

In a delinquency proceeding, counsel represents only one person: the youth charged in the petition. Because the youth's parent(s) or guardian(s) play an important role in the proceeding, it is often important for the counsel to maintain good communication with the parent or guardian. However, counsel does not represent the parent or guardian. Counsel's sole responsibility and undivided loyalty is to the youth charged in the petition.

2. Counsel Must Zealously Advocate for the Youth's Expressed Wishes

An attorney representing a youth in delinquency court is charged with the responsibility of protecting the youth's legal interests while zealously advocating for the youth's expressed interests, subject to the same duties and responsibilities as counsel for an adult. Counsel is not charged with advocating for the best interests of the youth, but rather is charged with advocating for the youth's expressed wishes. However, before advocating for the youth's wishes, counsel must have fully informed and counseled the youth about all aspects of the case, all legally available choices, and potential relevant consequences. While advising the youth, counsel should take special care to use developmentally and age appropriate language. While counsel's ultimate concern is the protection of the youth's due process rights and penal interests, the attorney must take into account the expressed or unexpressed specific needs of the youth. Thus, attorneys representing youth in delinquency proceedings, like attorneys representing adults in criminal proceedings, are ethically obligated to advocate for the objectives of the case as determined by the youths.

"[D]efense counsel's principal duty is to advocate, within the bounds of law, for the best outcome available under the circumstances, according to the client's view of the matter."⁴ Similarly, the ABA Model Rules of Professional Conduct provide that so long as the client is not so incompetent as to be unable to adequately act in her own interest, the youth must be accorded the prerogative of making decisions concerning the objectives of representation.⁵ If the youth has the legal right to make a decision affecting the case, then counsel must advocate for the youth's position even if counsel personally disagrees with the youth's decision.

⁴ IJA-ABA Juvenile Justice Standards Relating to Counsel for Private Parties, footnote to Standards 3.1(a) and 9.3(a).

⁵ ABA Model Rules of Prof'l. Conduct, footnote to Rules 1.2(a), 1.14(a), cited in Calvin et al., *Juvenile Defender Delinquency Notebook*, (2d ed. 2006) p.14.

Where counsel believes that the youth's directions will not achieve the best long-term outcome for the youth, counsel must provide the youth with additional information to help the youth understand the potential outcomes and offer an opportunity to reconsider; and if the youth is not persuaded, counsel must continue to act in accordance with the youth's expressed interests throughout the course of the case.⁶

3. Counsel Must Keep The Youth Informed

Counsel must keep youths "reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the youths so informed."⁷ Counsel must promptly respond to telephone calls and other types of communications from the youth, ideally within one business day.⁸ If a youth is in custody, counsel should visit on a regular basis.⁹ In delinquency court, this duty to keep the youth informed extends throughout the representation of the youth until the court's jurisdiction is terminated. This also includes the duty to promptly communicate all plea bargain offers.¹⁰

4. Counsel Must Maintain Youth's Confidences and Secrets

Counsel must "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."¹¹ The principle of client-lawyer confidentiality applies to information relating to the representation, whatever its source, and encompasses matters communicated in confidence by the youth and therefore protected by the attorney-client privilege. It also includes matters protected under ethical standards of confidentiality.

One of the hallmarks of the traditional juvenile justice system has been confidentiality, seen as a necessary building block in the process of rehabilitation. Counsel has a duty to ensure that confidentiality concerns are not breached.

Within the context of representing youth in delinquency court, counsel's duties in this area are many. First, counsel has a duty to advise his client that all confidential information obtained during the course of representation will remain confidential. Second, counsel has a duty to oppose the sharing of any client confidential information that the youth does not want shared. Third, when discussing whether or not the youth should permit disclosure, counsel must advise the youth the ways in which the confidential information may be used now and in the future. It would be a violation of counsel's ethical duties to allow material that is either confidential or privileged to be disclosed without considering what adverse or collateral consequences might ensue and advising the youth accordingly.

5. Duty to Provide Effective Representation

Counsel must act competently¹² whether he or she is representing youth or adults. However, competent representation in delinquency court requires a special knowledge base and skill set. The indigent defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law. In addition to understanding the juvenile court process and systems, juvenile team members should be competent in juvenile law, criminal law, the collateral consequences of adjudication and

⁶ National Juvenile Defense Standards, (hereafter "NJDC Standards"), Std. 1.2.

⁷ Cal. Rules of Prof'l. Conduct, rule 3-500; Bus. & Prof. Code § 6068(m)

⁸ NJDC Standards, Std. 2.4.

⁹ *Id.*

¹⁰ Cal. Rules of Prof'l. Conduct, rule 3-510(A)(1).

¹¹ Bus. & Prof. Code § 6068(e)(1). See also Cal. Rules of Prof'l. Conduct, rule 3-100.

¹² Cal. Rules of Prof'l. Conduct, rule 3-110.

conviction, and other disciplines that uniquely impact juvenile's cases such as, but not limited to:

1. Child welfare services and entitlements
2. Child and adolescent development
3. Competency and capacity
4. Mental health issues, cognitive impairments, and disabilities for defense and disposition
5. Communicating and building attorney-youth relationship with adolescents
6. Administrative appeals
7. Community-based treatment, resources and programs
8. Counsel's role in treatment and problem-solving courts
9. Confidentiality rules in juvenile court
10. Dependency court/abuse and neglect court process
11. Cal. Welf. & Inst. Code § 241.1 Process
12. Diversionary programs, alternatives to wardship
13. Addiction and substance abuse
14. Ethical issues and considerations
15. Gender-specific programming
16. Immigration
17. Racial, ethnic and cultural understanding
18. Role of parent or guardians, guardians and other caregivers
19. Sexual orientation and gender identity awareness
20. Transfer to adult court and waiver hearings
21. Education issues including, but not limited to, special education, zero tolerance, school suspension and expulsion policies
22. Indian Child Welfare Act
23. Local resources including out of home placements, and funding streams
24. Probation Department policy, duties and mandates
25. Child support and its implications
26. Record sealing
27. Writs, appeals, modification of court orders, violation/revocation hearings
28. Transitional services for youth
29. Collateral consequences and proceedings that may impact the youth
30. Cal. Rules of Court, Rule 5.663
31. Local and state juvenile institutions
32. Using experts and consultants
33. Use of psychotropic medication and protocols related thereto.

CHAPTER TWO: GENERAL DUTIES OF REPRESENTATION

1. Counsel must maintain candid, confidential communication with the youth. Counsel shall explain to the youth, in an age-appropriate manner, the nature of the proceedings, the youth's rights in those proceedings, and any developments in the case. Counsel shall respond to requests for information from the youth in a timely manner.
2. Counsel must be prepared and trained on psycho-social issues affecting representation of the youth at each specific hearing, including but not limited to: medical history, mental health history, educational issues, family history, Indian and ethnic heritage, history of abuse or neglect, and socio-cultural issues.
3. Counsel must become aware of all the necessary and relevant information for the effective defense of the youth. Appropriate preparation includes, but is not limited to: investigating psycho-social issues, reviewing the facts of the case, interviewing witnesses, examining and evaluating all evidence, obtaining and reviewing all relevant files, records and other documentation, understanding dispositional alternatives including necessary treatment, service options, and collateral consequences.
4. Counsel must have knowledge of the law both substantive and procedural, the court rules that apply, and changes in the law that may arise during the course of representation.
5. Counsel must be knowledgeable of the dynamics of the relationship between the parent or guardian(s) and the youth and its potential impact on the case. Counsel must exclusively serve the interests of the youth, and may not substitute a parent's interests or view of the youth's best interests for those expressed by the youth.
6. Counsel must appear and vigorously represent the youth at all delinquency proceedings and file all appropriate motions on behalf of the youth.
7. Counsel must act with diligence and promptness to avoid unnecessarily delaying the completion or resolution of the youth's case.
8. Counsel must maintain a case management system and a thorough, organized and current file on each case. Documentation should be clear, up-to-date, and orderly permitting a successor or appellate attorney to readily locate all information.
9. Counsel must be aware of and bring to the court's attention other interests of the youth that may require advocacy in another legal or administrative arena, as appropriate.
10. Counsel must have knowledge of and adhere to applicable ethical standards.
11. Whenever possible, counsel shall begin representation prior to the initial court hearing.
12. Counsel's duties continue until jurisdiction is terminated or counsel is relieved by the court, including in the post-dispositional phase. Counsel must provide continuous, active

representation throughout the entirety of the youth's contact with the juvenile justice system.¹³

13. Counsel must communicate professionally with other parties, individuals, agencies, entities, and the Court.
14. Counsel has an ongoing obligation to monitor the competency of the youth throughout the entire process.
15. Counsel has a duty to be a member in good standing with the State Bar of California throughout the course of the representation.
16. Counsel should not carry a caseload that interferes with the ability to render effective assistance of counsel to the youth.
17. Counsel should be aware of all the resources available for the youth throughout the process.
18. Counsel should wear appropriate professional attire and advise the youth as to appropriate attire and demeanor for the courtroom.
19. Counsel must remember that the youth has a right to independent, unconflicted counsel and that it is generally not appropriate for other attorneys to appear on their behalf.¹⁴ There may be occasions when a stand in attorney is necessary, but these should be exceptions. If counsel cannot be present, counsel should make arrangements to have someone stand in their place and never have the youth be unrepresented. Substitute counsel may appear for the purpose of a continuance or rescheduling, but should not perform other acts of representation unless he or she is qualified and prepared to do so. Substitute counsel should explain the situation to the youth in a private conversation and location and ensure against any potential conflict. The substitute counsel should be well informed of the case status, and should inquire about any current needs of the youth. Substitute counsel should promptly communicate to youth's counsel what occurred at the proceeding, including any information about the youth's current needs.
20. Counsel has an obligation to be familiar with all of the local court protocols that are used in Los Angeles County on behalf of the youths including, but not limited to, Cal. Welf. & Inst. Code § 241.1, Cal. Welf. & Inst. Code § 317(e) education protocol for delinquency, psychotropic medication, Indian Child Welfare Act (ICWA), tort, probation camp, and requests for juvenile records. These protocols may be found under the heading "General Information" at <http://www.lasuperiorcourt.org/juvenile/UI/CourtProtocol.aspx>, or under the Los Angeles, Special Juvenile Court Rules found at <http://www.lasuperiorcourt.org/courtrules/CurrentCourtRulesPDF/Chap7.pdf>.

¹³ NJDC Standards, Std. 1.1; Cal. Rules of Court, Rule 5.663.

¹⁴ NJDC Standards, Std. 1.4 (a): "Counsel must maintain continuity of representation in all phases of the delinquency process...."

CHAPTER THREE: DUTIES OF REPRESENTATION PRIOR TO ARRAIGNMENT¹⁵

1. Counsel should read all paper work and ascertain potential conflicts of interest.
2. Counsel should consider detention issues including, but not limited to alternatives to detention, reasonable efforts to prevent detention, time of arrest and filing and issues of over-detention warranting release.
3. Counsel should ascertain who is present for the youth.
4. Counsel should have releases ready to authorize retrieval of relevant records and information. Releases should include mental health, school, medical, educational, and employment releases. (Department of Health Services has a comprehensive release to cover mental health, education and medical.)
5. Counsel should speak to the youth in a confidential area, away from the parents or guardians or other people.
6. Counsel should explain, in developmentally appropriate language:
 - a. the defense counsel's role and the attorney-client privilege;
 - b. the role of parents in the proceedings, and how counsel will interact with them;
 - c. the charges and conduct alleged in the police report;
 - d. the possibility of obtaining release; and,
 - e. relevant timelines and whether or not to agree to hearings inside or outside of the period.
7. Counsel should confirm the youth's statistical information: date of birth, address (and length of time at this address), spelling of name, citizenship status, Indian heritage, parentage, who the youth resides with (along with names, addresses, and phone numbers), and the whereabouts of the parents or guardians, if the child does not reside with them.
8. Counsel should inquire about:
 - a. the youth's home living conditions, possible alternative living arrangements if the detained youth is released and cannot return home, and relevant contact information for family members/caregivers;
 - b. the youth's health (mental and physical), health insurance or Medi-Cal, and medication history, including medications currently being prescribed or taken;
 - c. the youth's school placement, status, disciplinary record, attendance and special education designation;

¹⁵ This document presupposes that counsel has been appointed just prior to arraignment. In some cases, the attorney-youth relationship begins prior to that time. For possible resources available in those situations, please refer to the section on pre-filing diversion in Chapter 5, Section (E)(1), Alternatives to 602 Status, *infra*.

- d. whether the youth or his or her family has had previous contact with the juvenile justice system (including the delinquency and family law courts), and the nature and status of the contact. Counsel should ascertain whether the youth has pending cases in dependency or delinquency and obtain contact information for relevant parties (attorney, social worker, court, next court date); and
 - e. the youth's account of the incident as well as any potential witnesses, including character witnesses.
9. Counsel should determine whether the youth or his/her parents/guardians have limited English proficiency, and their preferred language, and ensure an interpreter is present.
 10. Counsel should determine, to the extent possible, whether the youth has mental health issues, has developmental disabilities, has other cognitive limitations, or is illiterate and whether the youth is a regional center youth or is eligible for special education services.
 11. If the youth is in custody, counsel should inquire about conditions of confinement such as, but not limited to, safety with other detained youth and staff, phone calls, medications, health and mental health issues, special needs, and educational issues.
 12. Counsel should make necessary calls to the dependency attorney, social worker, delinquency attorney, or contacts to prepare for an argument for release.
 13. Counsel should discuss with the youth what will happen during the probation interview, advise the youth as to what areas the youth should avoid discussing with probation, or alternatively, whether to decline to be interviewed, and advise the youth to dress appropriately for the meeting.
 14. Counsel should discuss appropriate courtroom demeanor, appearance, and attire for the next hearing, if applicable.
 15. Counsel must provide contact information to the youth in written form.
 16. Counsel should advise the youth not to speak with police officers, probation officers, social workers, or any other persons about the case and other information that could impact the case without first speaking to Counsel.
 17. Counsel should enquire about the usage of social media such as Facebook, MySpace, Tumbler, WhatsApp, Facetime, Instagram, Twitter, etc. Counsel should advise the youth that law enforcement and the prosecution may have obtained access to these sites and should advise the youth regarding discontinuation as appropriate.
 18. Counsel should consider the appropriateness of bench officer exclusions including, but not limited to, Cal. Code of Civ. Proc. §§170.1, 170.6 or stipulations.
 19. Counsel should interview parents or guardians and supporters present. Counsel should inquire about the youth's home behavior, school, medication and health. Counsel should discuss appropriate courtroom demeanor. Counsel should explain the attorneys' role and relationship to the parent or guardian, obtain the parent or guardian(s) contact information

and signatures for necessary releases, confirm statistical information, and inquire about their ability to appear at future court hearings.

20. The potential for conflict of interest between an accused juvenile and his or her parent or guardian should be clearly recognized and acknowledged. Counsel should inform the parent or guardian that he or she is counsel for the child, and that in the event of disagreement between a parent/guardian and the child, counsel is required to exclusively serve the wishes of the child.
21. Counsel should explain the court process to the youth and the parent or guardian (this may be done with both parties simultaneously if appropriate), determine the appropriate plea at arraignment, give a range of potential outcomes for that particular hearing, and discuss the various types of diversion, pleas, and collateral consequences, if serious consideration is given to entering any type of admission at this stage.

CHAPTER FOUR: DUTIES OF REPRESENTATION AT ARRAIGNMENT

1. In the event that a youth enters the courtroom in shackles, counsel should be familiar with and cite the rules on shackling articulated in *Tiffany A. v. Superior Court* (2007) 150 Cal.App.4th 1344, 1359. Counsel should never accept a “blanket policy” by the sheriffs or the court; an individualized finding, supported by evidence, must be made by the court.
2. Counsel should consider who should be present in the courtroom and the appropriateness of making a motion to exclude.¹⁶
3. Counsel should decide whether the youth will enter a denial, an admission or deferral of a plea. Counsel should identify any legal defects in the charging documents.
4. In cases where a pre-disposition report may be ordered, counsel should consider requesting a court order that the youth not be interviewed by probation, that the scope of the interview be limited or prohibit certain matters, or that the attorney be contacted before the youth is interviewed so that counsel or a representative may be present. Counsel must warn the youth that anything the youth says to the probation officer will likely be shared with the court and may be used for several purposes. Counsel may also wish to file with the court a document signed by the youth which invokes the youth’s Fifth and Sixth Amendment rights not to be interviewed on any open cases or charges that may be filed.
5. Counsel should make any appropriate motions including but not limited to: demurrers, motions for release from detention based on untimely filings or untimely transportation to court, the absence of need for secure confinement, or the failure to make reasonable efforts to prevent the need for detention.¹⁷ If the youth remains detained, counsel should set the detention review hearings, commonly referred to as *Dennis H.*¹⁸ and *William M.*¹⁹ hearings unless there is a considered strategic reason not to do so.
6. Counsel should consider making requests in relation to conditions of confinement including, but not limited to: visitation (including after court visits), phone calls, medical and mental health needs, clothing, housing, and special dietary requirements.
7. Counsel should make a request for a Cal. Welf. & Inst. Code § 241.1 assessment of the youth if the youth is a current dependent of the court, or after consultation with the youth, if there is a nexus to child abuse in the offense charged.
8. Counsel should begin to consider whether a referral to drug court or juvenile delinquency mental health court for the youth may be appropriate.

¹⁶ Cal. Welf. & Inst. Code § 676(a).

¹⁷ Cal. Rules of Court, Rules 5.752, 5.754, 5.758, 5.760, 5.774.

¹⁸ *In re Dennis H.* (1971) 19 Cal.App.3d. 350.

¹⁹ *In re William M.* (1970) 3 Cal.3d. 16.

9. Counsel should make appropriate discovery requests, including an order to the prosecution that certain evidence be retained, particularly in cases where potentially exculpatory information or evidence might be destroyed.
10. Counsel should ensure that an appropriate holder of education rights is identified or that a process to locate and appoint an appropriate holder of education rights is initiated.

CHAPTER FIVE: DUTIES OF REPRESENTATION POST-ARRAIGNMENT TO ADJUDICATION

A. Detention Hearings

1. The NJDC Standards list four functions for detention advocacy:
 - a. If the state fails to establish a prima facie case, the youth must be released;
 - b. Counsel gathers discovery by getting a preview of the prosecution's case;
 - c. The testimony of live witnesses can be used to impeach witnesses at adjudication; and
 - d. The hearing provides counsel the opportunity to gain the youth's trust by zealously advocating on his or her behalf.²⁰

“Counsel must be versed in state statutes, case law, rules of court, detention risk assessment tools, and court practice regarding the use of detention. . . Counsel should be aware of and able to invoke research on the adverse impacts of detention on youth. Counsel should independently investigate the alternatives to secure detention, including “house arrest” or home detention, and review those with the client. Counsel should be familiar with and have visited the juvenile halls.”²¹

2. At the arraignment, counsel should be familiar with the hearings available to challenge detention, and the applicable statutory timelines for setting such hearings.
 - a. *In re William M.* (1970) 3 Cal.3d 16 (court may not detain a youth based solely on the nature of the offense without considering the statutory factors relevant to detention.)
 - b. *In re Dennis H.* (1971) 19 Cal.App.3d 350 (prosecution must prove a prima facie case with competent evidence at the detention rehearing.) Hearsay is admissible, but counsel has the right to cross-examine the declarant of documentary evidence. The court must find sufficient credible factual data to support a finding.
 - c. *Gladys R.* (capacity) must be shown at a *Dennis H.* hearing.
 - d. If a prima facie case is not proven, the youth must be released.

Note: it would be improper for the court to order home detention if a prima facie case is not established.

B. Discovery

Counsel should obtain all discovery in preparation for the defense of the youth. Relevant discovery may include, but is not limited to:

1. All documents filed in the case, including, but not limited to, the petition, arrest report, and any and all warrants
2. Exculpatory and mitigating information
3. Names and addresses of prosecution witnesses
4. Statements of witnesses and their criminal and juvenile records
5. Client statements and details of the circumstances

²⁰ NJDC Standards, Std. 3.7, Commentary.

²¹ NJDC Standards, Std. 3.8.

6. Portions of the youth's juvenile record that the prosecutor intends to use
7. Results of physical & mental examinations
8. Results of scientific tests (and raw data, notes, and CV's of examiners)
9. Statements of any co-defendant
10. Law enforcement reports
11. Audio and visual evidence including pictures, video, 911 tapes, tapes of audio transmissions, camera recordings of arrests, etc.
12. Information supporting gang allegations

Discovery may be accomplished both formally and informally. Counsel should ensure that efforts to obtain discovery informally are documented, and pursue formal requests in a timely manner. If formal requests are not complied with in a timely manner, counsel should consider seeking sanctions, which may include the preclusion of prosecution evidence being introduced.

C. Investigation

Counsel should conduct a prompt investigation into the facts relevant to the offense, potential defenses, and the youth's background. The investigation may include, but is not limited to:

1. Initial research on the offense:

- a. Counsel should research applicable statutes and case law, including current law relevant to motions such as suppression of evidence and unlawful or coerced confessions.
- b. Counsel should consider defenses, lesser included offenses to the offenses charged and relevant motions that may be made.
- c. Counsel should interview all witnesses and accumulate information through the use of an investigator, to avoid the conflict of becoming a witness.²²
- d. Counsel should obtain any relevant witness records including, but not limited to, criminal, juvenile and dependency records.
- e. Counsel should ascertain whether physical evidence exists, examine the same, and determine whether any expert testing is appropriate.
- f. Counsel should view the scene of the alleged offense under conditions as close as possible to the time of the offense.
- g. Counsel should determine whether experts are needed to assist in investigating the circumstances of the offense or charge.
- h. Counsel should issue *subpoenas duces tecum* where necessary and appropriate.

2. Initial research on the youth:

- a. Counsel should ensure that there has been a comprehensive interview of the youth.
- b. Counsel should obtain relevant records relating to the youth, as appropriate, including, but not limited to, dependency, mental health, medical, and education records, including any special education and regional center records.
- c. Counsel should contact any attorneys who have represented the youth in other relevant contexts, including, but not limited to, dependency, mental health, special education, school discipline, regional center, and delinquency proceedings to determine if there is any additional information that may be helpful to the youth.

²² If the youth is indigent, counsel should prepare and file a motion for the appointment of an investigator. The motion should have an accompanying declaration, specifying necessity, and should be filed ex parte and under seal. See Chapter 7, Motion for Confidential Expert, *infra*.

- d. Counsel should speak with individuals who may have relevant additional information about the minor including, but not limited to, family members, professionals, school staff, and friends.
- e. Counsel should determine whether experts are needed to assess or evaluate the youth for purposes of capacity, competency, mental health defenses, motions, adjudication, and or disposition.

D. Pre-plea Hearing Preparation

1. Counsel should work with the youth and his or her family or caregivers, if possible, to identify needs that require services that could improve the youth's posture in negotiating a better outcome in the case. Such services should be implemented as quickly as possible.
2. Counsel should consider attending the youth's interview with probation, if necessary, to protect the legal rights of the youth.
3. Counsel should work with the youth to compile information or records, such as school or medical records, which would aid the probation officer in making his report, and advise the youth to bring those records to the interview. Counsel should consider carefully what records are shared with the probation department, and under no circumstances should confidential information be shared without the express permission of the youth.
4. Counsel should further consider, in light of gathered information: whether any mental health, developmental disabilities or cognitive impairment issues exist, the youth's developmental immaturity, and the youth's ability to understand the court proceedings and to meaningfully participate in them, and should determine whether expert assessment is needed.
5. Counsel should determine whether a therapy or treatment plan is needed, and if so, seek to implement a plan so that services begin immediately.
6. Counsel should determine whether the youth is a regional center consumer, and if so, whether additional or modified services could be initiated before the pre-plea. If the youth appears to have developmental disabilities, but has not been found eligible, counsel should expeditiously determine whether evaluation for regional center eligibility should be initiated.
7. Counsel should determine whether any drug or alcohol problems exist, and recommend treatment or therapy to the youth if appropriate.
8. Counsel should compile a detailed and thorough account of the youth's educational history including, but not limited to:
 - a. Obtaining education records/cumulative file from most recent school attended.
Note: As of January 1, 2012, counsel of record for the youth in the delinquency action is permitted access to the youth's education records.²³
 - b. Working with the youth and caregiver to consider whether an individualized educational plan ("IEP") is needed. If so, arrange for a request for an assessment to be made. If an IEP is in place, consider whether or not it is being appropriately implemented, and determine whether there are any issues with respect to implementation.
 - c. Considering whether the youth is placed in a proper school setting for any special needs.
9. Counsel should determine whether there are expulsion or suspension hearings pending.
10. If an expulsion or suspension hearing is pending, counsel should consider the impact of those proceedings on the delinquency case, advise the youth as to the potential impact on the delinquency case, and if possible, seek assistance for the youth for those proceedings.

²³ Cal. Educ. Code § 49076(a)(1)(I).

Educational attorneys may be available for appointment pursuant to Cal. Welf. & Inst. Code § 317(e).

11. Counsel should work with the youth to address grades or attendance issues as soon as possible.

E. Alternatives to Cal. Welf. & Inst. Code § 602 Status

The California Welfare and Institutions Code affords defense attorneys, prosecutors and judges the opportunity to fashion dispositions that give the court and probation jurisdiction and authority to supervise a youth, while not declaring the child a ward of the court.²⁴ The following paragraphs provide important tools for resolving juvenile cases without the serious consequences of wardship. Counsel should familiarize themselves with the different alternatives listed below.

1. Pre-Filing Diversion

When counsel is consulted prior to the filing of a petition, counsel should consider recommendation and pursuit of informal resolution, if possible. There are a number of different types of interventions that do not require court involvement. Some programs are sponsored by law enforcement and are not necessarily prompted by an arrest or citation. Other programs are only available to those youth who are alleged to have committed a crime and whose participation in the program is in lieu of delinquency prosecution. In those instances, the cases are first reviewed by the Los Angeles County Probation Department and are then referred to local intervention programs pursuant to Cal. Welf. & Inst. Code § 626(b) and § 654. In those instances where an arrest or detention results in a referral to the District Attorney's office, the youth may be eligible for the District Attorney's Juvenile Offender Intervention Network (J.O.I.N.) program.²⁵

Either before or after the filing of a petition, counsel should attempt to discern whether a youth is eligible and suitable for J.O.I.N. or another diversion program and should attempt to negotiate the result with the prosecution and/or probation.

2. Post-filing Dispositions

Once a petition has been filed in the juvenile court, there are three remaining dispositional²⁶ options for the parties to consider which do not require the court to make a formal finding

²⁴ The declaration of wardship has profound consequences for a minor and should, from a defense perspective, be avoided to the extent possible.

²⁵ The District Attorney's J.O.I.N. program deals with non-violent, first-time juvenile offenders in an out of court setting. To participate in the program, parent or guardians and youthful offenders agree to the terms of a J.O.I.N. contract. In the contract, juvenile offenders acknowledge responsibility for their acts and agree to pay restitution, maintain good school attendance, and perform community service. Parents or guardians agree to attend parent or guardian classes, and all families are referred to group counseling. Cases are intensely supervised and monitored by the hearing officer for one year. If the minor reoffends or fails to adhere to the J.O.I.N. contract, the original case is referred for prosecution. Counsel should be cognizant in those cases of speedy trial issues, potential 782 motions, and the validity of uncounseled agreements.

²⁶ The term, "dispositional" is used informally because it is the custom and practice of the juvenile courts to characterize these levels of supervision as "disposition" and "probation." However, 654, 725 and 790 are technically not probation, nor have the courts held a formal disposition hearing.

that the minor is a ward of the court. They follow, beginning with what the courts typically interpret as the lowest level of court and probation involvement.

a. Cal. Welf. & Inst. Code § 654

Cal. Welf. & Inst. Code § 654 is an important tool for the court to allow supervision of a youth without an admission or wardship. Although primarily used in lower level cases, counsel should be mindful that § 654 provides for an “interests of justice” exception. This exception essentially provides that Cal. Welf. & Inst. Code § 654 is available to any youth, charged with any offense in the juvenile justice system. Counsel should brief the circumstances justifying 654 in such a case, e.g. where there are significant mitigating circumstances of the offense, mental health or developmental disability issues, or otherwise unknown historical information about the youth.

Counsel should be familiar with the following features of this option:

- i. The youth is not required to admit the petition in order to take advantage of Cal. Welf. & Inst. Code § 654.
- ii. If the court deems a minor eligible and suitable, it may grant Cal. Welf. & Inst. Code § 654 over the people’s objection.
- iii. Typically the youth must complete the terms and conditions of the grant of Cal. Welf. & Inst. Code § 654 within six months. This time period can be extended, however, delinquency proceedings must proceed within twelve months of the filing of the petition, or the court will lose jurisdiction.

b. Cal. Welf. & Inst. Code § 725

Cal. Welf. & Inst. Code § 725 is generally considered the next step up the dispositional ladder, providing for a higher level of accountability and supervision for a youth charged with a crime in the delinquency courts.

Counsel should be familiar with the following features of this option:

- i. Cal. Welf. & Inst. Code § 725 requires that the youth admit the charges prior to being formally supervised by the court. Although the language of § 725 appears to exclude “offenses set forth in § 654.3, which would thereby preclude its use with youths 14 or older who commit a felony unless special circumstances apply,” this reading would be an error. § 725 should be available to felony charges without respect to age, and without a showing of special circumstances. This is because § 725 was enacted and adopted the provisions of § 654.3 *at that time*. When Prop. 21 changed § 654.3, it did not impact § 725. Under settled principles of statutory interpretation, § 725 must be read with the limitations from § 654.3 that were in existence at the time that § 725 was enacted.
- ii. If the court deems a youth eligible and suitable, it may grant Cal. Welf. & Inst. Code § 725 over the people’s objection.
- iii. Cal. Welf. & Inst. Code § 725 must be completed within six months of the admission. If the terms and conditions imposed by the court are not satisfied within the initial six month period, then a disposition hearing must take place and the youth may be made a ward of the court at that time.

c. Cal. Welf. & Inst. Code § 790 (Deferred Entry of Judgment, or “DEJ”)

Cal. Welf. & Inst. Code § 790 is commonly reserved for those cases and youths who might be eligible for non-wardship probation, but are unsuitable in that they pose a substantial serious risk, and do not fall within the interests of justice exception. Cal. Welf. & Inst. Code § 790 is similar to Cal. Welf. & Inst. Code § 725 in structure, with substantial differences in eligibility and time under supervision.

Counsel should be familiar with the following notable features:

- i. Cal. Welf. & Inst. Code § 790 is only available to youth 14 years of age or older who admit to a felony.
- ii. There are several grounds for ineligibility, including previous declaration of wardship for a felony, current allegation of a Cal. Welf. & Inst. Code § 707(b) offense, previous commitment to DJJ, or prior formal revocation of probation.
- iii. If the court deems a minor eligible and suitable, it may grant Cal. Welf. & Inst. Code § 790 over the people’s objection.
- iv. Once supervision under Cal. Welf. & Inst. Code § 790 is granted, successful termination can occur no earlier than twelve months and no later than thirty six months.
- v. Upon successful completion of supervision, the court must dismiss the petition, the arrest is determined never to have happened, and the youth’s juvenile court record for the instant petition is automatically sealed.

Counsel must ensure the youth is fully informed of a failure to successfully complete deferred entry of judgment (DEJ), and should ensure the youth is provided with the necessary supportive programming to succeed. In the event of a subsequent allegation that the youth has failed to comply with his supervision, counsel should be prepared to vigorously contest the allegation, and to offer the court alternatives to revocation of DEJ.

Although a court is not required to hold a deferred entry of judgment suitability hearing for a youth who denies the allegations of a petition and insists upon a jurisdictional hearing, a youth need not forego the right to a suppression hearing in order to accept DEJ (Cal. Welf. & Inst. Code § 790). The juvenile court must make a determination as to whether to grant or deny DEJ pursuant to the provisions of § 790 (benefit from education, treatment, and rehabilitation) and not summarily deny DEJ because a youth challenges the search or seizure before admitting a petition.²⁷

F. Plea Negotiation

As discussed in the preceding section, counsel should be aware of the existence, operation, and effectiveness of programs in the jurisdiction such as court diversion, mediation, restorative justice programs, youth court, STAR court, and other alternatives that could result in the youth's case being diverted, handled informally, and/or referred out of the court system.

1. Notwithstanding the existence of ongoing plea negotiations with the prosecution, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to an adjudicatory hearing on the merits.

²⁷ *In re Joshua S.* (2011) 192 Cal.App.4th 670.

2. Counsel should bring all plea offers to the youth, immediately conveying them in an age appropriate manner, considering the youth's emotional and intellectual development and ensuring the youth understands the offer and its consequences.
3. Counsel should give the youth sufficient time to consider all plea offers.
4. If an admission is being contemplated, counsel must help the youth understand the process for making an admission or plea, the questions the court or the prosecutor will ask in the colloquy, and the rights the youth will forfeit.²⁸
5. In explaining the terms of the plea agreement, counsel must thoroughly explain the disposition and consequences. Counsel should be aware of and explain the effect the youth's admission will have on any other court proceeding or related issues, such as probation or school suspension. Counsel should be familiar with significant collateral consequences that may ensue, and discuss these consequences with the youth.²⁹
6. Counsel should explain the probabilities of the plea agreement being accepted by the court and the youth's options if the plea agreement is not accepted by the court.
7. Counsel should candidly explain to the youth the prospective strengths and weaknesses of the case for the prosecution and defense, including the availability of prosecution witnesses, concessions and benefits which are subject to negotiation and the possible consequence of an adjudication of delinquency. Counsel should also ascertain and advise the youth of the court's practices concerning disposition recommendations and withdrawing pleas or admission.
8. Counsel must also be satisfied that: the plea is voluntary, that the youth understands the nature of the charges, that there is a factual or legal basis for the plea or the admission, that the witnesses are or will be available, and that the youth understands the rights being waived.
9. Counsel's recommendation on the advisability of a plea or admission should be based on a review of the complete circumstances of the case, the possibility of a favorable outcome if further adjudicated, the collateral consequences that will ensue, and the youth's situation. Such advice should not be based solely on the youth's acknowledgement of guilt or solely on a favorable disposition offer.
10. Where Counsel believes that the youth's desires will not achieve the best long-term outcome for the youth, counsel must provide the youth with additional information to help the youth understand the potential outcomes and offer an opportunity to reconsider. If the youth is not persuaded, however, counsel should assure the youth he or she will defend the youth vigorously and represent the youth's expressed wishes.
11. The terms and conditions of the disposition should also be thoroughly explained to the parents or guardian.

²⁸ NJDC Standards, Std. 4.10.

²⁹ A Manual of Collateral Consequences, published by the Pacific Juvenile Defender Center, is available for purchase or for download at www.pjdc.org.

CHAPTER SIX: COMPETENCY IN JUVENILE COURT

Attorneys working with juveniles must be able to recognize their youths' developmental impairment, mental illness, and developmental immaturity, as this is an essential component of quality legal representation.³⁰ Identifying youths who may be incompetent and then litigating the issue of incompetency is a complex area of juvenile delinquency practice. In Los Angeles, competency proceedings are governed by Cal. Welf. & Inst. Code § 709, Cal. Rules of Court, Rule 5.645 and a local protocol -- the Los Angeles County Juvenile Court's Protocol Regarding Juvenile Competency to Stand Trial ("Competency Protocol.")

The test for incompetency is twofold: (1) whether the juvenile has sufficient present ability to consult with his/her attorney with a reasonable degree of rational understanding, *and* (2) whether he/she has a rational as well as factual understanding of the proceedings against him/her.³¹ In other words, a youth is incompetent if he/she is unable to understand the proceedings against him/her, or is unable to assist his/her attorney in conducting their defense in a rational manner.³²

A. Counsel must be familiar with the grounds for incompetency

1. Does the youth suffer from a mental disorder that prevents him/her from understanding, appreciating or assisting?
2. Does the youth have a developmental disability that prevents him/her from understanding, appreciating or assisting?
3. Is the youth incompetent based upon developmental immaturity³³ that prevents him/her from understanding, appreciating or assisting?
4. Are there other conditions or a combination of conditions that render the youth unable to understand the nature of the proceedings or to assist counsel in the defense of the case?

B. Counsel must be cognizant of how to identify youth who may be incompetent

While interviewing a youth an attorney should note any behavioral characteristics or language limitations. Extensive time must be spent with youths utilizing open ended questions. Specific things to look for may include, but are not limited to:

1. Youth is under 15 years old
2. Youth is receiving special education services or doing poorly in school
3. Youth has previous psychiatric hospitalizations or has had psychiatric evaluations or received mental health services
4. Youth appears withdrawn, anxious, depressed, disconnected or has difficulty communicating
5. Youth is unable to read something back to counsel, or accurately summarize what counsel has said to the youth
6. Youth prefers books, television, or games far below his/her age level

³⁰ American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Thorough Indigent Defense Delivery Systems* (2005).

³¹ *Dusky v. United States* (1960) 362 U.S. 402; *James H. v. Superior Court* (1978) 77 Cal.App.3d. 169.

³² See also *Drope v. Missouri* (1975) 420 U.S. 162, Cal. Rules of Court, Rule 5.645, Cal. Welf. & Inst. Code §§ 709, 6550, 6551, and Cal. Penal Code § 4011.6.

³³ See *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847.

7. Youth is a regional center consumer
 8. Youth's family provides historical background of youth or family history of mental illness or competency issues
- C. Counsel should be aware that the question is not whether the youth can be competent some day but whether he/she is presently competent.³⁴ Additionally, the issue of competency cannot be deferred until after a fitness hearing.³⁵
- D. Counsel should be familiar with the various experts who may be consulted and retained or appointed to evaluate juvenile competency, prepare reports, and testify in court.
1. Once an attorney has reason to believe there may be an issue regarding competency, but is not ready to request the court to declare a doubt, counsel may wish to seek out an expert who is proficient in forensic evaluations to determine whether a child is competent to stand trial.
 2. Counsel should be familiar with the latest research on competency in youth, including studies done by the MacArthur Foundation Research Network on Adolescent and Juvenile Justice³⁶ and assessment instruments used to measure competency.
 3. Counsel should select only qualified experts who know the legal requirements and considerations to explore in considering competence and have had experience assessing the developmental capacities of youth.
 4. Counsel should be familiar with the list of experts in child and adolescent development who have training in the forensic evaluation of juveniles and are familiar with the competency standards and accepted criteria used in evaluating competence.³⁷
 5. Counsel should determine whether to obtain a confidential report prior to requesting the Court to declare a doubt. Prior to the declaration of a doubt regarding competency to stand trial, a confidential expert will maintain the attorney-youth privilege regardless of mandatory reporting obligations.³⁸ Counsel should contact the expert prior to seeking appointment to confer with the expert about whether the expert is qualified, keeping in mind issues of language, race, gender, etc.
 6. If counsel feels that a particular expert, who is not on the Superior Court panel, is needed, counsel should prepare an ex parte motion and accompanying detailed affidavit justifying the need for appointment of that particular expert.³⁹ Denial of the expert request can be challenged by writ.

³⁴ See *In re Ricky S.* (2008) 166 Cal.App.4th 232 and Cal. Welf. & Inst. Code § 709.

³⁵ *Tyrone B. v. Superior Court*, (2008) 164 Cal.App.4th 227.

³⁶ See Thomas Grisso et al., *Juvenile Competence to Stand Trial: a Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, (2003) 27 Law & Human Behavior 333, and Thomas Grisso, *Assessing, Understanding, and Appreciation of the Miranda Rights: Manual and Material*.

³⁷ Cal. Welf. & Inst. Code § 70 and Cal. Rules of Court, Rule 5.645 specify minimum training requirements.

³⁸ See *Elijah W. v Superior Court* (2013) 216 Cal.App.4th 140.

³⁹ *Doe v. Superior Court* (1995) 39 Cal.4th 538.

7. Counsel should clearly specify the question or questions to be addressed by the expert, and should provide documents and information in a strategic manner. Among the documents to consider sending are IEPs, psycho-educational reports, grades, medical and health records of the youth.
8. After the expert's report is received, counsel may also need to request additional testing (i.e., neuropsychological, educational, IQ) in order to gain a complete picture of the youth's level of functioning and his/her competency. After receiving the report, defense counsel will also need to decide if or how he or she will be using this confidential report.

E. Counsel must be familiar with the Los Angeles County Competency Protocol to Stand Trial.

1. Counsel may want to explore the possibility of an informal resolution that would possibly resolve the case without initiating formal competency proceedings, or decide that a formal Competency to Stand Trial (CST) proceeding is required.
2. Once a doubt has been declared, counsel should assure that the court suspends proceedings due to a finding of substantial evidence raising the doubt.
3. Once a doubt has been declared, counsel should check with the court clerk as to the name of the next expert on the list and then contact that expert with any and all information relevant to the competency finding.
4. Counsel should assure that, if the youth is detained, that the CST hearing is set within the required 15 day timeline unless counsel determines that there is a strategic or tactical reason to waive time.
5. Counsel should assure that, if the youth is not detained, that the CST hearing is set within the required 30 days from suspension of the proceedings unless there is a strategic or tactical reason to waive time.
6. Counsel should be familiar with the Juvenile Adjudicative Competence Interview (JACI) and ascertain that the appointed expert utilized the required tool. If the expert does not intend to use the JACI, counsel should ascertain why not.
7. Counsel is entitled to the JCST evaluator's report two days prior to the date set for the CST hearing.
8. Counsel should be familiar with the requirement that the JCST evaluator's report includes:
 - a. Whether or not the youth has a mental disorder or developmental disability, immaturity or other condition,
 - b. That causes the youth to lack sufficient present ability to consult with counsel and assist in preparing his/her defense,
 - c. Or causes the youth to lack a rational and factual understanding of the nature of the proceedings against him/her.
9. Counsel should ensure that the evaluator included a statement in the report as to whether or not there is a substantial probability that the youth will attain competency in the foreseeable future.

If the delinquency court finds that substantial evidence raises a doubt as to the youth's competency, the delinquency proceedings shall be suspended. This substantial evidence is usually presented by defense counsel; however, the court itself can raise the issue of incompetency. Either way, if substantial evidence exists, the court shall order the proceedings

suspended. The court shall also order that the question of the youth's competency be determined at a hearing.⁴⁰

- F. Counsel should be familiar with and utilize the provisions of joinder, to join as a party any agency or specified individual, found in Cal. Welf. & Inst. Code § 727(b)(1).⁴¹
- G. Counsel should be prepared for the Competency to Stand Trial Hearing and has the burden of establishing incompetency by a preponderance of the evidence (unless the defense is contesting the declaration of doubt by the court.)
- H. If the youth is found incompetent, counsel should be familiar with issues of restoration, probability of attaining competency and its impact, timelines of progress reports, motions that may be made, and counsel's continued duty to advocate on behalf of the youth.
 - 1. Counsel should be aware that all proceedings remain suspended for a period of time that *is no longer than reasonably necessary to determine whether there is a substantial probability that the youth will attain competency in the foreseeable future, or the court no longer retains jurisdiction.*⁴²
 - 2. Counsel should make any relevant motions allowed, that do not require the participation of the youth in the preparations of those motions. Examples include: joinder, motions to dismiss, motions to suppress, detention hearings, demurrers, and changes of placement.⁴³
 - 3. If the youth is found incompetent due to a developmental disability, the court must appoint the regional center to evaluate the youth and prepare a plan for restoration, placement and services. If the youth is already a regional center consumer, the attorney needs to work collaboratively with the regional center to obtain the appropriate community supports and services as quickly as possible.
 - 4. If the court finds the youth competent, proceedings are resumed. Note that pursuant to case law and to the protocol, any statements or admissions made by the youth during the course of competency proceedings, or any evidence derived therefrom, shall not be used in any juvenile, criminal or civil proceeding.
- I. Counsel should be familiar with court procedures and continuing obligations after a finding of incompetency.
 - 1. Upon a finding of incompetency, the court must set an IST⁴⁴ Planning Hearing. The hearing must be within 15 calendar days for detained youth, and within 30 days for non-detained youth.⁴⁵

⁴⁰ Cal. Welf. & Inst. Code § 709 (b); the Competency Protocol.

⁴¹ The Competency Protocol was written prior to the enactment of SB 1048, which amended the joinder provisions and now allows for joinder at any time after the petition is filed.

⁴² Cal. Welf. & Inst. Code § 709(c).

⁴³ Cal. Welf. & Inst. Code § 709(c)(1-4).

⁴⁴ Incompetency to Stand Trial.

⁴⁵ See timeline rules in *In re Jesus G.* (2013) 218 Cal.App.4th 157.

2. For the IST Planning Hearing, if the youth is detained, the court shall order Probation (and DCFS if the youth is a dependent) to evaluate the youth and submit an IST Planning Report to the court. The report should specify whether the youth is a regional center youth (or has been referred for assessment), whether the youth is receiving special education services, and whether he or she is receiving services from DMH and/or DCFS. Probation should also consult with DMH to determine whether mental health services are available to help the youth attain competency. The report should also address whether the youth's needs can best be met safely in the least restrictive environment such as the youth's home, community or an open residential placement.
3. At the IST Planning Hearing, counsel should be prepared to advocate for the least restrictive environment pending resolution of the issue of ability to attain competency.
4. At the IST Planning Hearing, the court must also decide whether or not there is a substantial probability that the youth will attain competency in the foreseeable future. Counsel should be prepared to present evidence at this hearing. If the court finds that a youth is not likely to attain competency in the foreseeable future, counsel should move to dismiss the petition(s).
5. If the court finds that there is a substantial probability that the youth will attain competency in the foreseeable future, the court must set the case for an Attainment of Competency Hearing within 60 days.
 - a. If the youth is detained, the court shall order Probation and DMH to begin the coordination of services to help the youth attain competency.
 - b. If the youth is not detained, the court shall coordinate "attainment services" through the youth's education agency, therapist, Regional Center, DMH and other appropriate entities.
 - c. For all youth who were found incompetent due to a developmental disability, the court shall refer the youth to Regional Center for assessment and services.
6. At the Attainment of Competency Hearing, if the court finds that the youth has attained competency it shall reinstate juvenile proceedings. Counsel should be prepared at the attainment hearing to vigorously litigate the issue of whether or not the youth is likely to attain competency.⁴⁶ This often requires an additional evaluation by a psychologist or psychiatrist. At the hearing, Probation will submit a report that documents the specific services that have been provided and whether or not those services have been successful in helping the youth attain competency. Defense counsel should be prepared to cross examine those providers in addition to presenting his or her own evidence on behalf of the youth.
7. If the court finds that the youth is not likely to attain competency in the foreseeable future it shall dismiss the petition. If the court finds that further efforts at attainment would be successful, it can order that those services be provided for an additional period of time. Counsel should monitor compliance with remediation plans.

⁴⁶ See e.g., Jodi L. Viljoen and Thomas Grisso, *Prospects for Remediating Juveniles' Adjudicative Competence* (2007) 13 Psychol. Pub. Pol'y & L. p. 87.

8. **Under no circumstances may the youth be held in juvenile hall to participate in attainment services for more than one hundred and twenty days.**⁴⁷ Counsel should move to dismiss the petition, if youths are over detained.

⁴⁷ Competency Protocol.

CHAPTER 7: MOTIONS AND HEARINGS⁴⁸

Motion practice is an important part of effective defense advocacy: it provides an opportunity for relief to be granted, preserves issues for appeal, educates the court and the prosecutor on issues counsel wishes to highlight, offers counsel an opportunity to assess the prosecution's case, and allows counsel to acquire impeachment material of witnesses who may testify at adjudication or disposition. "It also allows counsel to demonstrate to all system stakeholders counsel's willingness to zealously advocate on the youth's behalf and use constitutional due process mechanisms to ensure a just and fair system."⁴⁹

In order to preserve issues raised in juvenile court where an attorney needs to seek relief in the federal courts, counsel for youth need to cite federal as well as state law grounds for objections or the issue raised may likely be deemed to have been waived. Therefore, it is incumbent upon counsel to familiarize themselves with the appropriate federal cases and to fit the state-law-based objections into the appropriate amendment to the U.S. Constitution: search and seizure issues (Fourth Amendment); due process and self-incrimination issues (Fifth Amendment); speedy and public trial, adequate notice, subpoena power, confrontation or right to counsel (Sixth Amendment); and substantive due process and incorporation (Fourteenth Amendment).

A. PRE-ADJUDICATION MOTIONS

1. DEMURRER

A demurrer challenges the sufficiency of the pleading, i.e., the petition. Cal. Welf. & Inst. Code § 656 sets forth the requirements of the petition. Grounds for demurrer include:

- a. lack of jurisdiction
- b. failure of the petition to conform to the requirements in Cal. Welf. & Inst. Code § 656
- c. improper joinder
- d. the facts do not constitute a public offense
- e. the petition contains matter which, if true, would constitute a legal justification or excuse of the offense charged or other legal bar to the prosecution (e.g., unconstitutionally of a statute, statute of limitations)

Cal. Penal Code § 1004 specifies that the demurrer must be in writing, and should be done at the arraignment or preserved at that time for a later date. Cal. Penal Code § 1006 provides that the argument must be heard immediately upon the filing of the

⁴⁸ This section is meant to be a brief description of common motions available to practitioners of delinquency law and not meant to be an exhaustive dissertation on motions practice.

⁴⁹ NJDC Standards, Std. 4.7, Commentary.

petition unless there is exceptional cause for the court to grant a (limited) continuance.

2. LINE UP

Counsel may request a lineup, also called an *Evans* motion, and a lineup will be ordered if good cause is established.⁵⁰ Counsel must show three elements in the *Evans* motion: (1) that the motion is timely (as soon after the arrest or arraignment as possible); (2) that the eyewitness identification is a material issue; and (3) that there is a reasonable probability of a mistaken identification, which a lineup would tend to resolve. Counsel must weigh the possible dangers of a lineup against the possible benefits.

3. TROMBETTA-YOUNGBLOOD MOTION

The law does not require the prosecution to collect evidence that might be beneficial to the defense (apart from that in the possession of the prosecution team), but if the evidence is collected then the prosecution must preserve material, exculpatory evidence. If the prosecution does not preserve this evidence, counsel should consider a motion for sanctions, called a *Trombetta-Youngblood* motion.⁵¹ Different standards of proof apply depending on whether or not the prosecution acted in bad faith. When the *Trombetta-Youngblood* standards are satisfied, the trial court has the discretion to exclude evidence or dismiss the case.

When counsel is aware of particular evidence that it wants preserved, counsel should move for a protective court order.

4. 730/952 MOTION FOR CONFIDENTIAL EXPERTS

In *Ake v. Oklahoma* (1985) 470 U.S. 68, the United States Supreme Court held that the “Fourteenth Amendment’s due process guarantee of fundamental fairness” requires that the State supply an indigent defendant with the “basic tools of an adequate defense,” including, in appropriate cases, state funds for expert witnesses. (*Id.* at 77.)⁵²

Counsel may move for appointment of an expert by the court, to be paid by public funds. Counsel must show 1) that the youth is indigent; and 2) why an expert is required for preparation of the defense. The motion should state the specific factors present in the case that necessitate the assistance of an expert, the qualifications of the expert requested, and the reason the particular expert is needed.

- a. Counsel should interview potential expert witnesses prior to seeking their appointment, and should take care especially in terms of mental health experts to

⁵⁰ *Evans v. Superior Court* (1974) 11 Cal.3d 617.

⁵¹ *Arizona v. Youngblood* (1988) 488 U.S. 51; *California v. Trombetta* (1984) 467 U.S. 479.

⁵² See also *Corenensky v. Superior Court* (1984) 36 Cal.3d 307.

ensure that the *appropriate* expert is chosen. On occasion, counsel may choose to appoint preliminary experts (such as a social worker) who can then point the way towards a more specific expert who can address the specific concerns brought out by the preliminary report. Counsel must also deliberate strategically in determining which materials should be provided to the expert.

- b. *Counsel should request that the appointment be made pursuant to Cal. Evid. Code §§ 730 and 952 so that the results of the appointed expert's examination are confidential.* In addition, depending on the nature of the expert to be appointed, in most cases counsel should file the motion ex parte and under seal, to avoid revealing defense strategy and privileged work product to the prosecution.
- c. Counsel should be familiar with discovery obligations with respect to expert reports. Communications with a defense expert who will not be called to trial are confidential because the expert's knowledge is privileged. However, reports or statements of the expert are discoverable, if counsel intends to call the expert as a witness. Statements made by a youth that appear in a defense expert's report can be redacted, if the report has been ordered to be turned over before trial pursuant to discovery rules.⁵³
- d. If the motion is denied, counsel should make a record of the grounds upon which the expert was sought, and how denial of the expert will impact the defense of the case. Counsel should pursue an interlocutory writ, if appropriate.

5. PITCHESS MOTION

Whenever evidence of a police officer's alleged prior use of excessive force, ethnic or racial bias, falsifying information or planting evidence would be relevant to the defense, counsel should consider filing a motion to discover the confidential personnel file of law enforcement, or custodial officers, or any other policy agency record that contains relevant information that might bear on the minor's claim that the officer engaged in misconduct.⁵⁴

Procedurally, the defense files a motion on the appropriate government agency with a declaration or affidavit that must establish good cause for disclosure, shown by facts establishing materiality. Under *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, the court must grant the right to an *in camera* hearing, if the defense "demonstrates" that the scenario of alleged officer misconduct could or might have occurred. The affidavit in support of the motion may be filed under seal, and/or subject to a protective order. The district attorney is entitled to notice of the motion, but is not entitled to the substance of the motion or to be heard on the granting of the motion.

At the *in camera* hearing, the court reviews the records and orders disclosure of relevant evidence. The court generally will reveal only the name, address, and phone number of any prior complainants and witnesses and the dates of the incidents.

⁵³ *Rodriguez v. Superior Court* (1993) 14 Cal.App.4th 1260; *Andrade v. Superior Court* (1996) 46 Cal.App.4th 1609.

⁵⁴ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

If the defense shows that a witness cannot be found, or the witnesses cannot recall or refuse to speak with the defense, a supplemental motion will lie, and disclosure of the verbatim reports is required.⁵⁵ Counsel should be aware that *Pitchess* motions must be served and filed 16 court days before the hearing, and if the motion is served by mail, the notice for the hearing shall be increased by five calendar days.⁵⁶ Therefore, in the case of detained youths, counsel should consider filing a motion to shorten time in order to have the *Pitchess* motion heard sooner and to avoid additional detention time.⁵⁷

6. VELA MOTION

Counsel should consider filing a *Vela* motion in the case of an officer's use of force or officer-involved shooting. *Vela* allows counsel to subpoena, for *in camera* review, reports prepared by a city's special investigation team about the crime.⁵⁸

7. BRADY MOTION

Due process requires disclosure of evidence in the government's possession that is favorable to the accused and that is material to either guilt or punishment, including evidence that may impact the credibility of a witness. Such exculpatory evidence is called "Brady" evidence.⁵⁹ Brady evidence is NOT limited to that evidence which is located in the prosecutor's files; the prosecutor has an affirmative duty to locate and produce information that police and investigative teams may have obtained. The defense is not required to make a specific request for Brady disclosure, but to protect the record and assure that the prosecutor is on notice, counsel should make a request for any such evidence, and to seek a statement from the prosecution that they have so complied with such a request.

8. WIC § 827: SEEKING JUVENILE RECORDS

Counsel may consider obtaining the juvenile case file(s) of the youth, codefendant(s), and/or any witnesses involved in the delinquency case. By law, juvenile case files are confidential and cannot be subpoenaed.⁶⁰ Access to these records is governed by Cal. Welf. & Inst. Code § 827, Cal. Rules of Court, Rule 5.552, and Los Angeles County Superior Court Rule 7.2.

Counsel seeking to obtain his/her own clients' juvenile case files are entitled to the records, and may file a "Declaration in Support of Access to Juvenile Records" with the Superior Court Clerk's Office of the Edelman Children's Court to view or obtain

⁵⁵ Cal. Evid. Code §§ 1043-1047.

⁵⁶ Cal. Code of Civ. Proc. § 1005(b).

⁵⁷ *Id.*; Los Angeles County Superior Court Rule 6.5 (b).

⁵⁸ *Vela v. Superior Court* (1989) 208 Cal.App.3d 141.

⁵⁹ *Brady v. Maryland* (1963) 373 U.S. 83; *Kyles v. Whitley* (1995) 514 U.S. 419.

⁶⁰ Cal. Rules of Court, Rule 5.552(b)(4).

copies of the records. Be aware that the files will need to be redacted for sibling information, and the process can take some time.

Counsel seeking to disseminate the youth’s juvenile case file(s) to persons or agencies not entitled to the records must file a petition for permission.

Counsel seeking to obtain juvenile case file(s) of anyone *other than the client* must file a Cal. Welf. & Inst. Code § 827 “Petition for Disclosure of Juvenile Court Records” (Judicial Council Form JV-570) with the Superior Court Clerk’s Office of the Edelman Children’s Court. Petitioners should specify what records are being sought and the specific reasons the records are being sought as they must establish good cause for the release of the records pursuant to Cal. Rules of Court, Rule 5.552.

If Counsel is seeking medical, psychological and or education records for any child, the request for such records must be expressly stated, and good cause set forth.⁶¹ “Confidential documents” are maintained in a separate, sealed portion of the file.

Finally, counsel is also required to notice the appropriate parties to allow them to file any objections to the release of records.⁶² If a request to obtain juvenile case file(s) is granted, the petitioner will be provided with redacted copies of the requested records.

9. MOTION TO LIMIT EDUCATION RIGHTS AND APPOINT AN EDUCATIONAL REPRESENTATIVE

Beginning at the initial hearing and throughout the entire process counsel should ensure that the youth has a competent holder of education rights; typically that individual is the parent or guardian. In the event that the holder is unavailable, unwilling, or unable to fulfill their obligations as holder of education rights, the attorney should request that the court limit their ability to hold education rights and appoint someone else who is capable of fulfilling that function.

10. MOTION TO APPOINT AN EDUCATION ATTORNEY

Counsel should be aware that there is a Los Angeles Delinquency Court Educational protocol that is designed to provide representation to help youth obtain necessary services from the education system, where those services are not provided. Counsel may seek appointment of an education attorney with a motion pursuant to Cal. Welf. & Inst. Code § 317(e).

If an educational attorney is appointed, counsel should coordinate with the attorney to assure that the youth’s penal interests are protected. For example, the education attorney should be counseled to prevent admissions being made at suspension or expulsion hearings.

⁶¹ Los Angeles County Superior Court Rule 7.2(b)(2)(d).

⁶² Los Angeles County Superior Court Rule 7.2(b)(3).

11. MOTION FOR SEVERANCE OF COUNTS OR CO-MINORS

a. Multiple Counts

Counsel should consider making a motion to sever counts when grounds exist to do so. The most common grounds for severing counts include the following:

- i. A count with strong evidence used to bolster a count with weak evidence;
- ii. One of the crimes is highly inflammatory;
- iii. Joinder permits the admissibility of additional prejudicial evidence such as a prior felony;
- iv. Joinder of unrelated crimes will prejudice a defendant's right to remain silent when the defendant plans to testify about one or more crimes while exercising the right to remain silent about other charged crimes; or
- v. Joinder violates Cal. Penal Code §§ 954 and 954.1.

Cal. Rules of Court, Rule 4.111 explains the requirements for submitting a defendant's motion for severance. A court cannot deny a motion for severance without a hearing.⁶³

b. Multiple Minors

Counsel should also consider making a motion for severance as to multiple defendants. Common grounds for severance include "an incriminating confession, prejudicial association with codefendants, likely confusion resulting from evidence on multiple counts, conflicting defenses, or the possibility that at a separate trial a codefendant would give exonerating testimony." *Id.* at 917. Cal. Penal Code §1098 gives the court discretion to order a separate trial for one or more defendants, and a joint trial for the rest; or an individual trial for each one. Under Cal. Welf. & Inst. Code § 675(b) adult rules of joinder and severance apply to juvenile youths. However, the *Aranda-Bruton* line of cases has been held not to apply to juvenile delinquency proceedings.⁶⁴

12. KELLETT MOTION

Under most circumstances, related offenses must be joined in a single proceeding unless joinder is prohibited or severance is permitted for good cause.⁶⁵ If the prosecution charges only some of the offenses that should have been joined under this rule, a judgment in that case bars prosecution of the offenses that could have been charged but were not; this is commonly called the *Kellett* rule. The rule against multiple prosecutions is based on Cal. Penal Code §§ 654 and 954.

If related offenses should have been joined in a single proceeding, but were not joined, counsel should consider making a motion to dismiss based on *Kellett* error.

⁶³ See *People v. Massie* (1967) 66 Cal.2d 899, 917.

⁶⁴ *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1480.

⁶⁵ *Kellett v. Superior Court* (1966) 63 Cal.2d 822.

13. MOTION FOR SPEEDY ADJUDICATION OR DISMISSAL FOR VIOLATION

A youth's constitutional or statutory rights may be violated where the investigation or prosecution of his case has been delayed. In this situation, counsel may file a motion seeking sanctions or an order dismissing the case. It is well established that this right to a speedy trial exists not only in adult court, but in juvenile delinquency proceedings as well.⁶⁶ When there has been a delay in filing, and the client has been doing well, the court should strongly consider dismissal of the petition. There is much less rationale for intervention, if the goal of rehabilitation has been achieved and the delay in filing or proceeding severely curtails the effectiveness of the sanction.

a. "Pre-filing" Right to Speedy Adjudication

Counsel may wish to argue that a youth's petition be dismissed for lack of a speedy trial where there has been a substantial delay between the date on which the offense was allegedly committed and the arrest, or the arrest and the filing of a petition.⁶⁷ These situations are governed by the due process clause of both the federal and state constitutions, and counsel should be prepared to demonstrate prejudice to the minor resulting from the delay. (*Note:* There is a split in authority as to whether prejudice is presumed, if the delay is greater than one year.) The burden will then shift to the prosecution to justify the delay. If there is a justification, it is up to the court to balance the delay, justification for the same, and the prosecution's interest in bringing the case against the minor (i.e. the seriousness of the allegations).⁶⁸

b. Right to Speedy Adjudication

Counsel must also be cognizant of the time frames that begin pursuant to the California Welfare & Institutions Code and the California Rules of Court once a petition has been filed. A violation of these statutory time frames may result in dismissal of the petition.

Cal. Welf. & Inst. Code § 657 and Cal. Rules of Court, Rule 5.774 set forth the time period in which a jurisdictional hearing must take place (15 court days for a detained youth, or youth on home detention, or 30 for a non-detained youth). Counsel should consider filing a motion to dismiss, if the jurisdictional hearing does not occur during the statutory time. The remedy for a statutory speedy adjudication issue is dismissal; no prejudice needs to be shown.⁶⁹ Also, counsel must object to the court setting the adjudication outside the period, or the speedy adjudication issue may be deemed to have been waived. Cal. Welf. &

⁶⁶ See *In re Chuong D.* (2006) 135 Cal.App.4th 1303, 1309; *In re Robert B.* (1995) 39 Cal.App.4th 1816; *Richard N. v. Superior Court* (1981) 116 Cal.App.3d 579.

⁶⁷ See *Arlyn R. v. Superior Court* (1981) 114 Cal.App.3d 1025.

⁶⁸ See *Richard N.* 116 Cal.App.3d at 585; Sarah H. Ruddy et al., (2008) *California Criminal Law Procedure and Practice*, §19.3.

⁶⁹ Cal. Rules of Court, Rule 5.774(d).

Inst. Code § 682 and § 700 provide timelines for continuances, and require that the continuance of a hearing only be granted where good cause has been established.⁷⁰

14. THE INDIAN CHILD WELFARE ACT (ICWA)

The Indian Child Welfare Act of 1978, or ICWA⁷¹, requires that certain child custody proceedings (foster care, guardianship, adoption, and termination of parental/guardian rights) and delinquency proceedings meet federal and state mandated standards, when an Indian child is at risk for entering, or is in foster care. The purpose of the ICWA is to preserve, protect, and strengthen Indian children and families by preventing and eliminating the need to remove children from their families. SB 678, which became effective on January 1, 2007, codifies this requirement in the applicable Welfare and Institutions Code sections. The Act applies in delinquency for all *Indian children who are at risk for entering or are in foster care placement and termination of parental or guardianship proceedings*.⁷² For purposes of ICWA, children are “at risk” when there is a reasonable belief that they may be “suitably placed” using Title IV-E funds at disposition following adjudication. Cal. Welf. & Inst. Code § 727.4 defines “at risk of entering foster care” to mean conditions exist in the minor’s family that may necessitate entry into foster care. “Foster care” is defined as any of the settings defined in Cal. Welf. & Inst. Code § 11402. Basically, it includes children who may go to suitable placement, whether ordered directly by the court as a disposition, committed at the conclusion of a probation violation hearing, or committed after a term spent at camp, when there is no suitable home to return to.

Although the application of ICWA to delinquency cases was severely narrowed by the California Supreme Court in 2012,⁷³ counsel should be cognizant of the changing law, and of the valid need to ascertain the youth’s Indian heritage, even apart from ICWA requirements. With the youth’s consent, counsel may want to notify the tribe, and should explore alternatives to juvenile court processing, as well as alternative dispositions.

15. VIENNA CONVENTION

Cal. Penal Code § 834(c) codifies the rights given to foreign nationals under the 1963 Vienna Convention. In any case where a foreign national is arrested or detained for

⁷⁰ A hearing continued pursuant to Cal. Welf. & Inst. Code § 682 “shall commence on the date to which it was continued or within seven days thereafter whenever the court is satisfied that good cause exists and the moving party will be prepared to proceed within that time.” Cal. Welf. & Inst. Code § 682(e).

⁷¹ 25 U.S.C. §§ 1901 et seq.; Cal. Rules of Court, Rule 5.480 through 5.487 and Cal. Welf. & Inst. Code §§ 110, 224-224.6, 290.1, 290.2, 291-295, 297, 305.5, 306.6, 317, 360.6, 361, 361.31, 361.7, 366.26, 727.4, 10553.1, and 16507.4.

⁷² 25 U.S.C. § 1903; Cal. Rules of Court, Rule 5.480(1) (*Emphasis added*).

⁷³ See *In re W.B.* (2012) 55 Cal.4th 30, *Opinion modified* at 55 Cal.4th 568 (on appeal, presumption is that placement of a youth is based on the youth’s conduct and not on home conditions, therefore, ICWA is inapplicable.)

more than two hours, the police shall advise the individual that he or she has a right to communicate with an official from the consulate of his or her country, and if the individual so chooses, the officer shall notify the pertinent official. In the case of certain countries specified in Cal. Penal Code § 834c, subdivision (d), the consulate must be notified regardless of the individual's request.

16. MOTION TO DISQUALIFY THE PROSECUTION (RECUSAL MOTION)

Cal. Penal Code § 1424 provides the grounds on which the defense may move to recuse the prosecutor. The motion may be aimed at a single prosecutor, specified individuals, one branch, or an entire office. The standard for the court is whether there is a conflict of interest which might prevent a fair trial.

17. MOTION TO DISQUALIFY THE JUDGE

- a. Cal. Code of Civ. Proc. § 170.1 sets forth the grounds to disqualify a judge on the basis of actual bias. Cal. Code of Civ. Proc. § 170.3(c) specifies the procedures to follow. An attorney seeking to disqualify a bench officer should also be familiar with the local rules and practices of Los Angeles County.
- b. Under Cal. Code of Civ. Proc. § 170.6, either the prosecution or the defense (or both) may file once in each case an affidavit pursuant to Cal. Code of Civ. Proc. § 170.6, which automatically disqualifies the judge from hearing the case.
- c. Referees in juvenile court may only hear a jurisdiction hearing pursuant to stipulation. In the Juvenile Court in Los Angeles, commissioners are also designated as referees, so that a stipulation is not necessary *for non-adjudicatory matters*. Thus, a § 170.6 motion need not be filed to disqualify the court from hearing the adjudication; counsel may simply not stipulate.
- d. Counsel should be mindful, however, that case law establishes that certain actions may constitute “implied stipulations.”⁷⁴
- e. Referees’ orders are subject to a rehearing by a judge upon request, and a referee’s order removing a minor from his or her home address becomes final only if approved by a juvenile court judge within two court days.⁷⁵
- f. Per local agreement, as needed referees (AKA *pro tems*) who are still practicing law require a new stipulation before each hearing each time they sit.

⁷⁴ Cal. Welf. & Inst. Code §§ 248-252, *In re Courtney H.* (1995) 38 Cal.App.4th 1221.

⁷⁵ Cal. Welf. & Inst. Code §§ 248-252.

18. MOTION TO CONTINUE; MOTION TO DISMISS FOR FAILURE TO COMPLY WITH TIME LIMITS

A case may be continued beyond the time limit within which the hearing is otherwise required upon written notice—filed and served two court days before the hearing—establishing good cause for the continuance.

Note that Cal. Penal Code § 1050.1 does not apply to juvenile proceedings.⁷⁶ Continuances are governed by Cal. Welf. & Inst. Code §§ 682 and 700, and Cal. Rules of Court, Rules 5.774 and 5.776.

In the case of a detained youth, if the People are unable to proceed upon a detained petition within the fifteen-day time period, the court must either dismiss the petition or release the minor and proceed upon the same petition, subject to the thirty day timeline applicable to minors who are not detained.⁷⁷ It is improper for the prosecution to attempt to circumvent this rule by commencing the proceeding where the prosecutor is not prepared to try the matter to conclusion at that time.⁷⁸ Likewise, it is improper for the court to commence an adjudication where the court is not truly available to try a matter to conclusion.⁷⁹ If the court commences a “sham” adjudication, and refuses to release a detained youth, counsel should be prepared to file a petition for writ of habeas corpus immediately.

Should the court dismiss the petition, the minor may not continue to be detained beyond the fifteen judicial days by the device of dismissing and refiling the juvenile petition and re-arresting the minor.⁸⁰ A subsequent petition must be filed as a “non-detained petition.”

a. Good cause

The determination of whether good cause exists is left to the sound discretion of the hearing officer.⁸¹ Generally, the court shall be guided by Cal. Rules of Court, Rule 5.776.

Where the grounds for continuance by the prosecution are alleged to be the failure of the witnesses to appear, counsel should ensure the court requires proof that due diligence has been exercised to secure the witness’ attendance. The court must state in its minute order the facts justifying any continuance that is granted.

b. Co-counsel Continuances

⁷⁶ *A.A. v. Superior Court* (2003) 115 Cal.App.4th 1.

⁷⁷ *In re Kerry K* (2006) 139 Cal.App.4th 1; *In re Robin M*, (1978) 21 Cal.3d 337, 347; *A.A.*, *supra* n. 74; Cal. Rules of Court, Rule 5.774(b).

⁷⁸ *In re Chuong D.* (2006) 135 Cal.App.4th 1303, 1309-12.

⁷⁹ *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772.

⁸⁰ *In re Robin M.* *supra*, n. 56.

⁸¹ *In re Lawanda L.* (1986) 178 Cal.App.3d 423, 428.

A request by co-minor’s counsel for a continuance of a jurisdictional hearing is not good cause for continuance of the youth’s adjudication.⁸² Whether a co-counsel’s request for a continuance will result in release depends on whether the matter is within the original statutory period or not. Either way, an appropriate objection to the continuance is necessary to preserve the issue.

- i. If the matter is still within the original statutory time period: upon proper objection, the court must hold the hearing within the statutory time period or release the youth.
- ii. Absent a waiver of time, a minor may not be detained beyond “statutory time limits.” When a youth has consented to a continuance beyond the 15-day statutory time period, the hearing must commence on the date to which it was continued or within seven days thereafter, whenever the court is satisfied that good cause exists.⁸³ Thus, when a minor has consented to a jurisdictional hearing beyond the 15-day statutory limit, and thereafter co-counsel moves to continue the matter over the youth’s objection, the youth’s adjudication must take place within seven days, or he must be released.⁸⁴

c. Special Circumstances justifying continuances

The court may continue the jurisdiction hearing for no more than seven days to enable the petitioner to subpoena witnesses, if the youth made an extrajudicial admission that is now denied, or where it was indicated the youth would be entering an admission, but is instead denying the petition.⁸⁵

19. JURY TRIAL MOTIONS

The right to a jury trial emanates from the Sixth and Fourteenth Amendments of the U.S. Constitution, and Sixth Amendment of the California Constitution. These Amendments guarantee trial by jury in all criminal prosecutions. Nevertheless, neither the California Supreme Court nor the United States Supreme Courts have yet been willing to extend that fundamental right to youth in Juvenile Court. However, other states have begun to recognize that Juvenile Court proceedings are no longer the intimate, informal and protective proceedings they were intended to be and as such have granted the right to a jury trial for those in Juvenile Court.⁸⁶

The California Court of Appeal Fourth Appellate District held in the case *In re J.L.* (2010) 190 Cal.App.4th 1394 that Proposition 83’s (Jessica’s Law) lifelong residency

⁸² *In re Edwayne V.* (1987) 197 Cal.App.3d 171; *A. A.*, *supra*, n. 74 (rejecting application of Cal. Penal Code § 1050.1).

⁸³ Cal. Welf. & Inst. Code § 682(e).

⁸⁴ Cal. Welf. & Inst. Code § 682; *In re Kerry K.*, *supra*, n. 75.

⁸⁵ Cal. Rules of Court, Rule 5.776(c), Cal. Welf. & Inst. Code § 700.5.

⁸⁶ For a discussion on the juvenile court’s authority to empanel an advisory jury in delinquency pursuant to Cal. Welf. & Inst. Code § 680, please refer to *People v. Superior Court (Carl W.)* (1975) 15 Cal.3d. 271.

restrictions under Cal. Penal Code § 288 (a) are in fact so serious and punitive in nature that due process and equal protection require the right to a jury trial before they may be imposed on juveniles. The juvenile court was directed to issue an order enjoining enforcement of the restrictions under Cal. Penal Code § 3003.5 (b) as to *J.L.* unless and until he is afforded a new trial with a jury.

Counsel representing youth should therefore consider filing motions requesting a trial by jury in serious felony cases, or cases where counsel deems it appropriate to preserve the record that a request was made to the court.

B. MOTIONS THAT MAY BE MADE PRE- OR CONCURRENT WITH ADJUDICATION

1. SUPPRESSION MOTIONS IN JUVENILE DELINQUENCY COURT

The protection against unreasonable searches and seizures provided by the Fourth Amendment and Article 1 of the California Constitution extends to minors, and as in criminal court, the youth may assert his right to be free from unreasonable searches and seizures by bringing a motion to suppress.

a. Statutory Authority

The procedures for bringing motions to suppress and appeals from suppression rulings are controlled by Cal. Welf. & Inst. Code §§ 700.1 and 800, and Cal. Rules of Court, Rule 5.544. (Cal. Penal Code § 1538.5 is not applicable to juvenile proceedings).

Motions to suppress may be made to suppress evidence obtained or indirectly obtained (as “fruit of the poisonous tree”) pursuant to an illegal search or seizure. This may include statements, observations, physical or tangible evidence, and identifications.

b. School Official Searches

School searches present a significant departure from the usual rules of search and seizure. Searches of students by public school officials must be based upon a reasonable suspicion that the student searched has engaged in or is engaging in a proscribed activity, i.e., a violation of a school rule or criminal statute. “Articulable facts” must support the reasonable suspicion.⁸⁷ In addition, a school search is permissible in scope only, if the measures adopted are reasonably related to the objectives of the search, and not unnecessarily intrusive in light of the age and sex of the student and the nature of the infraction.⁸⁸

c. Timing of the motion to suppress

⁸⁷ *In re William G.* (1985) 40 Cal.3d 550; *see also, In re Bobby B.* (1985) 172 Cal.App.3d 377, *In re Robert B.* (1985) 172 Cal.App.3d 763.

⁸⁸ *Safford v. Redding* (2009) 557 U.S. 364.

Counsel should refer to Cal. Welf. & Inst. Code § 700.1 to determine when the suppression motion must be made.

d. Right to DEJ after suppression

If a youth loses a suppression motion the youth may still accept DEJ.⁸⁹

Although a court is not required to hold a deferred entry of judgment (DEJ) suitability hearing for youth who deny the allegations of a petition and insist upon a jurisdictional hearing, a youth need not forego the right to a suppression hearing in order to accept DEJ. The juvenile court must make a determination as to whether to grant or deny DEJ pursuant to the provisions of Cal. Penal Code § 790, and not summarily deny DEJ because a youth challenges the search or seizure before admitting a petition.⁹⁰

2. CONFESSIONS AND ADMISSIONS IN JUVENILE COURT

Counsel may move to exclude evidence of admissions or confessions orally either prior to or at the adjudication. When the motion is made, the prosecutor may request a continuance based on Welf. & Inst. Code § 701, which allows a continuance for up to 7 days to subpoena witnesses, if the youth denies admitting facts or confessing. The continuance is not automatic; it is based on “unfair surprise” to the prosecution. Thus, providing the prosecution with notice of an intent to deny, or filing a motion to suppress a statement, should obviate any need for a continuance by the prosecution.

Counsel should be cognizant of the special considerations when evaluating the potential admissibility of statements made by juveniles. Because of their age and developmental immaturity, juveniles are more susceptible to being coerced, easily led, waiving Miranda rights without knowing and intelligent waivers, and making false confessions. Juveniles who are particularly young or have special education needs are even more likely to make statements without a full appreciation of their constitutional rights. Counsel should make every effort to review school and other records and consult with appropriate experts when evaluating juvenile confessions.

All confessions/admissions should be scrutinized under the U.S. and California Fourth, Fifth, and Sixth Amendments.

a. Fourth Amendment Concerns

Is the statement the product of an illegal stop or seizure or search? Counsel should be thoroughly familiar with case law on the varying degrees of stops/detention, the quantum of suspicion required, the scope of permissible searches, and the definition of detention, which may be influenced by the youth’s age.

b. Fifth Amendment Concerns

⁸⁹ *In re A.I.* (2009) 176 Cal.App.4th 1426.

⁹⁰ *In re Joshua S.* (2011) 192 Cal.App.4th 670.

i. Miranda violations

A statement obtained in violation of *Miranda* is inadmissible in the prosecution's case in chief, but may be used for impeachment. In determining whether a youth was "in custody," age and immaturity is a factor the court must consider. See *J.D.B. v. North Carolina* (2011) 131 S. Ct. 2394.

ii. Voluntariness

A statement that is given under conditions that render it involuntary is violative of due process and may be suppressed *for all purposes*. Because of the obvious disadvantage that youth plays in an interrogation setting, counsel should pay special attention to all the subjective and objective factors relating to the interrogation.

The court will examine the totality of the circumstances involved in the interrogation to determine involuntariness. Counsel should be familiar with interrogation techniques and tactics,⁹¹ their particular impact on youth, and the circumstances of the interrogation, including, but not limited to: the physical setting of the interrogation, the youth's age, prior police experience, length of interrogation, ability to speak to parent or guardian, repeated requests for parent or guardian, educational and cognitive abilities, tone of police questioning, promises or threats made, absence of food or drink, among others.

In addition, a youth shall be advised immediately after being taken into custody, and no later than one hour after he has been taken into custody, that he has a right to two completed phone calls, one to his parent or guardian and one to an attorney. Any willful deprivation of this right constitutes a misdemeanor. The fact of whether this phone call was offered or not may also be a factor to consider in the totality of the circumstances analysis.

Counsel should attempt to visit the interrogation site, and determine whether electronic or video equipment was available.

Counsel may also challenge the voluntariness of the co-minor's statement. Voluntariness of any confession can be challenged at an *Edsel P.* or *Dennis H.* hearing.

c. Sixth Amendment: Right to Counsel

Statements may also be suppressed when they are given in violation of the youth's right to counsel. The Sixth amendment right to counsel attaches when a person is charged or is appointed counsel, and is offense specific, which means that police may be entitled to question on other offenses.

⁹¹ Counsel are strongly encouraged to research the Reid-Inbau technique of interrogation, scholarly research on the vulnerability of youth to these tactics, and expert testimony that may assist the court in understanding the particular circumstances in a case that suggest the youth's "confession" was coerced and/or false.

At the very first interview, counsel should advise the youth not to speak about the incident, or any other possible offenses, with anyone unfamiliar to the youth. If the client is not detained, he or she must be warned about the prosecution and law enforcement likely acquiring social media information. If the youth is detained, he should be advised regarding the tape recording of phone conversations, and the necessity of refraining from discussing any aspect of his case with anyone other than the defense team. Counsel may want to provide the youth with a special “password” that will identify members of the defense team.

Counsel should be familiar with the law on police or prosecutor interrogation of represented youth.

d. Statements Made to Others

i. Probation Officers

Statements made to probation officers are admissible for detention and disposition purposes. Statements made to probation officers are also admissible at a fitness hearing; however, these statements cannot later be admitted at adjudication or trial during the prosecution’s case in chief on the substantive question of guilt.

However, these statements can be used by the prosecution for impeachment. Likewise, statements made to a retained defense psychologist, who is called as a defense witness, may be used for impeachment as well.

Whenever a youth is scheduled to meet with a probation officer, counsel should consider attending the meeting. If counsel cannot attend, counsel should advise the youth on areas that should not be discussed with the probation officer.

ii. School Personnel and Others

Miranda warnings are not required for school personnel questioning a juvenile. However, in certain situations there may be a nexus between the actions of the school and law enforcement that may form a basis for suppression based on illegal state action.

C. MOTIONS TO BE MADE ANYTIME OR POST-ADJUDICATION

1. MOTION TO DISMISS PURSUANT TO CAL. PENAL CODE § 782

A motion to dismiss pursuant to Cal. Penal Code § 782 may be made at any time before the youth reaches the age of 21.⁹² The court may dismiss the petition or may set aside the findings and dismiss the petition even post adjudication or admission, and even if the minor is no longer a dependent or ward.

⁹² SB 1038, pending before the Legislature at the time of this writing, seeks to eliminate the age ceiling.

There are two bases for granting such a motion: (1) if the court finds that the interests of justice or the welfare of the minor require such dismissal, or (2) if the court finds that the minor is not in need of the treatment or rehabilitation available in the juvenile court.

A § 782 motion is entirely appropriate to divert children with mental health issues, learning disabilities, or developmental disabilities out of the delinquency system. A “strike offense” dismissed pursuant to § 782 may not be used in the future as a strike to aggravate a sentence pursuant to the three strikes law.

2. ORDER TO PROVIDE TRANSPORTATION

Once an attorney has obtained an order for an assessment, evaluation, or medical examination and the youth is detained in Juvenile Hall or Camp Community placement, counsel should prepare a separate order for the Probation Department to transport the youth to said appointment. The order should be specific as to date, time, location and how long probation is to remain with the youth before transporting back to Juvenile Hall or Camp. Counsel may wish to include in the order a request for shackles to be removed once the youth has arrived at the location for any evaluations or assessments.

Note: If a youth in suitable placement needs to attend an assessment, evaluation, or medical examination, counsel should ensure that the youth has transportation and, if necessary, request the court to order Probation to make the necessary arrangements for transportation.

3. MOTION TO WITHDRAW PLEA/ADMISSION

To prevail on a motion to withdraw a plea, counsel must show good cause by clear and convincing evidence. Grounds for withdrawal of a plea include but are not limited to: failure of advisements (constitutional rights, immigration consequences, direct consequences), plea was involuntary, plea was coerced, youth was incompetent when plea was entered, plea bargain terms were violated, or the youth was provided ineffective assistance of counsel.

When the grounds for withdrawal of the plea are based on ineffective assistance of counsel, counsel should consider whether it is appropriate to declare a conflict on the youth’s case.

Historically the decision to withdraw a plea rested with the youth.⁹³ However, in a more recent analysis, the court held “[a]s long as [the] defendant is represented by

⁹³ *People v. Brown* (1986) 179 Cal.App.3d 207, 215.

counsel, the decision on whether to file a motion to withdraw a plea is left with counsel.”⁹⁴

Even with this ambiguity, a youth has the right to counsel’s assistance in appealing either the denial of the motion to withdraw a plea or the refusal to make the motion at all.⁹⁵

In the case of an inter-county transfer, the receiving court has the sole jurisdiction to hear the motion to withdraw the plea.⁹⁶ Therefore, counsel representing a youth at disposition after a plea has been entered in another county should investigate whether a motion to withdraw a plea is proper.

4. MOTION FOR SPECIAL NEEDS

Counsel should always feel free to draft specific court orders related to the youth’s needs. Some examples might be a motion for a special diet (e.g. kosher, diabetic), motion for special shoes or clothing, motion for extra bedding, motion for eye exam and glasses, motion for release for funeral, motion for haircut, etc.

5. JOINDER MOTION

Counsel should be familiar with the statutory provisions which allow the court to join agencies. Amended by SB 1048 in 2012, Section 727(b) now allows for joinder at any time after a petition has been filed,⁹⁷ and has expanded the definition of agency to include private agencies, service providers or individuals who receive government funding or reimbursement for providing services to youth.⁹⁸ Joinder motions are particularly helpful to bring involved agencies together where there are issues of funding, to facilitate cooperation among responsible agencies.

⁹⁴ *People v. Brown (Orione)* (2009) 175 Cal.App.4th 1469, 1472; *see also People v. Makabali* (1993) 14 Cal.App.4th 847, 853 (where counsel has determined in good faith that a motion would be frivolous, counsel is not obligated to file.)

⁹⁵ *People v. Johnson* (2009) 47 Cal.4th 668, 684 fn. 6; *see also People v. Ribero* (1971) 4 Cal.3d 55.

⁹⁶ *In re Brandon H.* (2002) 99 Cal.App.4th 1193.

⁹⁷ “To facilitate coordination and cooperation among agencies, the court may, at any time after a petition has been filed, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to a minor, for whom a petition has been filed under Section 601 or 602, to a non minor, as described in Section 303, or to a non minor dependent, as defined in subdivision (v) of Section 11400 regardless of the status of the adjudication.” (Welf. & Inst. Code § 727(b)(1).)

⁹⁸ “For the purposes of this subdivision, "agency" means any governmental agency or any private service provider or individual that receives federal, state, or local governmental funding or reimbursement for providing services directly to a child, non minor, or non minor dependent.” (Welf. & Inst. Code § 727(b)(3).)

CHAPTER EIGHT: SPECIAL ISSUES WITH CROSSOVER YOUTH

A. Cal. Welf. & Inst. Code § 241.1 Hearings

California Welfare and Institutions Code § 241.1, providing a process for counsel and the courts to follow in the case of “crossover youth,” applies “whenever a minor *appears* to come within the description of both section 300 and sections 601 or 602...”⁹⁹

In 2005, the statute was amended to add § 241.1(e), which allows counties to create a protocol that allows for a recommendation that a “...*child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court.*” Such a protocol has been adopted in Los Angeles. Starting January 2012, all § 241.1 delinquency courts in Los Angeles County (which currently include one designated court at each of the courthouses) have the additional option of declaring a child dual status. The courts must follow the dual status protocol created by the Los Angeles Superior Court.

Note: The goal of this new protocol is to prevent youth from entering the juvenile justice system. The dual status designation will benefit those youth who were unable to benefit from less restrictive, informal dispositions.

1. Counsel should be familiar with the protocol, and should request a Cal. Welf. & Inst. Code § 241.1 (hereafter referred to as 241.1) hearing if:
 - a. The youth is currently a dependent of the court pursuant to Cal. Welf. & Inst. Code § 300;
 - b. The detention report and/or youth interview suggest current abuse or neglect contributed to the petition filing;
 - c. The youth is on informal dual supervision and facing additional charges or a probation violation. (The same standard applies as the initial 241.1 hearing);
 - d. The youth is currently a Cal. Welf. & Inst. Code § 300 dependent in another county; *or*
 - e. The youth is currently a ward of the delinquency court and has complied fully with all conditions of probation. If the delinquency court finds it is appropriate to terminate jurisdiction, but there is no safe home for the youth to return to, a 241.1 should be ordered to determine if dependency jurisdiction is warranted.

Once ordered, a multi-disciplinary team (MDT) comprised of the Probation Department, the Department of Children and Family Services, an educational expert and a representative from the Department of Mental Health will prepare and submit a joint 241.1 assessment and recommendation prior to the adjudication. The report must include social, educational, family, dependency and mental health history as well as input from the current caregiver, therapist, and dependency attorney. The MDT will interpret this information to create individualized case plans.

⁹⁹ *In re Marcus G.* (1999) 73 Cal.App.4th 1008

While the 241.1 process is in place, the youth should be held in the least restrictive appropriate setting, and should not be detained simply because he/she has a § 300 case. Counsel should advocate for placement in a non-secure setting whenever appropriate.

By using this new assessment, stakeholders in the Los Angeles Juvenile Justice system hope to reduce the number of dependent youth who become wards of the Delinquency Court, enhance public safety by providing better services to youth and their families, and, for those youth that do become wards, limit their time as wards of the Delinquency Court by maintaining Dependency Court jurisdiction where appropriate.

The judicial officer must decide which status will serve the best interests of the youth and the protection of society. Possible dispositions include dismissing the criminal charges, placing the youth on informal probation under Cal. Welf. & Inst. Code §§ 654 or 725(a), deferred entry of judgment under Cal. Welf. & Inst. Code § 790, or declaring the youth dual status (§ 300/§ 602). In each of these circumstances, the youth will retain dependency status and receive supervision from both Probation and the Department of Children and Family Services.

2. If the 241.1 process is initiated, and the youth is to remain detained, counsel should request placement/housing in the Elite Family Unit, (alpha and omega), at Central Juvenile Hall.
3. If the 241.1 report is ordered, counsel should:
 - a. Contact the dependency attorney for case background and current placement and service needs.
 - b. Contact the Multi-Disciplinary Team to provide input for the 241.1 assessment, including information that could shed light on failures to provide services or properly supervise the youth in the § 300 placement, as well as alternative placements that could prevent the need for crossover.
 - c. Become familiar with types of services DCFS offers to dependents.
 - d. Strongly consider requesting an order that probation not interview the youth as any statement may be submitted in the 241.1 joint assessment. Alternatively, counsel may request to be present for an interview of the youth.
 - e. Consider requesting an order that DMH not interview the youth for the 241.1 joint assessment by weighing the youth's needs against the possibility of making incriminating statements. Counsel should consider instead making an *ex parte* request for the appointment of an expert to perform a confidential mental health assessment, and with the youth's consent, submit that report to the team.
 - f. Consider requesting an evidentiary hearing on the 241.1 issues to provide evidence the child would benefit from dependency status. The right to a full evidentiary hearing is in the court's discretion.¹⁰⁰
 - g. Ensure that a WIC § 241.1 is ordered if the youth is eligible and has been found fit to remain in the juvenile court. (A joint assessment is not required while a fitness motion is pending.) To prepare for the fitness hearing, defense counsel should contact the Dependency attorney for all background and other mitigating information available, as discussed in chapter 9.

¹⁰⁰ *In re Henry S.* (2006) 140 Cal.App.4th 248.

- h. Maintain communication with the youth's dependency attorney if the youth is placed on either formal or informal probation in order to have current information for delinquency progress report hearings and to ensure the youth is receiving the support services necessary to successfully navigate and complete probation.
- i. After delinquency disposition, the MDT will schedule a post disposition meeting with the youth and the youth's caregiver. The purpose of the meeting is to inform the youth of the conditions of probation and to designate which agency (DCFS or Probation) will provide a particular service. Defense counsel should consider attending this meeting in order to provide support to the youth and to ensure appropriate services are set up so that the youth can successfully comply with probation.

B. California Foster Connections To Success Act (AB 12/212)

This section covers special considerations for: (1) former dependents, (2) wards in foster care placements, and (3) wards who have completed probation, but who do not have a safe home to which they may return.

1. Overview

The passage of AB 12 in 2010, followed by AB 212 in 2011, provides for the following:

- a. extended foster care after age 18 and up to age 21 for eligible youth. In order to be eligible, a youth must have an order for a foster care placement at age 18 (i.e. group homes, suitable placements with relatives, and other Title IV-E allowable placements).¹⁰¹ A youth also must meet one of the following participation requirements: enrolled in school, working, trying to overcome barriers to employment or have a medical condition.¹⁰²
- b. A new jurisdiction, known as transition jurisdiction, allows certain youth to remain in care and access necessary services – such as housing and financial support – without being subject to terms and conditions of probation. To be eligible, youth must be over 17 years, 5 months old, in a foster care placement and done with the terms of probation. If the youth is still a minor (i.e. older than 17.5 but younger than 18 years), the court must also find s/he does not have a safe home to return to.
- c. Reentry – enables youth whose cases have closed, but who would otherwise be eligible for extended foster care, to reenter into transition jurisdiction if they want to.
- d. Clear procedural mechanisms for the delinquency court to resume or assume dependency jurisdiction for wards 17.5 years or younger who have completed the terms of their probation, but who do not have a safe home to return to.

¹⁰¹ If a youth is sent to camp or Dorothy Kirby Center close to their 18th birthday, and has no safe home to return to when they are released, counsel should, prior to the youth's 18th birthday, file a Welf. & Inst. Code § 778 motion for a change of placement. If the youth is not subject to a suitable placement order on their 18th birthday, the youth will not be eligible for extended foster care or reentry.

¹⁰² Welf. & Inst. Code § 11403(b).

2. Counsel should be familiar with the provisions of AB12/212 and the availability of extended foster care or the assumption/resumption of dependency jurisdiction, which depends on the age of the youth:

- a. 17 Years, 5 Months and Under

At any hearing to terminate jurisdiction for a youth in a foster care placement, or for a former dependent who “crossed over” from dependency to delinquency, the delinquency court must assume or resume dependency jurisdiction if: (a) the youth has met his/her rehabilitative goals, and (b) the youth does not have a safe home option. The code provides specific procedures for the transition. (Cal. Welf. & Inst. Code §§ 607.2 & 727.2, Cal. Rules of Court, Rule 5.812.)

Counsel should advocate for modification to dependency if the youth has completed probation but has nowhere to go. **Youth should not linger on probation for placement purposes.**

- b. Over 17 Years, 5 Months and Under 18

AB 12/212 imposes new requirements for youth in foster care placements at both the last status review hearing before age 18 and at a hearing to terminate jurisdiction. (Cal. Welf. & Inst. Code § 727.2(i).) Counsel should:

- i. Describe the option of extended foster care to the youth.
- ii. Explain to the youth that if s/he has completed the terms of probation, these services can still be accessed without remaining on probation under transition jurisdiction. In other words, youth can still get housing and support services, but would not be subject to random drug testing, bench warrants if they leave placement, probation violations, etc. Transition jurisdiction can begin any time after a youth turns 17 years, 5 months old.
- iii. Ensure Probation has also started these discussions and is working with the youth on his/her plans for aging out. The reports should include a Transitional Independent Living Plan (“TILP”) addressing whether your youth intends to remain in extended foster care, where s/he intends to live and what services Probation will be providing the youth to assist him/her in meeting his/her goals.

- c. 18 and Over

For youth 18 and over in a foster care placement, there are three hearings affected by AB 12/212:

- i. Status review hearings for non minor dependents: Welf. & Inst. Code § 366.3; Cal. Rules of Court, Rules 5.900 & 5.903.
- ii. Hearings to terminate jurisdiction: Welf. & Inst. Code § 450 for transition jurisdiction or Welf. & Inst. Code § 607.3 for delinquency jurisdiction; Cal. Rules of Court, Rule 5.555.
- iii. Re-entry: Welf. & Inst. Code § 388(e); Cal. Rules of Court, Rule 5.906.

3. At a status review hearing for a youth over 18 or a hearing to terminate jurisdiction, counsel should:

- i. Determine whether your youth is eligible for extended foster care as a non minor dependent. Remember, the youth must have had an order for foster care placement at age 18.
 - ii. If the youth is eligible, explain the options of extended foster care and transition jurisdiction. Assuming the youth has completed the terms of probation, remaining in care under transition jurisdiction is voluntary.
4. If the youth has no interest in remaining in extended foster care and/or the Delinquency Court will be terminating jurisdiction:
 - i. The report should include a detailed 90-day Transition Plan required by Welf. & Inst. Code §§ 391 and 16501.1(f)16.
 - ii. The youth should receive all the documents required by Welf. & Inst. Code § 391.
 - iii. The youth should be informed of his/her right to reenter.
5. At a hearing to petition for reentry, counsel should:
 - i. Ensure the youth has signed a Voluntary Reentry Agreement with Probation, which will initiate services.
 - ii. Go over the participation requirements.
 - iv. Find out what services, if any, the youth would need to be able to meet the participation requirements, and also to prepare for eventually aging out of care.
 - v. Discuss what placement options are available.

CHAPTER NINE: FITNESS HEARINGS & OTHER PROCEDURES RELATED TO ADULT COURT

A. FITNESS HEARINGS

A youth who was 14 years or older at the time of the alleged offense may be considered for prosecution in adult court, if specific statutory circumstances exist. The decision to seek to have a youth prosecuted in adult court is made by the prosecutor, who must file a motion to request a hearing on this issue.¹⁰³ Juvenile court practitioners refer to this motion as a “fitness motion” and to this hearing as a “fitness hearing.”

The court’s determination about whether the youth is “fit” or “unfit” for juvenile court treatment is based on an evaluation of five criteria:

1. The degree of criminal sophistication exhibited by the youth
2. Whether the youth can be rehabilitated before the expiration of jurisdiction
3. The youth’s previous delinquent history
4. The success of previous attempts by the court to rehabilitate the youth
5. The circumstances and gravity of the offense alleged in the petition to have been committed by the youth

For the prosecution to prevail in a fitness case, where the youth is presumed fit, they must show by a preponderance of evidence that the youth is not fit. The court can make a finding of fit or unfit on any one, or combination, of the five fitness criteria. In contrast, for the defense to prevail in a fitness case where the youth is presumed unfit, the court must find the youth fit on *each criterion*.

It is imperative that counsel handling fitness cases have specialized training and experience. Recognizing the severe consequences that emanate from such hearings, the U.S. Supreme Court in 1966 noted:

[I]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony, without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice, dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society’s special concern for children...permitted this procedure. We hold that it does not.¹⁰⁴

1. The National Juvenile Defender Center Standards devote an entire chapter to counsel’s special duties in the context of hearings wherein a youth may be subjected to adult prosecution.¹⁰⁵ To begin, counsel must be familiar with relevant statutes and case law

¹⁰³ Cal. Welf. & Inst. Code §707, Cal. Rules of Court, Rule 5.766(c).

¹⁰⁴ *Kent v. United States* 383 U.S. 541 (1966).

¹⁰⁵ NJDC Standards, Chapter 8.

regarding the interplay between adult and juvenile prosecution, including presumptions in favor of or against keeping youth in juvenile court and the burden of proof necessary to overcome such a presumption.

2. Counsel must be aware of two ways in which fitness hearings and the fitness hearing process itself are unusual. First, fitness hearings are not designed to determine guilt or innocence; that is not their purpose. They exist only to determine the *forum* (juvenile court or adult court) in which guilt or innocence will later be litigated. Counsel must appreciate that the way these unusual hearings are litigated is quite different from trying an adjudication or trial.
3. Second, after the fitness hearing has concluded, an adjudication (juvenile court) or trial (adult court) will be calendared. Thus, counsel must strategically evaluate how to handle the fitness hearing in light of the fact that guilt or innocence will be litigated later. For example, evidence that could be helpful to the defense at the fitness hearing may be harmful to the defense at an adjudication or trial. Thus, while litigating the fitness hearing, counsel must remain mindful of the fact that an adjudication or trial is still to come.
4. Counsel should be aware that there are two types of fitness hearings. Depending on the statutory requirements (which are based on age, offense and/or prior sustained petitions) the youth either is presumed fit or presumed unfit at the start of the fitness hearing.¹⁰⁶ If the youth is presumed unfit, counsel must overcome the presumption, and this requires evidence. It is imperative that counsel present expert evidence in such cases, rather than simply arguing from the probation officer's fitness report.
5. Counsel's Duties at Arraignment
 - a. If the prosecutor has filed a fitness motion, it will usually be attached to the petition. This puts counsel on notice that a fitness hearing will be held in the case. Counsel should determine if the statutory requirements for a fitness motion are present based on the youth's age and the alleged offense or offenses.¹⁰⁷ Note that a fitness motion may be filed up until five days before adjudication, pursuant to Cal. Rules of Court, Rule 5.766(b).
 - b. If a fitness motion has not been filed in a case but could have been filed, counsel should consider whether an immediate admission to the petition might be in the youth's best interests. Jeopardy would attach upon admission and no fitness motion could be filed thereafter. A quick decision is necessary because once a fitness motion is filed no admission is permitted per Cal. Welf. & Inst. Code § 707(a).
 - c. Gather Information on Youth and Youth's Family

For the initial client meeting, counsel should set aside additional time when a fitness motion has been filed. Counsel will need to take special care to explain the fitness hearing process, and must explain the possible results, including the extent of possible sentencing decisions. Counsel should anticipate that upon hearing that

¹⁰⁶ Cal. Welf. & Inst. Code § 707.

¹⁰⁷ Cal. Welf. & Inst. Code § 707.

prosecution in adult court is a possibility, a youth and family members will need additional time to fully process the potential serious consequences that the youth is facing. Youths and families also should be advised that the complexity and gravity of the proceedings may necessitate additional preparation time.

Counsel may need to conduct multiple interviews of the youth and family to gather information which will be relevant in preparing for the fitness hearing. Important information to be gathered includes, but is not limited to, the youth's:

- educational history
 - mental health history
 - medical history
 - dependency court history
 - family history
 - drug and/or alcohol history
 - gang history
 - developmental history
 - delinquency history
 - interests, hobbies, skills, awards, community support
- d. Counsel should request that the youth and parent or guardian sign appropriate consent/release forms to facilitate the easy retrieval of the records noted above.
- e. After counsel has interviewed the youth and youth's family and discussed future appointments and interviews, counsel should:
- i. Request that the court order the probation department to contact counsel so that he or she can be present when the youth is interviewed, or request that the court order the probation department not to interview the youth at all;
 - ii. Request that a fitness hearing date or setting (and *Edsel P.* hearing, described below) be calendared;
 - iii. Request that an adjudication date be set two to four days past the fitness hearing date;¹⁰⁸
 - iv. Request a *Dennis H.* hearing¹⁰⁹ if your youth is presumed fit and is detained. This allows you the opportunity to try to get your youth released during the pendency of the proceedings. (*Dennis H.* hearings are only available if the youth is presumed fit; if the youth is presumed unfit s/he will be entitled to an *Edsel P.* hearing described later.)
6. In preparation for a fitness hearing counsel should:
- a. Investigate the youth's psychosocial history

¹⁰⁸ Should the prosecution be unable to conduct the fitness hearing on the originally scheduled date, counsel can argue that the youth is entitled to proceed to adjudication based upon the youth's statutory right to a speedy adjudication set forth in Cal. Welf. & Inst. Code § 657 and Cal. Rules of Court, Rule 5.774. Absent "good cause," the remedy for failure to hold a timely fitness hearing is release of the youth (*David B. v. Superior Court* (1983) 142 Cal.App.3d 623.)

¹⁰⁹ *In re Dennis H.* (1971) 19 Cal.App.3d 350.

- b. Investigate the allegations in the petition
- c. Gather records related to the interview topics noted above
- d. Request appointment of forensic experts:
 - i. Determining what type of experts will be needed to evaluate the youth depends entirely on the youth's issues, deficits, and history.
 - ii. Determining what type of experts you will need to assist you in defending against the allegations depends on the facts of the case.
- e. File a timely discovery motion
- f. Prepare a fitness brief which:
 - i. Conveys the youth's life and history
 - ii. Focuses attention on the factors most relevant to the court's decision
 - iii. Permits the use of secondary sources that support your position
 - iv. Specifically addresses each of the five fitness amenability criteria

7. Conditions of Confinement

Sometimes it can take a considerable period of time for the fitness process to be completed. During this timeframe, counsel needs to be aware of the conditions of the youth's confinement: counsel needs to ensure that the youth is receiving education, health, and mental health services, if necessary, and is generally receiving a quality standard of care. To the extent that the conditions of confinement are not sufficient, counsel should raise those conditions in the courtroom.

8. Counsel's Duties at The *Edsel P.* Hearing

*Edsel P. v Superior Court*¹¹⁰ provides for a pre-fitness hearing to determine whether a prima facie showing that the youth committed the alleged offense can be shown. The prosecution must meet the preliminary hearing standards requiring proof of "such state of facts as would lead a man of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion of the guilt of the accused."¹¹¹ *Edsel P.* hearings are only available for cases in which the youth is presumed unfit.

At the *Edsel P.* hearing, counsel may:

- a. Challenge an involuntary confession. A prima facie case and the determination of fitness cannot be based upon an involuntary confession.¹¹²
- b. Commit or "marry" the police officer and/or testifying witness(es) to the certain facts. The *Edsel P.* transcript will be useful later to impeach witnesses at the adjudication or trial.
- c. Establish that the alleged crime is not as sophisticated or as grave as it initially seemed. Evidence adduced at the hearing is relevant for criterion five, the circumstances and gravity of the offense.

Counsel should be aware of the unusual limitations imposed during the *Edsel P.* hearing:

¹¹⁰ 165 Cal. App. 3d 763

¹¹¹ Cal. Penal Code §§ 871-872.

¹¹² *Marcus W. v. Superior Court* (2002) 98 Cal.App.4th 36.

- a. Counsel is not entitled to cross-examine percipient witnesses. Upon request the defense has a right to cross-examine the person who prepared the police report, usually the investigating officer or detective. Counsel may also subpoena and present witnesses or documentary evidence.
- b. Prosecutors will usually submit the police report to the court.¹¹³ Hearsay is admissible; however, it cannot be so attenuated that the evidence is incompetent or does not comply with due process.¹¹⁴
- c. No affirmative defense or alibi defense is allowed.¹¹⁵

Counsel should consider waiving the *Edsel P.* hearing if the testimony adduced at the hearing will cast the youth's participation in the alleged offense in a harsher manner than described in the reports and when a prima facie case is likely to be established.

9. Results of the *Edsel P.* Hearing

If defense counsel wins the hearing and the youth is 16 years or older, the burden of proof shifts and the youth is now presumed fit during the fitness hearing which will follow. If the youth is 14 or 15 years old and counsel prevails at the hearing, the remedy is dismissal of the fitness motion. Dismissal of the underlying felony offenses is never the remedy.

10. Counsel's Duties at the Fitness Hearing

At the fitness hearing,¹¹⁶ the prosecutor and defense counsel are permitted to introduce "any relevant evidence which the petitioner or the minor may wish to submit."¹¹⁷

Counsel should consider introducing any evidence that is relevant to the five criteria and which demonstrates that the youth is amenable to treatment in the juvenile court. Some examples of evidence that might be introduced include:

- Individual Education Plans (IEPs)
- past psychiatric hospitalization records
- character letters from coaches, pastors, neighbors
- birth records
- regional center records
- dependency court records
- medical records
- behavior records from juvenile hall and/or other treatment facilities
- testimony from social workers, psychologists or psychiatrists
- testimony from lay witnesses

¹¹³ See *People v. Superior Court (Ronald H.)* (1990) 219 Cal.App.3d 1475.

¹¹⁴ *Marcus W. v. Superior Court* (2002) 98 Cal.App.4th 36.

¹¹⁵ *People v. Superior Court (Rodrigo O.)* (1994) 22 Cal.App.4th 1297, 1303-1304.

¹¹⁶ If the youth turns 18 prior to the commencement of the fitness hearing there is authority to support the idea that the youth has a right to waive a fitness hearing. (*Rucker v. Superior Court* (1977) 75 Cal.App.3d 197.)

¹¹⁷ Cal. Welf. & Inst. Code § 707.

Regardless of the outcome of the fitness hearing, the youth still will be facing either an adjudication or a trial in adult court. Thus, counsel must strategically weigh whether or not to introduce every expert report, witness or detail of the youth's life. Future use of this evidence must be considered and evaluated.

The prosecution will introduce the probation report into evidence. A probation report is a jurisdictional requirement to a fitness determination. Any determination of unfitness made in the absence of the social study report is void.¹¹⁸ Cal. Rules of Court, Rule 5.768(a) mandates that the probation report for the youth must contain:

- a. The social, family, and legal history of the child;
- b. Any statement the child chooses to make regarding the alleged offense;¹¹⁹
- c. Any statement by a parent or guardian;
- d. Any statement by a social worker, probation officer, or Youth Authority parole agent who has supervised the child regarding the relative success or failure of any program of rehabilitation; and
- e. Any other information relevant to the determination of fitness

The probation report must be furnished at least 24 hours prior to the hearing.¹²⁰

Statements made by the youth to the probation officer in preparing the report cannot be later used against the youth in the prosecution's case-in-chief.¹²¹ However, the statements can be used for impeachment.¹²²

After all testimony and reports and other evidence have been introduced, the prosecutor and counsel argue the five fitness criteria. The court should then make specific findings of fact and/or law regarding each of the five criteria. As noted before, if the youth is presumed unfit, in order for him/her to remain in juvenile court, the bench officer must find him/her amenable under each of the five criterion.¹²³ Counsel must rebut the presumption of unfitness by a preponderance of the evidence for *each* of the criterion.¹²⁴ In contrast, if the youth is presumed fit, the bench officer can make a finding of amenability to juvenile court based on any one or combination of the five fitness criteria. If the court finds the youth fit, the court must state that it finds the youth fit.¹²⁵

Because future direct filings in adult court may be predicated upon the particular findings by the court, it is important that counsel not concede unfitness on criteria three or four.¹²⁶

¹¹⁸ *Raul P. v. Superior Court* (1984) 153 Cal.App.3d 294, Cal. Welf. & Inst. Code § 707(c), and Cal. Rules of Court, Rule 5.768.

¹¹⁹ At the initial appearance, counsel should insist on being present during any interview of the youth. If the request to be present is not honored, ask that a new report be prepared by a new probation officer and that all copies of the current report be returned to the court and sealed or destroyed, including electronic copies. (See *In re Paul T.* (1971) 15 Cal.App.3d 886, 892-895.)

¹²⁰ Cal. Rules of Court, Rule 5.768(c).

¹²¹ *Ramona R. v. Superior Court* (1985) 37 Cal.3d 802.

¹²² *Sheila O. v. Superior Court* (1981) 125 Cal.App.3d 812; *People v. Macias* (1977) 16 Cal.4th 739.

¹²³ Cal. Rules of Court, Rule 5.772.

¹²⁴ *People v. Superior Court (Steven S.)* (1981) 119 Cal.App.3d 162.

¹²⁵ Cal. Rules of Court, Rule 5.770(c).

¹²⁶ Cal. Welf. & Inst. Code § 707.01(a)(6); see Chapter 9, *infra*.

11. Counsel's Duties If the Youth is Found Fit

Under Cal. Rules of Court, Rule 5.772, the prosecution may request a stay to have the finding of fitness reviewed by an appellate court. However, if the prosecutor fails to request the continuance, the youth is entitled to admit the petition or commence the adjudication. Both of these actions cause jeopardy to attach and prevent further appellate review. In some cases it may be in the youth's best interest to enter an open plea immediately after the court has found him/her fit. Counsel needs to evaluate the likelihood of the appellate court reversing the finding of fitness in advising the youth of this option.

If an adjudication is commenced, the same bench officer who heard the fitness case will hear the adjudication unless counsel enters a timely objection.¹²⁷

12. Counsel's Duties if the Youth is Found Unfit

If the fitness hearing was conducted by a referee and there was no stipulation signed by the parties, then counsel should immediately file a motion for rehearing pursuant to Cal. Welf. & Inst. Code § 252. Counsel may want to ask the juvenile court to stay the matter pending review. If the stay is not granted, it is imperative that the felony arraignment in adult court be continued and no plea be entered.

If the fitness hearing was heard by a judge or if counsel's rehearing is denied, and the youth is transferred to adult court, counsel should consider filing a Writ of Mandate in the Court of Appeal to challenge the finding.

A finding that the youth is unfit may be challenged *only by writ, and not by appeal*. **The writ must be filed no later than 20 days after the date of the felony arraignment in adult court.**¹²⁸ This means juvenile court counsel should immediately request a transcript of the *Edsel P.* and fitness hearing at the conclusion of the hearing, and obtain an expedited order for the transcript signed by the court.

Practically speaking, counsel will need to ensure that the felony arraignment is continued in order for the attorney filing the writ to obtain and review the transcript and additional documentation needed to file the writ in a timely manner. Where juvenile court counsel will not continue to represent the youth in adult court, counsel should contact the attorney who will be representing the youth at further proceedings, and provide all documentation or information requested. Successor counsel is entitled to a copy of the client's file.

Whether or not appellate review is sought, or if appellate review is denied, it is imperative that the entire file is supplied to the attorney who will be handling the case in adult court if different counsel will be representing the youth. Transcripts, especially those of the *Edsel P.* hearing, are very useful.

¹²⁷ See *In re James D.* (1981) 116 Cal.App.3d 810.

¹²⁸ Cal. Rules of Court, Rule 5.772(j).

Once a youth has been found unfit on one fitness case, all other pending juvenile matters follow the youth to adult court.¹²⁹

B. DIRECT FILING: MANDATORY AND DISCRETIONARY

After Proposition 21 (entitled the Gang Violence and Juvenile Crime Prevention Act of 1998), effective March 7, 2000, there are three methods by which a youth may be tried in adult court. These include the traditional route of a fitness hearing, mandatory direct filing, and discretionary direct filing. Discretionary direct filing may be based upon the charge and age of the youth, or may be based upon a prior finding of unfitness.

1. Mandatory Direct Filing

Cal. Welf. & Inst. Code § 602(b) mandates that certain juvenile offenses be prosecuted in adult court. The District Attorney has no discretion to file these offenses in juvenile court; therefore, they are often referred to as “mandatory direct file.” Mandatory direct filing requires the prosecution to file in adult court for juveniles 14 and older under the following circumstances:

- a. murder with a special circumstance allegation listed in Cal. Penal Code § 190.2(a), **and** the minor personally killed the victim, **or**
- b. certain enumerated sex offenses¹³⁰ where the juvenile is the actual perpetrator, **and** one of the circumstances listed in Cal. Penal Code § 667.61(d) or § 667.61(e) is alleged.

The prosecution of juveniles under Cal. Welf. & Inst. Code § 602(b) may proceed either by grand jury indictment or by information.¹³¹

2. Discretionary Direct Filing (Where there is no prior finding of unfitness)

Cal. Welf. & Inst. Code § 707(d) permits the prosecution discretion to *elect* whether to file in juvenile *or* adult court for specified offenses. Discretionary direct filing is permitted in the following circumstances:

- a. The youth is 16 years of age or older, and is accused of committing
 - i. An offense enumerated in Cal. Welf. & Inst. Code § 707 (b);
 - ii. Any felony punishable by death or state prison for life;
 - iii. Personal use of a firearm during the commission or attempted commission of a felony as described in Cal. Penal Code § 12022.5 or § 12022.53; or
 - iv. Where the youth has a prior felony offense committed at or after age 14, and is now charged with an offense with any one of the following allegations:

¹²⁹ See *In re Shanea J.* (1984) 150 Cal.App.3d 831.

¹³⁰ The following sexual offenses are included: Cal. Penal Code §§ 261(a)(2), 262(a)(1), 264.1, 288(b), 289(a), 286(c)(2), 288a(c)(2), 288(a) (as long as youth does not qualify for probation per Cal. Pen. Code §1203.66(c).)

¹³¹ *Guillory v. Superior Court* (2003) 31 Cal.4th 168.

- Cal. Pen. Code § 186.22,(b) (Gang Allegation)
 - Cal. Pen. Code § 422.55 (Hate Crime)
 - The victim is 65 or older, blind, deaf, quadriplegic, paraplegic, developmentally disabled or confined to a wheelchair and the disability was known or reasonably should have been known at the time of the offense.
- b. The youth is 14 years of age or older, and is accused of committing:
- i. Any felony punishable by death or state prison for life;
 - ii. Personal use of a firearm during the commission or attempted commission of a felony as described in Cal. Penal Code § 12022.5 or § 12022.53; or
 - iii. A Cal. Welf. & Inst. Code § 707(b) offense where it is alleged as follows:
 - Cal. Penal Code § 186.22, subdivision (f) (Gang Allegation)
 - Cal. Penal Code § 422.55 (Hate Crime)
 - The victim is 65 or older, blind, deaf, quadriplegic, paraplegic, developmentally disabled, confined to a wheelchair and the disability was known at the time of the offense, or
 - The youth has a previously sustained petition for a Cal. Welf. & Inst. Code § 707(b) offense.

In circumstances where Cal. Welf. & Inst. Code § 707 (d) applies, the prosecutor now can choose to file charges directly in criminal court without a judicial determination of unfitness under the juvenile court law.¹³² **Once an election is made to file in juvenile court, however, the prosecutor may not then file in adult court.** The court must conduct the fitness hearing.¹³³

3. Direct Filing Where There Has Been a Previous Finding of Unfitness

The final way in which a youth may have his petition filed in adult court occurs where there was a *previous finding of unfitness*. If a juvenile is found unfit, any pending petitions are transferred to adult court as long as (1) *jeopardy has not attached to those petitions, and (2) the youth was 16 or older at the time the offense was committed.*

Once a youth is found unfit, Cal. Welf. & Inst. Code § 707.01 provides for two circumstances where future petitions may be filed directly in adult court. There are two scenarios that may occur. First, Cal. Welf. & Inst. Code § 707.01(a)(5) provides that a prosecutor may directly file in adult court where:

- i. There is a previous finding of unfitness and the youth is convicted of the offenses that were subject of the fitness hearing,
- ii. The youth is 16 or older, AND
- iii. Is alleged to have committed another offense for which s/he may be presumed unfit or may be found not to be a fit and a proper subject to be dealt with under the juvenile court.

Second, Cal. Welf. & Inst. Code § 707.01(a)(6) provides that a prosecutor may directly file in adult court where:

¹³² *Manduley v. Superior Court* (2002) 27 Cal.4th 537

¹³³ Cal. Welf. & Inst. Code § 606.

- i. There is a previous finding of unfitness based solely under either or both criteria three (previous delinquent history) or four (previous attempts to rehabilitate),
- ii. But the youth was not convicted of the offense, AND
- iii. The new charges are committed when the juvenile is 16 or older, AND
- iv. The youth is alleged to have violated a criminal statute for which s/he is presumed unfit or may be found not to be a fit and proper subject to be dealt with under the juvenile court.

Prospectively, counsel should be sure to challenge and not concede criteria three or four in the course of a fitness hearing. Retroactively, counsel in adult court must ensure that these foundational criteria are established by carefully checking the juvenile court findings in the fitness hearing.

It is important for counsel to be familiar with the provisions of the law that allow direct filing, particularly discretionary direct filing, and those more tangential provisions that may be indirectly related to the forum chosen. For example, where a prosecutor has filed a charge in juvenile court against a youth 16 years or older *and could have filed in adult court*, Cal. Welf. & Inst. Code § 707(d)(5) requires the court to commit the adjudicated youth to a hall, ranch or camp, or secure juvenile home. There is no minimum term, however, so a one-day commitment would be permissible.

Similarly, if a youth, who is 14 or 15 years old, is either directly filed on, or sent to adult court, upon a finding that he is unfit, the convictions of qualifying offenses will be considered strikes even though the youth is not 16 years old and even though the qualifying offense is not listed in Cal. Welf. & Inst. Code § 707(b).

C. REMANDS AND RETURNS TO JUVENILE COURT

There are two stages at which a youth in adult court may be returned to juvenile court---pre-conviction and post-conviction.

1. At the pre-conviction stage, there are two ways that a youth may be returned to juvenile court.
 - a. First, if the youth was filed on in adult court under a mistaken belief that he was an adult, the court's jurisdiction may be challenged and the court must make a determination as to the proper forum.
 - b. Second, if the case has been directly filed, but the predicate offenses which qualified the case for direct filing are not proven at the preliminary hearing, the case can be returned to juvenile court for further proceedings.¹³⁴ Note, however, that although the statute mandates transfer back to juvenile court, the statute is not specific as to when the transfer to juvenile court occurs. Because of this, one court held that the prosecutor could still file the dismissed direct file charges in the Information in superior court to challenge the magistrate's probable cause findings. If that occurs, then counsel must file a § 995 motion, and if counsel prevails then the matter is to be transferred to juvenile court. However, the best

¹³⁴ Cal. Welf. & Inst. Code §707(d)(4).

practice would be to request transfer to juvenile court immediately after the preliminary hearing magistrate dismisses the direct file charges.¹³⁵

2. At the post-conviction stage, there are very few charges which actually qualify for reverse remand. Reverse remand is another way of saying that because of the actual conviction suffered, the youth may qualify for a fitness hearing and/or juvenile disposition. The statutes to consult in this situation are complex and require careful perusal.¹³⁶

“Reverse Remand” is not applicable to matters that were filed in adult court subsequent to a finding of unfitness, nor is it applicable to charges that are subject to mandatory or discretionary direct file.

Reverse Remand is triggered when your client is convicted of a charge which is **not eligible for direct file**. The key to determining whether the youth is eligible for reverse remand requires counsel to determine whether the offense in combination with the age of the youth makes the youth eligible for mandatory or discretionary direct file. If so, then the youth is *not* eligible for “reverse remand.”¹³⁷

Assuming counsel has correctly determined that the remaining charge *is* eligible for reverse remand, further analysis is necessary to determine whether the youth is now eligible for a juvenile disposition. There are three possible scenarios:

- a. If the remaining charge in combination with the client’s age would be a charge in which the youth is presumed *unfit*, then an adult sentence is *presumed unless counsel requests a fitness hearing and prevails*.¹³⁸
- b. If a the remaining charge in combination with the client’s age would be cause the youth to be presumed *fit*, there is a presumption that there will be a juvenile court disposition *unless the prosecution requests a fitness hearing*.¹³⁹
- c. If the remaining charge in combination with the client’s age is a charge that is not eligible for a fitness hearing, the youth receives a juvenile disposition.¹⁴⁰

The adult court judge may conduct the fitness hearing, or may remand the matter back to the juvenile court for the juvenile court to conduct the fitness hearing.¹⁴¹

¹³⁵ See *Solano v. Superior Court* (2009) 169 Cal.App.4th 1361.

¹³⁶ See Cal. Penal Code, §§ 1170.17, 1170.19, Cal. Rules of Court, Rule 4.510.

¹³⁷ For example, if a youth is 14 years old and is charged with Cal. Penal Code § 211 and it is alleged that the youth used a firearm in violation of Cal. Penal Code § 12022.53, the prosecutor has the discretion to file this charge in adult court. (See Cal. Welf. & Inst. Code § 707(d)(2)(B).) Assume that the youth has proceeded to jury trial and the jury finds the youth guilty of the § 211 but does not find the § 12022.53 enhancement true. Counsel is now left with a 14 year old youth that has been convicted of Cal. Penal Code § 211. This youth is eligible for reverse remand because for a 14 year old (with no prior petitions for a Cal. Welf. & Inst. Code § 707 (b) offense) charged with just a § 211, the prosecutor does not have the discretion to file in adult court. Now take this exact same scenario, but change the age of the youth to 16. The 16 year old would NOT be eligible for reverse remand because under Cal. Welf. & Inst. Code § 707(d)(1), the prosecution has discretion to file in adult court, when the juvenile is 16 years old and charged with a robbery.

¹³⁸ Cal. Penal Code § 1170.19(b)(2).

¹³⁹ Cal. Penal Code § 1170.19(c)(1).

¹⁴⁰ Cal. Penal Code § 1170.19(d).

D. HOUSING MOTIONS PRIOR TO CONVICTION

1. Housing for Youth Under Age 18

Youth under the age of 18 who are accused of offenses in juvenile court must be detained in juvenile hall. Likewise, youth under the age of 18 who have been directly filed on in adult court or found unfit are considered minors in the adult court process and are to be detained in juvenile hall as well. However, Cal. Welf. & Inst. Code § 207.1 provides an exception allowing county jail housing for direct file and unfit youth when there is a specific finding that the youth's further detention in juvenile hall would endanger the safety of the public or would be detrimental to the other youth in juvenile hall. Additionally, Cal. Welf. & Inst. Code § 207.6 requires that a youth may be detained in jail or other secure facility for adults only, if the court makes findings on the record that the youth poses a danger to the staff, other youth in juvenile hall, or to the public (1) because of the youth's failure to respond to disciplinary control, or (2) because the nature of the danger posed by the youth cannot be safely managed.

Youth facing adult prosecution are currently held in "the compound" at Barry J. Nidorf Juvenile Hall (females are detained at Los Padrinos Juvenile Hall). Probation may file a petition seeking transfer of the youth to county jail. For this reason counsel for any youth under 18 should be familiar with the youth's juvenile hall behavioral records, juvenile hall school records, and any previous detention records from juvenile hall and/or camp. After carefully reviewing all applicable records, counsel for the youth should be prepared to file an opposition to the motion to transfer, and request a hearing.

2. Housing for Youth 18 and Older

When a youth who is under the jurisdiction of the **adult court**, either by way of direct file or a finding of unfitness, turns 18 years old, the probation department will usually file a request to transfer the youth to the county jail pursuant to Cal. Welf. & Inst. Code § 707.1(B)(2). That code section indicates that upon the attainment of the age of 18 years, a person who is detained in juvenile hall shall be delivered to the custody of the Sheriff *unless the court finds it in the best interest of the person and the public that he or she remain in juvenile hall*. If a hearing is requested, the transfer shall not take place until after the court has made its finding. It is imperative that counsel be familiar with the youth's juvenile hall behavioral record, counseling records, if any, and school grades, attendance, and behavior in order to establish how the youth is performing in juvenile hall and what services s/he is receiving in contrast to what s/he will not be getting in county jail or another adult facility. Often, probation's petition to transfer the youth contains conclusionary language that needs to be challenged with the actual records. In order to establish why it is also in the best interest for the public that youth remain in juvenile hall, counsel should familiarize themselves with statistical and anecdotal evidence on what happens to youth placed in adult facilities and file an opposition to transfer motion with a request for a full hearing with witnesses from juvenile hall.

¹⁴¹ Cal. Penal Code §§ 1170.19(b)(2) and (c)(2).

When a youth under the jurisdiction of the **juvenile court** turns 18 years of age, s/he may remain in juvenile hall in that separation is not required. However, at age 19, probation may recommend that the youth be transferred to jail. Cal. Welf. & Inst. Code § 208.5 allows youth under the jurisdiction of the juvenile court to remain in contact with juveniles housed in the same facility until they are 21 years old, if the juvenile court has ordered continued detention in the juvenile facility. Counsel for all youth age 19 or older should request such an order.

Cal. Welf. & Inst. Code § 1752.15 permits the county to contract with the Department of the Youth Authority to house youth under the age of 18 when existing county facilities are unsafe or inadequate due to a natural or manmade disaster or in the event that the continued presence of a youth or youth in the county juvenile facility would present a significant risk of violence or escape. Either the juvenile bench officer or chief probation officer of the county may make this determination. If there is an attempt to move the youth, counsel should request a hearing and litigate these issues.

Counsel should advise his or her youth at the earliest point in time that daily behavior will impact whether or not he or she is allowed to stay in juvenile hall.

E. SENTENCES FOR YOUTH CONVICTED IN ADULT COURT

1. When youth convicted in adult court can receive a state prison sentence

Many youth will receive significant sentences to state prison. Since no one under the age of 16 may be housed in state prison, youth convicted in adult court and sentenced to state prison will remain housed in DJJ until they turn 18 years old.¹⁴² Upon turning 18, they will be transferred to adult prison.

In some cases when the youth could complete his or her sentence by the age of 21, DJJ retains the discretion to retain the youth until the age of 21.

If you represent a youth who is under 16 at the time s/he committed the offense, s/he cannot be sentenced to state prison unless an amenability evaluation is completed. The evaluation consists of the court remanding the client to DJJ for period of time not to exceed 90 days for the purpose of evaluating his/her amenability to the services of DJJ. However, this does not apply to youth who are ineligible for DJJ commitment pursuant to Welf. & Inst. Code § 1732.6.

At the time of the writing of these Guidelines, there have been several cases recently decided, as well as others currently pending, which significantly impact youth who are convicted in adult court and are or will be serving lengthy sentences. Counsel should be familiar with *Graham, Miller, Caballero, Gutierrez* and the cases which have been decided since these seminal cases. Counsel must be able to litigate whether a lengthy sentence constitutes cruel and unusual punishment under the United States and/or California Constitutions.

¹⁴² Cal. Welf. & Inst. Code §1731.5(c).

Counsel should also be familiar with recent legislation which impacts the parole eligibility and parole process for youthful offenders, including SB 9 and SB 280.

2. When youth convicted in adult court can be sentenced to DJJ

Pursuant to Penal Code § 1170.19(a), a judge can sentence a youth to DJJ as long as the youth meets the eligibility requirements set forth in Welf. & Inst. Code § 732.6. Since § 1732.6 bars DJJ commitment for a § 707(b) offense committed when the youth was 16 or older, and also bars commitment if the youth cannot complete the sentence before the age of 23, many youths will not be eligible for a DJJ commitment in adult court.

At the time of writing these guidelines, there is an unresolved conflict in the law between Welf. & Inst. Code § 1732.6 and § 1731.5. Pursuant to § 1732.6, a youth cannot obtain a DJJ commitment for a § 707(b) offense committed when the youth was 16 or older. However, under § 1731.5, DJJ will *only* accept youths, who have been convicted for a § 707(b) offense. Thus, if you have a client acquitted of robbery, but convicted of grand theft (not on the § 707(b) list), your client is eligible under § 1732.6, but ineligible under § 1731.5. Penal Code section § 1170.19 limits commitment to DJJ pursuant to § 1732.6, if your court sentences the youth to DJJ and DJJ rejects the youth, then you will need to seek appellate review to resolve the conflict.

A court may refer a person who committed an offense between the ages of 16 and 18 and was found unfit for juvenile court to the DJJ for an evaluation and report concerning his/her amenability to training and treatment offered by DJJ.¹⁴³ If the court decides that the amenability report is not necessary, the court shall make that finding on the record. However, if the person committed the offense when they were under the age of 16, s/he must be remanded to DJJ for an amenability report.¹⁴⁴ In determining the proper disposition the court should consider the need to protect society, the nature and seriousness of the offense, the interests of justice, and the needs of the minor. Last, an amenability report need not be ordered when commitment to DJJ is prohibited by Cal. Welf. & Inst. Code §1732.6.

3. When a youth convicted in adult court can receive a life without the possibility of parole (“LWOP”) sentence

Under specific circumstances Cal. Penal Code § 190.5 permits the adult court to sentence a youth who was 16 years or older and under the age of 18 to receive a life without the possibility of parole sentence. To receive this sentence the youth must have been found guilty of murder in the first degree and one or more special circumstances must have been found to be true. Under case law, this sentence has been presumptive. Following *Miller v. Alabama* (2012) 132 S. Ct. 2455, holding that mandatory imposition of LWOP is unconstitutional, the California Supreme Court was presented with the questions of whether § 190.5 violated *Miller’s* ban. In *People v. Gutierrez* (2014) 58 Cal. 4th 1354, the Court held that the sentences heretofore imposed pursuant to this judicial presumptive gloss were indeed unconstitutional. The court did not declare § 190.5 unconstitutional; prospectively, the court required that before a youth may be sentenced to LWOP, the court must carefully consider five specified categories of evidence relating to a youth.

¹⁴³ Cal. Welf. & Inst. Code § 707.2(a).

¹⁴⁴ Id.

In addition, SB 9, effective Jan. 1, 2013, allows youth sentenced to LWOP (with certain limited exceptions), to petition the court for resentencing after serving a specified number of years.

F. DETERMINATION OF A YOUTH'S AGE/MINOR STATUS

When the youth is charged with a complaint in adult court (not charged with an offense which authorizes direct filing), but is actually under the age of 18, counsel must consider in consultation with the youth whether to challenge the court's jurisdiction.

Under Cal. Welf. & Inst. Code § 604, whenever it appears that the person in court is under the age of 18, the judge shall immediately suspend all proceedings and certify the case to the juvenile court in the county. If the judge refuses to certify the person to juvenile court, defense counsel should request the court order a Mandibular Molar Examination, authorized in Cal. Welf. & Inst. Code § 608 to determine the age of the youth. The burden is on defense counsel to prove by a preponderance of the evidence that the youth is actually a juvenile.¹⁴⁵ If the youth "willfully misrepresented" his age to be 18 years or older, detention time lines begin to run from the time the true age is determined.¹⁴⁶

When a petition is filed against a person in juvenile court, but s/he was actually over the age of 18 when the alleged offense was committed, the juvenile court does not have jurisdiction over that person.¹⁴⁷ Once the true age of the person is discovered the case is transferred to the adult court. Technically, however, there is no parallel provision (similar to § 604) which specifically authorizes this transfer to adult court.

When the prosecutor has filed an accusatory pleading against a youth in criminal court, the magistrate is required to make a finding that reasonable cause exists to believe that the minor comes within the subdivision permitting a directly filed case.¹⁴⁸ By implication, the magistrate's finding would include a finding that the minor is at least 14 years old.

¹⁴⁵ *People v. Nguyen* (1990) 222 Cal.App.3d 1612.

¹⁴⁶ Cal. Rules of Court, Rule 5.752.

¹⁴⁷ Cal. Welf. & Inst. Code § 602.

¹⁴⁸ Cal. Welf. & Inst. Code § 707(d)(4).

CHAPTER TEN: DUTIES OF REPRESENTATION AT THE ADJUDICATION PHASE

A. General Concepts

1. Adjudication is an adversarial proceeding and counsel has a duty to zealously represent the youth.
2. Counsel should remember that:
 - a. Youth have all rights afforded by the United States and California Constitution, with the exception of the right to a jury trial.
 - b. The State has the burden of proving the allegations beyond a reasonable doubt.
 - c. With certain exceptions, the rules of evidence apply to all juvenile court proceedings.¹⁴⁹

B. Preparation

1. Counsel should consider seeking stipulations from the prosecutor on non-contested issues.
2. Counsel should review jury instructions in order to be familiar with the applicable law and the elements the prosecution needs to prove.
3. Counsel should analyze all potential prosecution evidence for admissibility problems, and develop strategies for blocking its admission. Counsel should research and prepare legal arguments in support of the admission of each piece of defense evidence or testimony.¹⁵⁰
4. Counsel should thoroughly prepare defense witnesses for the hearing.
5. Counsel should bring copies of any case law that counsel intends to cite.
6. Counsel should communicate to the youth what is expected to happen before, during and after the hearing.
7. Counsel should carefully discuss with the youth whether the youth will testify, and should be sure the youth understands the consequences of testifying or not. If the youth will testify, counsel should thoroughly prepare the youth for direct and cross-examination.
8. Counsel should provide the youth with clear instructions regarding appropriate courtroom attire and conduct.
9. Counsel should structure how and when the youth may communicate with counsel and the court during a hearing.

¹⁴⁹ Exceptions to the application of the rules of evidence include, but are not limited to: accomplice corroboration rule, application of *Aranda-Bruton*.

¹⁵⁰ NJDC Standards, Std. 5.2.

10. For anticipated prosecution expert witnesses, counsel should consider and prepare a pre-adjudication motion, or voir dire examination of the alleged experts to determine their qualifications, their expertise, and the reliability of the anticipated opinions. Counsel should obtain a C.V. of the expert, and conduct investigation into qualifications, publications, and prior testimony.

C. Adjudication

At a delinquency adjudication, counsel should be conscious that all information in pre-trial hearings, reports and pleadings will influence the court. Counsel should make every effort to shield the court from information detrimental to the youth prior to the fact-finding hearing, including requesting that pre-adjudicatory reports be placed under seal, when appropriate. When pre-adjudication information has potentially biased a judge's view of the youth's culpability, counsel should consider moving for the court's recusal.¹⁵¹

1. Counsel should ask the prosecution to declare on the record what witnesses it intends to call at trial, the order in which it intends to call them, and whether the witnesses are under subpoena.
2. Counsel should move to exclude any witnesses or persons not legally entitled to be present at the adjudication, and counsel should request an admonition from the court that excluded witnesses not discuss their testimony with each other.
3. Counsel should consider the benefits and detriments to the youth's case in deciding whether to give an opening statement. If an opening statement is given it should forcefully establish the prosecution's burden of proof, identify weaknesses in the prosecution's case, and introduce and humanize the youth. Counsel should also be cognizant of the dangers of promising any defense evidence in the opening statement.¹⁵²
4. During the prosecution's case, counsel should:
 - a. Object to attempts to introduce inadmissible evidence or testimony on applicable state and/or federal grounds.
 - b. Move to have testimony stricken when objections are sustained.
 - c. Be prepared to cross examine all witnesses. Counsel should be prepared by obtaining records of the witness' prior statements, and must be familiar with methods of impeachment.
5. At the conclusion of the prosecution's case, counsel should move for a dismissal of the charges pursuant to Cal. Welf. & Inst. Code § 700.1.
6. When presenting the youth's case, counsel should:

¹⁵¹ NJDC Standards, Std. 5.3; *In re Gladys R.* (1970) 1 Cal.3d 855.

¹⁵² NJDC Standards, Std. 5.4.

- a. Consider whether any evidence needs to be presented.
 - b. Discuss again with the youth all the implications of testifying, in light of the evidence presented, and bearing in mind that the decision whether to testify is solely the youth's.
 - c. Be prepared for direct examination and redirect of any witnesses.
 - d. Move to admit any evidence and exhibits that were introduced.
7. At the conclusion of the defense case, counsel should renew the motion for dismissal.
 8. Closing argument is counsel's opportunity to present his/her theory of the case, demonstrate how the prosecution failed to satisfy their burden of proof, and/or show how the defense has raised a reasonable doubt.
 9. Counsel should move the court to make findings on a lesser degree, a lesser included offense, and/or for a reduction of a "wobbler" or "woblette," if appropriate.
 10. If the petition is not sustained, counsel should consider making a motion for a finding of factual innocence.

D. Post-adjudication and Pre-disposition

1. For appellate purposes, counsel should consider whether it is tactically advantageous to ask for the basis of the court's rulings sustaining allegations.¹⁵³
2. Counsel should consider whether to make a motion for release or for alternatives to detention based on the nature of the evidence. Counsel should also be prepared to respond in case detention is requested. Counsel should always have witnesses available for this purpose.
3. Counsel should consider whether an immediate disposition should be requested.
4. Counsel should be aware of the youth's mental state and whether any action is needed once the petition is sustained.

E. Prosecutorial Misconduct

Defense counsel should be familiar with the law on prosecutorial misconduct, which may occur at any stage of the proceedings. Pretrial, counsel should be cognizant of the prosecutor's duties to disclose favorable Brady evidence, to disclose statements of witnesses, and to disclose inducements given to a witness. "A prosecutor has a duty to search for and disclose exculpatory evidence if ... possessed by a person or agency... used by the prosecutor or the investigating agency to assist the prosecution.... The important determinant is whether the person or agency has been 'acting on the government's behalf'¹⁵⁴ ... or 'assisting the government's case.'¹⁵⁵

During trial, counsel must be vigilant for areas of prosecutorial misconduct, and must properly preserve the record. A specific objection (preferably counsel should ask the court to assign the

¹⁵³ Cf. NJDC Standards, Std. 5.11.

¹⁵⁴ *Kyles v. Whitley* (1995) 514 U.S. 419, 437.

¹⁵⁵ *In re Brown* (1998) 17 Cal.4th 873, at 881; *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1315.

error as prosecutorial misconduct) and a request for an admonition and or sanctions is imperative, although the courts have found this unnecessary if it is considered to be “futile.”

Common misconduct includes impermissible comment on the defendant’s exercise of his right to remain silent (“Doyle” error), giving personal opinions regarding a witness or defendant’s credibility (“vouching”), presenting or questioning about inadmissible evidence, threatening a defense witness with perjury or intimidation, and commenting directly or indirectly on a defendant’s decision not to testify (“Griffin” error).¹⁵⁶

F. Subordinate Judicial Officers

1. A stipulation by the parties is required for referees to conduct an adjudication hearing. Once that is filed, the referee is in the same posture as a judge. In Los Angeles, all commissioners sitting in the juvenile court are designated as referees.
2. There is a right to a re-hearing on rulings made by referees up until a stipulation is signed.
3. If a rehearing is requested and a judge grants the request, the matter is then heard de novo. If the rehearing is not decided within the twenty day time limit in Cal. Welf. & Inst. § 252, then it is considered granted.
4. If a rehearing is not filed, counsel may still challenge the court’s ruling by writ.

¹⁵⁶ In *People v. Higgins* (2011) 191 Cal.App.4th 1075, the court described a pervasive pattern of misconduct which denied the defendant a fair trial. The case is illustrative for numerous categories of misconduct.

CHAPTER ELEVEN: DUTIES OF REPRESENTATION AT DISPOSITION

1. The role of counsel is to advocate the best outcome available consistent with the youth's stated preference.
2. Counsel should move to strike inaccurate and irrelevant information from the probation report.¹⁵⁷ This duty to review the report diligently for inaccuracies or irrelevant information, and to request the material be stricken, is often neglected, but its importance for potential future negative consequences cannot be overstated. These reports will likely follow youths who remain in the system, or who are later arrested as adults, and can impact priorability, gang enhancements or classification for housing, consideration for enhanced punishment or extended commitment, etc. Therefore, counsel should exercise particular diligence in this area.
3. Counsel should ensure that all conditions of probation are consistent with the purposes of disposition in their case and should object to any overbroad or unlawful probation conditions.
4. Counsel should be aware of the requirement that the court order restitution, if appropriate. Counsel should know how restitution is calculated. If necessary, counsel should request a hearing to contest the amount sought and/or the youth's ability to pay.
5. Counsel should explain to the youth and parent(s)/guardian(s) their obligations under the disposition plan, the meaning of the probation conditions, the consequences should they fail to comply with the conditions, the probable duration of jurisdiction, and the obligations of Probation and other service providers. Counsel should explain what search and seizure conditions mean and how the youth should behave when he/she has contact with law enforcement.
6. Counsel should explain to the youth and his/her parents the direct and collateral consequences of wardship, and the youth's rights to record sealing.
7. Counsel should ensure that the youth has his/her contact information and encourage ongoing communication, including through alternative means of communication.
8. Counsel should ensure that the court is complying with the requirements of Title IV-E in ordering any suitable placement disposition.
9. If the disposition is DJJ, counsel should ensure that the calculations of the maximum period of confinement and the credit for time served are accurate. Counsel should advocate for a maximum time that is less than the maximum an adult would receive for the crime based on the facts and circumstances of the matter,¹⁵⁸ and for specific services to be provided at DJJ. Counsel should review the JV-732 for accuracy, be familiar with what information should be provided in the packet, and consider augmenting that information.¹⁵⁹

¹⁵⁷ *People v. Chi Ko Wong* (1976) 18 Cal.3d 698.

¹⁵⁸ Pursuant to Welf. & Inst. Code § 731(c).

¹⁵⁹ Cal. Rules of Court, Rule 5.805 and Cal. Welf. & Inst. Code § 1742.

A. Rehearing of Juvenile Court Referee Orders

Counsel should be familiar with the rehearing procedures which are as follows:

1. A motion for rehearing should be filed within 10 days pursuant to Cal. Welf. & Inst. Code § 252.
2. If there is a motion for rehearing, it is sent to the supervising judge who determines whether or not a hearing should occur, assuming no legal impediment. The decision whether to grant or deny a rehearing must be made within 20 days, but may be extended for 25 additional days for good cause, which must be entered into the minutes within the first twenty days. If rehearing is not granted or denied within the appropriate time, the rehearing is granted by operation of law.
3. If there is a hearing, it is a hearing de novo. The supervising site judge will usually conduct the hearing, assuming no legal impediment.

B. Appeals

Counsel has an obligation to explain the right to appeal, the procedure for appeal, and the positives and negatives of proceeding with an appeal to the youth. Counsel has an obligation to file the notice of appeal on behalf of the youth, if the youth wishes to proceed. Failure to file a notice of appeal on behalf of the youth has been held to be ineffective assistance of counsel.¹⁶⁰

Counsel has a duty to communicate with the appellate attorney, and to provide the youth's file promptly, if requested.

¹⁶⁰ See *In re Anthony J.* (2004) 117 Cal.App.4th 718.

CHAPTER TWELVE: POST-DISPOSITIONAL DUTIES OF REPRESENTATION

- A. Duties After Disposition of Informal Supervision¹⁶¹ and Release to HOP (Home of Parent/guardian)
1. Counsel must continue to represent the youth in post-disposition proceedings in accordance with Cal. R. Ct. 5.663 and Cal. Welf. & Inst. Code § 634.6.
 2. Counsel should contact the youth within a reasonable period after disposition to learn about any problems the youth is experiencing, ensure that the youth is able to comply with the conditions of probation including, but not limited to, helping the youth to enroll in court ordered programs, and ensuring that the Probation Department is providing the appropriate assistance and court ordered services.
 3. Counsel should, if necessary, intercede with Probation or the relevant service provider to ensure that the youth is receiving necessary assistance to comply with the conditions of probation. Counsel should be aware of the availability of a joinder motion in the event that relevant agencies are not providing necessary services which have been ordered by the court.
 4. Counsel should determine whether the youth is enrolled in school and whether there are any educational issues that need to be addressed. If there are existing educational issues, counsel's options include: working with the youth and family to resolve those problems, enlisting the assistance of the probation officer, and/or going to court to express the concerns and seek appointment of an educational advocate consistent with Los Angeles court policy.
 5. Counsel should document his/her file with contacts or efforts to contact the youth, parent/guardian, probation officer, and any other service provider.
 6. Counsel should ensure that the youth receives documentation of his/her efforts to comply with the conditions of probation, provides that proof to the probation officer, and has a copy available for use in court if necessary.
 7. Counsel should arrange to receive any probation report at least 48 hours prior to any scheduled review hearing, and review the same with the youth prior to the hearing.
 8. If the youth is involved with the child welfare system, counsel should retain the contact information for the youth's dependency attorney and social worker, should communication become necessary.
 9. If counsel needs to be relieved, he/she must file a motion with the court and provide notice to the youth. If there is a change in assignment within an office, such as the Office of the

¹⁶¹ Informal Supervision includes Cal. Welf. & Inst. Code §§ 654, 725 and 790.

Public Defender, that office shall have a procedure in place to notify the youth that a change has been made, and to provide the youth with the contact information of the new attorney.

10. After consultation with the youth, counsel should file a petition for dismissal or modification of conditions of probation under Cal. Welf. & Inst. Code § 778 or 782.

B. Duties After Disposition of Suitable Placement¹⁶²

1. Counsel has the same duties for youths who are suitably placed as for those who are home on probation, with the following additions.
 - a. For youths who are in juvenile hall awaiting placement, counsel must appear at fifteen day review hearings following the dispositional hearing to ensure that the youth has been suitably placed and/or Probation is making the appropriate efforts to effectuate the placement. The fifteen day reviews should be heard in open court and be conducted on the record.
 - b. Counsel should seek provision of interim services for the youth's educational, physical, mental health and other needs.
 - c. If the youth is not placed within a reasonable period of time, counsel should consider a motion for modification of the disposition order, or seek relief by extraordinary writ.
2. Once the placement has been effectuated, counsel should contact the placement provider to provide contact information and ensure the provider is aware of any and all special needs of the youth. Should an issue regarding placement arise, counsel should follow up with the placement and/or the Probation Department, if necessary.
 - a. If counsel learns that the placement is not providing the services contemplated by the court order or that the placement is inappropriate, counsel should bring the matter to the attention of the court through a motion for modification under § 778.
 - b. Counsel should be aware of the requirements of Title IV-E and Cal. Welf. & Inst. Code § 727 et seq. Counsel should know the timing and purpose of the ensuing (statutorily required) status reviews in accordance with Title IV-E and Cal. Welf. & Inst. Code § 727, and the findings that must be made by the court.
 - c. Counsel should be aware of the details of the disposition case plan that is the focal point of the statutorily required status review hearings, and should access any reports of review hearings in a timely manner so as to be prepared for those hearings.
 - d. Counsel should evaluate compliance with the dispositional case plan including services provided for the family, the requirements of reasonable efforts and any and all services required to be provided to the youth. Counsel must ensure that there is an evidentiary basis for the findings made by the court.
 - e. At the status review hearings progress, counsel must be aware of the requirements to develop and implement a permanent plan including family reunification, adoption, and

¹⁶² Suitable Placement includes placement in foster homes, group homes and with relatives.

legal guardianship. In the event that a youth will likely age out of the system, counsel must be aware of and prepared to advocate for appropriate transition services for the youth.

- f. Counsel should request that the court order notification to counsel whenever there is a change in placement.
- g. When a youth changes placements, counsel should determine whether there are appropriate transition plans in place. If not, counsel should be prepared to raise these issues with the court.
- h. If and when a placement changes, counsel should determine whether there is any unreasonable delay in the youth's enrollment in school. Counsel should bring any issues to the court's attention.

C. Duties After Disposition of Camp Commitment:

- 1. Counsel should appear at fifteen day review hearings following the dispositional hearing to ensure that the youth has been placed in camp and/or the Probation Department is making the appropriate efforts to effectuate the placement order.
- 2. Counsel should maintain appropriate contact with a youth placed in camp.
- 3. Counsel should be aware of the court camp procedures utilized in the Los Angeles court system.¹⁶³
- 4. Counsel should be aware of the dates for camp progress reports, which are appearance progress reports that should occur in court on the record with the attorneys present. Counsel should also be aware of the information required to be included in camp progress reports.
- 5. Counsel should be provided with and review any progress report at least 2 days prior to a scheduled hearing and confirm the veracity of the information contained therein.
- 6. Counsel should be present and prepared to advocate for the youth at all progress report hearings and request any necessary follow up information or action from the court.
- 7. Counsel should file a Cal. Welf. & Inst. Code § 778 petition, if counsel believes that the facts no longer justify a camp placement. A petition should include counsel's recommendation for a reentry plan.

D. Duties After Commitment to DJJ:

- 1. When the youth is committed to DJJ, the obligations of counsel continue until relieved by the court. Commensurate with that duty, the attorney has an obligation to maintain contact with the youth once placed at DJJ to ensure that the youth receives "care, treatment, and guidance consistent with his or her best interest."¹⁶⁴

¹⁶³ The camp protocol is being revised at the time of this writing.

¹⁶⁴ Cal. Rules of Court, Rule 5.663.

2. Counsel should appear at the fifteen day review hearing to ensure that the youth has been transported to DJJ, or appropriate efforts have been made. Counsel should determine whether there are needs the youth has while the youth is still in juvenile hall pending transportation.
3. Counsel should be aware of what is legally required to be sent to DJJ upon a commitment. Counsel should review the JV-732 form for accuracy. Counsel should be aware of the additional information routinely provided to DJJ by probation. Counsel should consider whether to augment the information provided to DJJ.¹⁶⁵
4. Counsel should request that the court provide him or her with the mandatory progress reports required pursuant to Cal. Welf. & Inst. Code § 1731.8 and § 1766 by DJJ. Counsel should periodically review the youth's cumulative DJJ records to ensure that he or she is benefitting from the program offered at DJJ.¹⁶⁶
5. Where appropriate, counsel should file a Cal. Welf. & Inst. Code § 779 motion to change, set, aside, or modify an order of commitment.
6. When a Cal. Welf. & Inst. Code § 779 motion is not appropriate, but the youth is not receiving appropriate services, counsel should consider contacting the state ombudsman for DJJ, or the appropriate authorities in DJJ to advocate for the youth. If the issues are not adequately addressed, counsel may consider consulting with other agencies, such as the Prison Law Office or the Special Master's Office for assistance.
7. Counsel should be aware of the youth's parole date and appear at any county reentry hearing. Counsel should review all pertinent reports at least two days prior and be prepared to advocate for the youth at the hearing.¹⁶⁷

E. Duties of Counsel Upon Re-Entry From DJJ

In 2010, Assembly Bill 1628 changed the process of release and parole consideration for youth committed to the Division of Juvenile Justice. Codified in Cal. Welf. & Inst. Code §1766.01 (B) (5), the Juvenile Parole Board determines whether a youth should be released to the community at the Discharge Consideration Hearing. If the board determines that the youth should be released, the matter is referred to the county court of origin with a recommendation for post-release supervision for the court and county probation to consider. The youth is then scheduled for a court Re-Entry Hearing 14 calendar days from the date of the hearing before the parole board. The youth is transported by DJJ to the county of origin at least one day prior, but not more than 4 days before the Re-Entry Hearing. The youth then attends a re-entry hearing in court. The court reviews the recommendations made by the Juvenile Parole Board and the Probation Department. After hearing from both of the parties, the court makes orders regarding the conditions of release and probation.

Upon receipt of a notice of a discharge consideration hearing, counsel should consider the need for advocacy and assistance on behalf of the minor for that hearing. Assistance may consist of:

¹⁶⁵ See Cal. Rules of Court, Rule 805 and Cal. Welf. & Inst. Code § 1742.

¹⁶⁶ Cal. Welf. & Inst. Code § 734.

¹⁶⁷ Cal. Welf. & Inst. Code § 1766.

- assisting the youth to communicate with the board
- providing background information to the parole board
- advocating for appropriate conditions of release
- monitoring the case to ensure that the youth is promptly transported
- assisting the youth in arranging for transportation of his or her property
- assisting with the appropriate transfer of the youth's earnings
- ensuring that youth with immigration holds are aware of their rights and not over-detained

F. Duties Prior to Termination of Jurisdiction of Suitable Placement Cases or Camp Cases Where Youth are Not Returning Home

1. Counsel should ensure that when the Probation Department seeks to terminate jurisdiction over a youth in suitable placement, the following services and/or information have been provided to the youth.
 - a. The Probation Department will work with the youth to develop a plan for independent living, if court jurisdiction may be terminated without the youth returning home to a parent or guardian or legal guardian. The plan will include the provision of appropriate independent living services that would benefit that particular youth. The plan should be youth driven and individualized in each case.
 - b. Independent living services shall include services to promote:
 - education
 - career development
 - health
 - mentors
 - daily living skills
 - financial resources
 - housing information
 - c. If the youth is in an identified placement with a specified goal, the Probation Department will name the placement and specify the goal toward which the Probation Department and the youth are working. A specific goal for the youth includes return home, adoption, legal guardianship, placement with a relative, a less restrictive foster setting, or independent living with identification of a caring adult to serve as a lifelong connection.
 - d. The Probation Department will ensure that the youth has received written information concerning the youth's delinquency case, including the youth's family history, tribal affiliation if any, placement history, any photographs of the youth and the youth's family, information on the whereabouts of any siblings under juvenile court jurisdiction, unless the court determines that sibling contact would jeopardize the safety or welfare of the siblings, information on how to seek contact of siblings that have been adopted, and directions on how to access documents the youth is entitled to inspect under Cal. Welf. & Inst. Code § 827.

- e. The Probation Department will work with the youth to identify, locate, and maintain relationships with responsible adults, relatives, siblings, and other individuals who are important to the youth, based on the youth's best interests.
 - f. The Probation Department will ensure that the youth has a social security card, certified birth certificate, identification card as described in Cal. Veh. Code § 13000, death certificate of parent(s) or guardian(s), proof of citizenship as applicable, and proof of wardship.
 - g. The Probation Department will ensure that the youth has education and health information as described in Cal. Welf. & Inst. Code § 16010.
 - The Probation Department will assist the youth in obtaining a copy of any diploma, certificate of completion, or transcript of high school credits accumulated thus far.
 - h. The Probation Department will ensure that the youth has assistance completing an application for SSI, Medi-Cal, or other health insurance.
 - i. The Probation Department will ensure that the youth has assistance in applying for transitional housing if available or assistance in securing other housing.
 - Assistance will include transporting youth at camp to transitional housing programs for application, interviews, and orientations where necessary.
 - j. The Probation Department will ensure that the youth has assistance applying for admission to college, vocational training programs or other educational institutions, and in obtaining scholarships and financial aid where appropriate.
 - k. The Probation Department will ensure that the youth has assistance in seeking or obtaining employment or other financial support.
2. The Probation Department will ensure that the youth has information on how to obtain referrals for mental health treatment and substance abuse treatment.
 3. Counsel should report to the court responsibilities listed in item #1 herein which have not been adequately met.
 4. Counsel should provide information to the youth regarding the youth's rights to expungement and/or sealing of his/her juvenile court records.
 5. Counsel should inquire if the youth has any outstanding matters pending in the Traffic Court and advise the youth accordingly.
 6. To the extent that the Probation Department has not provided the appropriate services and/or information, counsel should have a discussion with the youth on whether to allow the case to remain open for a reasonable period of time to allow for the services and/or information to be provided. Failure to meet the requirements in this section will not be the sole basis to permit the court to continue jurisdiction over a youth who has turned 18 unless the youth consents to continued jurisdiction.

H. Duties as to Probation Violations

1. Counsel should be familiar with Cal. Welf. & Inst. Code § 777, Cal. Rules of Court 5.580, as well as all other relevant law.
2. Counsel should be provided with proper notice of a probation violation, pursuant to Welf. & Inst. Code §§ 656, 658 and 660.
3. Counsel has the same duty to obtain documentation, argue any detention issues, investigate the allegations, and prepare a defense and alternate plan as they would for adjudication and disposition hearing for any other petition. The investigation should include ensuring that the services that were in the case plan were provided.
4. If the court does detain the youth on the probation violation, counsel should consider requesting a *William M.* hearing to contest the detention within 48 hours.

I. Duties as to Sealing/Destruction of Records

1. Counsel needs to be aware of the statutory procedures for sealing and destruction of records pursuant to Cal. Welf. & Inst. Code §§ 781 and 781.5. Counsel should also be aware of local practices related thereto.¹⁶⁸
2. Counsel should communicate to the youth the right to have his or her record sealed and/or destroyed. Counsel should also inform the youth of the earliest opportunity to have their records sealed and the procedure for sealing the records.
3. Under § 781 the youth is allowed to petition to reopen a sealed record to permit inspection by designated persons. Occasionally this will be necessary for youth seeking employment or entering the military.
4. Under § 781(e) the court is allowed to access a sealed file to verify the prior jurisdictional status of a youth petitioning the court to resume its jurisdiction pursuant to section 388(b).

¹⁶⁸ At the time of this writing pending legislation would waive any court fees for persons under 26 years old seeking to seal their record (AB 1756) and would allow courts to automatically seal non 707(b) offenses upon successful completion of probation (SB 1038).

CHAPTER THIRTEEN: PSYCHOTROPIC MEDICATION

1. Counsel should be aware of the local court protocols relating to the authorization of psychotropic medications and the follow ups for youth in suitable placement, camps, juvenile halls, and youth who change placements. Counsel should be aware of the court appearances required by each protocol.
2. Before medication is approved, counsel should verify the accuracy of the information that is being provided in the request for psychotropic medication. This can be done in several ways including, but not limited to: reviewing the file, speaking to the youth, parent/guardian, and/or therapist or doctor. In addition, if there are concerns about side effects, counsel may consider seeking the appointment of a psycho-pharmacologist who can review the youth's medical and psychiatric history and medication prescriptions.
3. Counsel should file an opposition to the request for approval within the prescribed period of time, if after speaking with the client there are any concerns about the medication. If the opposition cannot be filed within the seven day period, counsel may still petition to change the court order through a Cal. Welf. & Inst. Code § 778 petition.
4. After medication is approved, counsel should at least attempt to communicate with the youth prior to the scheduled progress report hearings in order to adequately represent the youth's interests at those hearings.
5. Counsel should request the progress report two days in advance, review the report, and communicate with the youth and whoever else counsel deems necessary.
6. Counsel should ensure that a youth aging out of the system has the capacity to maintain the medication regimen.

CHAPTER FOURTEEN: TRANSFERS¹⁶⁹

A. Inter-County Transfer Into Los Angeles County

1. Counsel should be familiar with the statutes, rules of court, and case law on inter-county transfers.
2. Counsel should review the documents that have been sent to see if there is appropriate documentation for the transfer.
3. Counsel should speak with the youth and his or her family to verify the information and ensure that the transfer is appropriate and in the best interests of the minor.
4. Counsel should contact the attorney for the minor in the sending county to determine the reason for the transfer, obtain additional records and information and to determine if there were any representations made concerning disposition of the youth's case.
5. Understanding that a court cannot refuse to accept a transfer, if a transfer was not appropriate, counsel should request that the court set a hearing to transfer the case back to the sending jurisdiction.
6. If transfer is appropriate, then counsel should prepare for the disposition hearing that the matter was set for.
7. If appropriate, counsel should consider filing a motion to withdraw or set aside the plea and/or file a motion to dismiss.

B. Inter-County Transfer Out of Los Angeles County

1. Counsel should be familiar with the statutes, rules of court, and case law on inter county transfers.
2. If the youth's legal residence is outside of the county, counsel should investigate in which counties jurisdiction is more advantageous (in terms of disposition and overall jurisdiction) to the youth if the allegations are sustained. This investigation should involve contacting juvenile counsel in the other county.
3. Counsel should prepare an argument for either keeping the youth in Los Angeles County or transferring the youth outside of Los Angeles County.
4. Once a case has been ordered transferred out, counsel should maintain communication with the youth and The Probation Department to ensure that the transfer is made in a timely manner.

¹⁶⁹ A new Southern California Inter-County Transfer Protocol is being considered at the time of this writing. Counsel should be familiar with the already implemented eCase Exchange Program in Los Angeles County.

C. Transfer between Courts in Los Angeles County

Counsel should be familiar with local court policies on transfer of cases between courts in Los Angeles County.

D. Interstate Transfer/Interstate Compact

1. Counsel should be familiar with the rules of the Interstate Compact. (28 C.F.R. § 2.107.)
2. Counsel should ensure that the state that the youth is moving to has the youth's correct information.
3. If the other state is not responding in a timely manner, counsel should consider requesting that the bench officer contact the bench officer in the other jurisdiction to expedite the process.

CHAPTER FIFTEEN: CONSEQUENCES BEYOND DISPOSITION

Although the juvenile law specifically states that sustained juvenile petitions are not considered “convictions,” there are many consequences resulting from juvenile cases that attorneys should become familiar with in order to best advise the youths and assist them in minimizing the impact of these consequences. Attorneys should also become familiar with resources and experts with whom they can consult if they have a question about possible consequences.¹⁷⁰

Among the collateral consequences to consider are the following:

- possible immigration consequences
- driver’s license restrictions/suspensions/revocations
- sentence enhancements and strikes in adult court
- barriers to military enlistment
- school suspensions/expulsions
- impact on public benefits e.g. public housing, Medi-Cal, and financial aid
- restrictions on possession of a firearm
- extended commitment proceedings (Cal. Welf. & Inst. Code §1800 DJJ confinement extension and Cal. Welf. & Inst. Code § 6600 sexually violent predator commitments)
- registration requirements (sex offender, gang, arson)
- placement on the Child Abuse Central Index (CACI)
- requirement of DNA collection
- travel restrictions
- limitations on sealing of records
- aggregating factor in adult court sentencing, including capital case penalty phase
- implications of Cal. Welf. & Inst. Code § 707(b) findings (such as DJJ eligibility, extension of juvenile court jurisdiction, and sealing eligibility)
- impeachment through use of court reports

¹⁷⁰ Counsel should be aware of the Pacific Juvenile Defender Center Manual *Collateral Consequences of Juvenile Delinquency Proceedings in California: A Handbook for Juvenile Law Professionals*. See <http://www.pjdc.org/wp/wp-content/uploads/2012/01/CollateralConsequences.pdf>.

CHAPTER SIXTEEN: SUPERVISORIAL DUTIES

The NJDC Standards contain a chapter devoted to the role and duties of attorneys who supervise juvenile defenders.¹⁷¹ Highlighted below are a few of the most significant responsibilities:

1. “The supervisor must provide leadership and ensure that counsel is able to effectively offer the most competent, diligent and zealous representation to protect the youth’s procedural and substantive rights.”¹⁷²
2. The supervisor should ensure that counsel has regular and ongoing opportunities to receive relevant and specialized training and leadership development.¹⁷³
3. The supervisor should ensure that counsel’s skills and abilities are a proper match with the number and complexity of the cases assigned.¹⁷⁴
4. The supervisor should ensure that counsel has access to investigative and other critical resources.¹⁷⁵

¹⁷¹ NJDC Standards, Chapter 9.

¹⁷² NJDC Standards, Std 9.1.

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ Id.

EXHIBIT 5

IJD BILLING & DISCIPLINE COMMITTEE

	NAME
1	Cheung, Terrance
2	Gregory, James
3	Hong, Janet
4	Horner, Lauren
5	La Salle, Kimberly
6	Liner, Steven
7	Megerditchian, Silva
8	Rothenberg, Marc
9	San Jose, Jon

EXHIBIT 6

IJD Executive Committee Members

Arthur Bowie, Esq.

Arthur Bowie's tenure as a trial and appellate court attorney includes the successful litigation of sixteen California Court of Appeal and California Supreme Court cases. Mr. Bowie has served on the Board of Directors of the California Public Defender Association (CPDA), Pacific Juvenile Defender Center (PJDC), and Friends Care. Between 2004 and 2016, Mr. Bowie participated in more than 25 policy committees within the juvenile justice system. He is currently an adjunct professor at California State University, Sacramento.

Barbara Duey, Esq.

Barbara Duey, Supervising Attorney, CARE Project Director (Crossover Advocacy & Resource Effort) and Child Welfare Law Specialist, has been an attorney at the Children's Law Center of California (Los Angeles Office) since its inception in 1990. During the first ten years she represented thousands of abused and neglected children in the dependency system. In 1999 Ms. Duey was promoted to supervising attorney where she was responsible for supervision and training of the firm's 50 attorneys.

In addition, she was involved in the development and implementation of the Los Angeles County 241.1 protocol and the new AB129 pilot program that allows the juvenile court to place a child under the jurisdiction of both the dependency and delinquency court. This is an on-going, multi disciplinary project, requiring continuing refinement and modification.

Ms. Duey manages CLC's representation of cross over youth and represents the organization in a variety of committees and stakeholder groups concerning these at-risk children. In 2012 she developed the highly specialized CARE unit (Crossover Advocacy and Resource Effort) which partners MSW interns with CLC's dual status youth. The interns promote increased communication and collaboration between the youth and the probation officer, the social worker, service providers, the attorneys and the courts. The interns provide hands on, holistic, trauma informed support and guidance to the youth to help them navigate through and successfully complete probation. The CARE unit provides these youth with a consistent connection with an adult who provides positive, unsolicited attention, acceptance and advocacy while also modeling for and educating the System to focus on healing, not punishing, the youth.

Recently Ms. Duey was selected to be a member of the newly formed Dual Status Youth Practice network, part of the Robert F. Kennedy Children's Action Corp and a division of the RFK National Resource Center for Juvenile Justice. This group is tasked to help shape the direction of Dual Status practice reform on a nationwide level. She recently joined the Office of Juvenile Justice Delinquency Prevention (OJJDP), Dual Systems Youth Designs Study as a sub-work group consultant. In January she helped launch the first Los Angeles Dual Status Pilot Court where one judge will preside over both the dependency and delinquency case for a dual status youth and their family.

Previously Ms. Duey was a Federal Public Defender in San Diego and a Deputy Public Defender in Los Angeles County, including two years in delinquency court. She has benefited from the dual perspective of representing children in both systems and seeing, firsthand, the impact of delinquency on "crossover" children.

Dennis Fischer, Esq.

Dennis Fischer, a 1965 graduate of UC Berkeley Law School (Boalt), has been a California lawyer for 52 years. As an LA County Deputy Public Defender for 16 years and in private practice since 1981, he has participated as lead or co-counsel in more than 1,000 appeals, including 24 of his own cases argued before the California Supreme Court, and *Boyd v. California* in the U.S. Supreme Court. Besides his 35 years of membership in the California Academy of Appellate Lawyers (serving as president from 1993 to 1994), and two decades as a Fellow of the American Academy of Appellate Lawyers, Mr. Fischer has been appointed by three California Chief Justices to serve on task forces and committees. A certified specialist in appellate law, he recently concluded four years' service on the California State Bar's Appellate Law Advisory Commission. Mr. Fischer's private practice is limited to criminal appellate and habeas corpus litigation and consultation with attorneys in trial and appellate matters.

Joel Koury, Esq.

Joel Koury has dedicated twenty-eight years defending the rights of others at both the local and federal level. Mr. Koury served as a Los Angeles County Capital Public Defender and was a member of the California Central District Federal Defender's Office. Currently, Mr. Koury is a member of the Indigent Criminal Defense Appointment (ICDA) capital panel and the Criminal Justice Act Trial Panel for the Central District (CJA).

Sean Kennedy, Esq.

Sean Kennedy, Director of the Center of Juvenile Law and Policy at Loyola Law School, is an Associate Clinical Professor of Law. Mr. Kennedy was the Federal Public Defender for the Central District of California from 2006 to 2014 and has served as Chief of the Federal Public Defender Capital Habeas Unit.

Hon. Jan Levine

Since retiring from the Los Angeles Superior Court in 2013, Judge Levine turned to the aspect of her judicial career that she found the most rewarding: working to improve the support the county provides to our most vulnerable children who, after all, are the future of our community. She currently participates in various efforts within the juvenile justice community. Nominated by Supervisor Ridley-Thomas to the Probation Commission and appointed in October 2015, Judge Levine currently serves as First Vice President of the Commission.

She also works with incarcerated and previously incarcerated individuals through Inside Out Writers, ManifestWorks and the Anti-Recidivism Coalition. Judge Levine has been closely involved in the planning process for the county's new facility replacing the former Camp Kilpatrick detention camp. Early in her retirement she worked with the then newly opened STAR court, a specialty court in Compton for sex trafficked youth.

Since retiring, she has joined the boards of the Loyola Center for Juvenile Law and Policy, and ManifestWorks. She previously served on the boards of the Los Angeles Conservation Corps, the California Children's Law Center, and Bet Tzedek Legal Services. She worked with incarcerated youth as a volunteer at Camp David Gonzales, a juvenile probation camp, from 2001-2008, and once again after her retirement.

Judge Levine served on the Los Angeles Superior Court from her appointment in 2003 until February 2013. Assigned first to the Juvenile court, she handled both dependency and delinquency calendars. In January 2010 she began an assignment in a limited civil court at the Stanley Mosk courthouse. There she presided over both bench and jury trials. In 2011, she became an Assistant Supervising Judge, coordinating all limited civil courtrooms. During her judicial career, she also served on several statewide groups working on juvenile dependency and delinquency issues.

A civil practitioner before her appointment, Judge Levine's legal experience included business litigation, personal injury, environmental protection, land use, and natural

resource management, as well as appellate practice in all of those areas. She also worked as a consultant for Californians for Legal Aid and served on the Access to Justice Commission of the California State Bar Association, where she still serves as an ex officio member. She is a native of Los Angeles, an amateur photographer, and the mother of three adult children.

Jyoti Nanda, Esq.

Jyoti Nanda is currently the Binder Clinical Teaching Fellow at the UCLA School of Law. She has been teaching at UCLA School of Law since 2003, served as the Co-Faculty Director of their Critical Race Studies Program and is core faculty of the David J. Epstein Public Interest Law Program. Ms. Nanda founded the *Youth & Justice Clinic* at UCLA. Her research and writing is on the intersections of gender, race, disability, education, and juvenile justice. Her latest article served as the framework for a national report on the adultification of girls of color in our criminal justice system.

Joseph Pertel, Esq.

Joseph Pertel practices all areas of litigation in state and federal courts including business, civil rights, personal injury, and criminal law. Mr. Pertel has served on the Board of Directors for the California Association for Criminal Justice (CACJ).

Ezekiel Perlo, Esq.

Ezekiel Perlo spent many years defending clients as a Los Angeles County Deputy Public Defender, where he was a senior trial deputy. Mr. Perlo was a private criminal defense attorney handling death penalty murder cases prior to his appointment as the Directing Attorney for the Los Angeles County Bar Association.

Hon. Michael Shultz

Prior to his appointment to the Los Angeles County Superior Court Bench, Judge Michael Shultz spent many years defending indigent clients as a Los Angeles County Deputy Public Defender. Judge Shultz is currently a felony trial judge in the Compton branch of the Los Angeles County Superior Court.

Patricia Soung, Esq.

Patricia Soung is a Senior Staff Attorney and Senior Policy Associate at the Children's Defense Fund-California (CDF). Ms. Soung has spent her career working with stakeholders and youth in Los Angeles County in an effort to drive policy advocacy.

Her focus is on decreasing the population of incarcerated youth and improving outcomes in the juvenile justice system.

Hon. Gustavo Sztraicher

The Hon. Gustavo Sztraicher is a judge for the Superior Court of Los Angeles County. Prior to his appointment to the Superior Court Bench, he was a public defender where he served as a senior felony trial deputy and as a training supervisor.

Stuart Glovin, Esq.

Stuart Glovin has 30 years of experience as a Deputy Public Defender in both Los Angeles and Philadelphia. Before retiring as a Public Defender, he served as a Head Deputy in the Compton and Airport branch offices.

EXHIBIT 7

JUVENILE CASE INTAKE SHEET

Attorney Name: _____

Duty Date: _____ / Non-Duty Pick-Up Date: _____

Case #: _____ Court: _____ Court Dept. #: _____

EMAIL TO:

North	South	East	West
Bethany Judson (213) 896-6472 bjudson@lacba.org	Tracy Andrade (213) 896-6505 tandrade@lacba.org	Shanice Hawthorne (213) 833-6706 shawthorne@lacba.org	Sarah Fiskin (213) 896-6430 sfiskin@lacba.org

Demographic Information

Name: _____ AKA/Booked as: _____

DOB: _____ / AGE: _____ Gender: M F Race/ Ethnic Origin: _____

Minor's Place of Birth (City, Country): _____

Whether or not your client is a potential candidate, please check this box affirming that you have considered their eligibility for SIJS and that this is sufficiently documented in their file.

Parent/ Legal Guardian/ DCFS Placement: _____

Phone Number: (____) _____

Address/ Placement Location: _____

Interpreter Required? (Including Parents) : Yes No Preferred Language: _____

Case Information

Next Ct. Date: _____ Detention Hearing Date: _____

Petition Date: _____ Petition Status: New Active

Is this a Prop 57 Case? Yes No Is your client facing a Transfer Hearing? Yes No

WIC 450/ AB12/212 Appointment? Yes No
If yes, you may skip the Detention Status section

Is this a 601 status offense? Yes No

Charges (Code Section, Indicate Felony (F) or Misdemeanor (M)) :

Enhancements: _____ Max Exposure: _____

Was there any DCFS or Dependency Court Involvement? Yes No

If yes,

Name/ Contact of Social Worker: _____

Name/ Contact of Dependency Court Attorney: _____

Detention Status

Petition Type: Detained Non- Detained

If Detained After Arraignment:

House Arrest (CDP) Juvenile Hall/ Camp Jail Other: _____

Detention Location: _____

Dennis "H" Hearing Date: _____ William "M" Hearing Date: _____ Other: _____

Names of Co-Minor(s):	Case Number:	Co-Attorney for Co-Minors:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other Open Petitions/ Probation

If yes, please fill out the following fields:

Charges:	Petition Date:
_____	_____
_____	_____
_____	_____
_____	_____

Attorney: _____ Probation Officer: _____

Next Court Date: _____ Court/ Judge: _____

Notes:

CASE RESOLUTION FORM

Date of Resolution: _____ Attorney Name: _____

Client Name: _____ Case Number: _____

Court: _____ Department: _____

Judicial Officer: _____ Petition Date: _____

Experts appointed: _____

IJD Referrals:

Investigator Social Worker Writ Attorney Resource Attorney

Charges in Petition:

Charges Sustained:

MAX: _____

MAX: _____

Basis of Charges Sustained:

Admission

Adjudication

If your client admitted the charges, check this box if you have sufficiently documented your rationale for admission as opposed to adjudicating the matter.

Disposition at time of Admission/Resolution:

654	Suitable Placement	Other: _____
725	CCP Term: _____	
790	DJF Term: _____	
HOP	Dismissed	

Contested Hearings Conducted:

William M.

Witnesses Called: _____

Dennis H.

Witnesses Called: _____

Motion to Suppress

Witnesses Called: _____

Adjudication

Witnesses Called: _____

Disposition

Witnesses Called: _____

Other: _____

Did you file a notice of appeal?

Yes No No Contested Issue of Law or Fact

Written Motions Filed

700.1 (WIC analog to PC 1538.5)

Other: _____

Oral Motions Argued

701.1

Other: _____

How many times did you meet with the client outside of court appearances? _____

Please indicate any notable effort put into the case, not covered elsewhere on this form:

EXHIBIT 8

SURVEY: DID YOUR LAWYER DO A GOOD JOB?

For purposes of this survey, attempts are made to survey all clients and/or their parent/guardian regardless of the level of interaction the youth has with the IJDP Attorney. This interaction can range from hours in an initial court appearance to years of representation throughout court, probation, placement, and/or parole processes. Within two weeks of the day that a Case Resolution form is submitted, an IJDP Program Coordinator will attempt to contact and administer this survey to the client and the client’s parent/guardian.

No identifying information is recorded on the form. Completed surveys are entered into a database that contains no identifying information. Incentives to participate in this survey include an opportunity to provide feedback that could impact IJDP’s future development and the way in which it responds to its clients’ needs as well as the possibility of benefiting future youth that will receive IJDP services. No financial or material incentives are provided for participating in the survey.

TEAM REPRESENTATION			
Question to client	Options	Question to client’s parent	Options
What was your lawyer’s name?	Don’t know / Name	What was your child’s lawyer’s name?	Don’t know / Name
Did you meet anyone else who worked with your lawyer?	Yes / No / Don’t know	Did you meet anyone else who worked with your child’s lawyer?	Yes / No / Don’t know
Do you know that/those person/people’s name/s*?	Not applicable / Don’t know / Name	Do you know that/those person/people’s name/s?	Not applicable / Don’t know / Name
If they did anything for you, do you think it made a positive difference in your <u>case</u> ?	Yes / No / Don’t know / Not applicable	If they did anything for your child, do you think it made a positive difference in his/her <u>case</u> ?	Yes / No / Don’t know / Not applicable
If they did anything for you, do you think it made a positive difference in your <u>life</u> ?	Yes / No / Don’t know / Not applicable	If they did anything for your child, do you think it made a positive difference in his/her <u>life</u> ?	Yes / No / Don’t know / Not applicable

*Database will be coded to show any identified name as either a social worker, youth advocate, or investigator.

YOUTH/CLIENT For these questions, I'm going to call your lawyer, and the people who work with your lawyer, your "defense team." Does that make sense? (explain if needed)	PARENT/GUARIAN For these questions, I'm going to call your child's lawyer, and the people who worked with their lawyer, his/her "defense team." Does that make sense? (explain if needed)	Strongly Agree		Agree		Do Not Agree or Disagree		Disagree		Strongly Disagree	
		C	P	C	P	C	P	C	P	C	P
My defense team spent enough time with me	My child's defense team spent enough time with my child										
I understood my lawyer's role	I think my child understood his/her lawyers' role										
I understood the roles of the people who worked with my lawyer	I think my child understood the roles of the people who worked with his/her lawyer										
Everyone from my lawyer's office was polite and respectful to me and my family	Everyone from the lawyer's office was polite and respectful to me and my child										
Everyone from my lawyer's office treated me like an important client	I think everyone from the lawyer's office treated my child like an important client										
The people on my defense team were there when I needed them – in person or on the phone	The people on my child's defense team were there when he/she needed them – in person or on the phone										
If I was in jail at all during the case, my lawyer came to visit me regularly	If my child was in jail at all during the case, his/her lawyer came to visit him/her regularly										
My lawyer explained everything that I needed to know, including the legal process, my rights, and my options	My child's lawyer explained everything that my child needed to know, including the legal process, his/her rights, and his/her options										
My defense team listened to me	My child's defense team listened to him/her										
My defense team followed my directions and did what I wanted them to do	The defense team followed my child's directions and did what he/she wanted them to do										
My lawyer let me make the important decisions in my case	My child's lawyer let him/her make the important decisions in his/her case										
My defense team fought hard for what I wanted	The defense team fought hard for what my child wanted										
I trusted my defense team	I think my child trusted the defense team										
I felt confident in my defense team	I think my child felt confident in his/her defense team										
My defense team members did what they said that they were going to do – they kept their promises	My child's defense team members did what they said that they were going to do – they kept their promises										
My defense team cared about me	My child's defense team cared about him/her										
My lawyer was an expert in the law	My child's lawyer was an expert in the law										
If I had to do it over again, I would want the same lawyer	If my child had to do it over again, I think he/she would want the same lawyer										
I am satisfied with the outcome of my case	I think my child is satisfied with the outcome of his/her case										
I am satisfied with the work that my defense team did for me	I think my child is satisfied with the work that his/her defense team did for him/her										

NARRATIVE PORTION

What did your (child's) lawyer and the rest of your lawyer's team do well?

Client Response-

Parent/Guardian Response-

What could they (lawyer/defense) have done better?

Client Response-

Parent/Guardian Response-

Did your lawyer, or anyone who works with your lawyer, make a difference in your life? What sort of difference?

Client Response-

Parent/Guardian Response-

Please provide any additional comments:

Client Response-

Parent/Guardian Response-

EXHIBIT 9

Date: _____

Greetings,

_____ has been appointed to represent you. This attorney is a member of the Los Angeles County Independent Juvenile Defender Program (IJD). IJD is the product of a partnership between the County of Los Angeles and the Los Angeles County Bar Association. Our office furnishes support for and oversight of the attorneys on our panel. IJD's mission is to provide attorneys with the resources necessary to provide their clients with high quality legal representation.

Attached to this letter is some information about juvenile courts and the court process. Please read this information before you come back for your next court date.

Attorney Contact Information

Attorney Phone Number: _____

Attorney Email: _____

Case Information

Case Number: _____

Next Court Date: _____

Court Room: _____

Time: _____

Case Plan/ What to Bring:

1055 West 7th Street
Suite 2700
Los Angeles, CA 90017

Tel:
213.896.6429

Fax:
213.833.6796

Website:
www.lacba.org
www.lacba.org/ijdp

YOUR CHILD and the JUVENILE JUSTICE SYSTEM

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ELLA BAKER CENTER FOR HUMAN RIGHTS



YOUR CHILD AND THE JUVENILE JUSTICE SYSTEM

Tips on How to Advocate for Your Child in the Juvenile Justice System

Lenore Anderson

Books Not Bars
Family Advocacy Project

ELLA BAKER CENTER FOR HUMAN RIGHTS

**Many, many thanks to the following editors,
contributors, and people whose ideas are reflected inside:**

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Everyone at the Center for Young Women’s Development

All mistakes or inaccuracies contained herein are the sole
responsibility of the author. Please direct any comments,
questions, or ideas about this handbook to

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or call 510-428-3939 x 221

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INTRODUCTION

Many young people get caught up in the juvenile justice system without understanding how the system works and may get locked up when time behind bars is not what is needed. Parent advocacy is extremely important to ensure that youth in the system do not end up unnecessarily incarcerated or harmed.

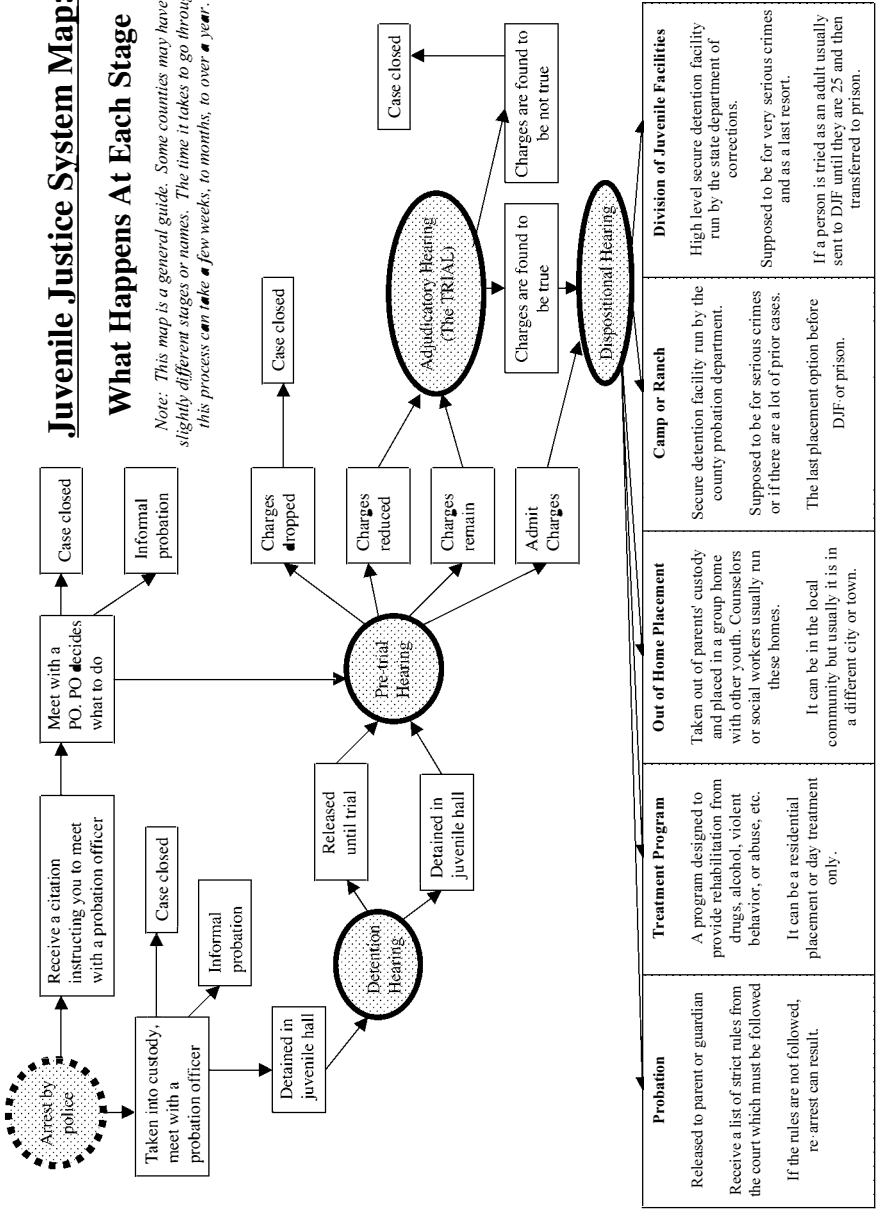
This publication aims to provide parents with basic information on how parents can advocate for youth in the juvenile justice system. With parent support and advocacy, young people have much better chances to get treated fairly and to get access to programs and services they need.

***Note:** The information in this handbook is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your own situation.*

Juvenile Justice System Map:

What Happens At Each Stage

Note: This map is a general guide. Some counties may have slightly different stages or names. The time it takes to go through this process can take a few weeks, to months, to over a year.



Probation Released to parent or guardian Receive a list of strict rules from the court which must be followed If the rules are not followed, re-arrest can result.	Treatment Program A program designed to provide rehabilitation from drugs, alcohol, violent behavior, or abuse, etc. It can be a residential placement or day treatment only.	Out of Home Placement Taken out of parents' custody and placed in a group home with other youth. Counselors or social workers usually run these homes. It can be in the local community but usually it is in a different city or town.	Camp or Ranch Secure detention facility run by the county probation department. Supposed to be for serious crimes or if there are a lot of prior cases. The last placement option before DJF or prison.	Division of Juvenile Facilities High level secure detention facility run by the state department of corrections. Supposed to be for very serious crimes and as a last resort. If a person is tried as an adult usually sent to DJF until they are 25 and then transferred to prison.
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LOS ANGELES COUNTY COURT INFORMATION

Courthouse Locations

Compton Courthouse
200 West Compton Blvd.
Compton, CA 90220

Sylmar
16350 Filbert Street
Sylmar, CA 91342

Inglewood Juvenile Courthouse
110 E. Regent Street
Inglewood, CA 90301

Alfred J. McCourtney Juvenile Justice Center
(Lancaster)
1040 West Avenue J
Lancaster, CA 93534

Eastlake Juvenile Courthouse
1601 Eastlake Ave.
Los Angeles, CA 90033

Pomona Courthouse South
400 Civic Center Plaza
Pomona, CA 91342

Governor George Deukmejian Courthouse (Long Beach)
275 Magnolia Avenue
Long Beach, CA 90802

Los Padrinos Juvenile Courthouse
7281 East Quill Drive
Downey, CA 90242

If your child is arrested and in custody, call:

Central Juvenile Hall

1605 Eastlake Ave
Los Angeles, CA 90033
Phone: (323) 226-8611
(323) 226-8608

Visiting Hours:
Saturdays 1:00 – 3:00 pm
Sundays 1:00 – 4:00 pm
Must be parent or guardian and provide a valid ID.

Los Padrinos Juvenile Hall

7285 Quill Dr.
Downey, CA 90242
Phone: (562) 940-8681

Visiting Hours:
Saturdays 1:00 – 3:00 pm
Sundays 1:00 – 4:00 pm
Must be parent or guardian and provide a valid ID..

Barry J. Nidorf Juvenile Hall

16350 Filbert St
Sylmar, CA 91342
Phone: (818) 364-2011

Visiting Hours:
Saturdays 1:00 – 3:00 pm
Sundays 1:00 – 4:00 pm
Must be parent or guardian and provide a valid ID.

If you need to speak with your child's probation officer, call:

Juvenile Probation Department

4849 Civic Center Way
Los Angeles, Ca 90022
Phone: (323) 780-2185
Fax: (323) 262-8418

Not sure where or who your probation officer is? Give the operator your child's last name, first name, and date of birth to find out.

USEFUL DEFINITIONS

People that work for the government in the juvenile justice system:

Public Defender, also called **P.D.** or **lawyer**: The public defender is a lawyer that defends indigent youth in court. The public defender is responsible for defending juveniles against the charges they face. All conversations between the child and this lawyer are confidential. It is a violation of this lawyer's responsibilities to share information from these conversations with anyone.

Court-Appointed Attorney, also called **lawyer**: The court-appointed attorney is a lawyer assigned to represent your child just like a public defender. Usually the court assigns a court-appointed attorney when there is some reason that a lawyer from the public defender's office cannot represent your child. For example, if there are two young people arrested together, the public defender's office can only represent one of them because there may be a conflict of interest. The judge then assigns a court-appointed attorney to represent the other youth. The Independent Juvenile Defender Program provides resources and oversight to court-appointed attorneys in Los Angeles County.

Probation Officer, also called the **P.O.**: The P.O. is basically responsible for investigating your child's case, managing the case, and providing some information and counseling to your child. The P.O. is sometimes just like a police officer and sometimes more like a counselor. The P.O. keeps a case file, investigates and writes reports to the court about your child, and makes recommendations about what should happen to your child. In most cases, the judge relies very heavily on the P.O.'s recommendations and opinions. However, this is not always true; the judge can send your child to the Division of Juvenile Facilities (DJF) even if the PO recommends another, less restrictive placement.

District Attorney, also called **D.A.** or **prosecutor**: The D.A. is the lawyer who represents the government against your child. The D.A. is responsible for presenting the case against your child and asking the judge for the punishment that she or he thinks should be given.

Judge: The judge is in charge of the courtroom and decides whether or not your child committed the crime she or he has been charged with and what will happen to your child.

Ombudsperson: Some counties have a special office called the Office of the Ombudsperson to respond to complaints from people in custody. The Division of Juvenile Facilities also has an ombudsperson. If your child has a complaint about how she or he is being treated inside a facility, you or your child can speak to an ombudsperson. You or your child can fill out a grievance and ask the ombudsperson to come speak with your child in person.

Hearings in the juvenile court process:

Detention Hearing: In this hearing, the judge decides whether your child's detention in juvenile hall is appropriate. The judge can release your child or keep your child in juvenile hall until the case is resolved. If your child was detained after being arrested, this hearing should take place within 72 hours after being arrested, not including weekends and holidays.

Transfer Hearing: In this hearing, the judge decides whether your child should be tried as an adult in adult court or tried as a juvenile and kept in juvenile court.

Pre-trial Hearing: In this hearing your child's attorney and the district attorney bargain for a deal to try and solve the case without a trial. Make sure that your child's lawyer has discussed the possible options with your child and knows what you and your child want and need.

Adjudicatory Hearing: This hearing is THE TRIAL, where the judge will decide whether the charges against your child are true or false. If the judge decides that the charges are true, then your child will have a juvenile record and will be punished.

Dispositional Hearing: The dispositional hearing determines what your child's punishment will be. Your child may be placed on probation, in an out-of-home placement program, in a county detention center sometimes called a camp or ranch, or sent to the Division of Juvenile Facilities (this is the state's juvenile prison, once known as California Youth Authority).

A few terms you may hear in the courtroom:

Continuance: The judge will set another date and the hearing will be continued to that date.

Motion: Anytime your child's lawyer wants the judge to make an order, (s)he must bring a "motion" asking the court to do that.

Petition: This is a legal paper that says what the charges against your child are. If the petition is found to be true or "sustained," it means that the judge has decided that the charges are true.

Welfare and Institutions Code, Section 300: These are the laws that say what the government has to do if a child is being abused or neglected. If the government believes that your child is being abused or neglected, a judge has to remove your child from your home. Your child will then become a “dependent.” Once your child becomes a dependent, the government then has the power to decide where your child lives, even if you disagree. Your child will be assigned a social worker and can be sent to live with a relative, in foster care, in a group home, or in a treatment program.

Welfare and Institutions Code, Section 601: These are the laws that outline the activities that are illegal for people under the age of 18. These are activities that would be legal for an adult to do, but young people cannot do them. This includes being truant from school or running away from home. A judge can punish your child for breaking these laws through probation or by taking your child out of your custody and sending your child to live in a group home, foster home, treatment program, or a shelter.

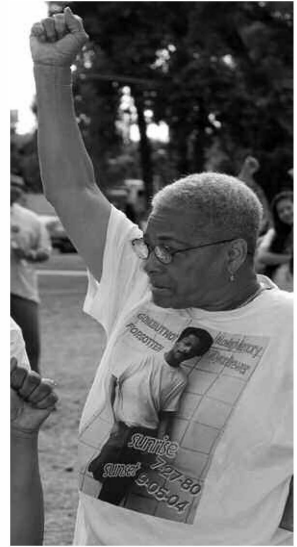
Welfare and Institutions Code, Section 602: These are the laws that say that young people who commit a crime are within the jurisdiction of the juvenile court and may be adjudged as a ward of the court. Your child can be punished for committing a crime by paying a fine, being placed on probation, being sent to a group home, a probation camp, a treatment program, or the DJF, or to being transferred to adult court and sent to prison. It depends the seriousness of the crime, among other issues.

Welfare and Institutions Code, Section 707: These are the laws that say which crimes are serious enough to allow your child to be transferred to adult court. These include murder, rape or other violent crimes, or some serious drug related crimes.

PARENTS AND THE JUVENILE JUSTICE SYSTEM

The Juvenile Justice System Is Different From The Adult Criminal Justice System:

If you have a child under age 18, the law considers your child a minor. When minors break the law, they usually go through the juvenile delinquency system (or juvenile justice system) instead of the adult criminal justice system. The juvenile justice system is separate from the adult criminal justice system because the legal system says that minors have different needs than adults and minors cannot be treated the same as adults. Some adults, like parents or legal guardians, and some government institutions, like Child Protective Services, are required by law to make sure that minors are taken care of and that their best interests are being protected.



The juvenile system is different from the adult system in several ways. The juvenile justice system is responsible for providing minors who break the law with rehabilitation and educational services, in addition to punishment. The adult criminal justice system can sentence people to much longer periods of time than the juvenile system, like life without parole or the death penalty. A criminal record in the adult system is also permanent, while a delinquency record can eventually be sealed to the public.

The language that is used in the juvenile system is also different than in the adult system. Here are a few examples of the different words that are used in each system:

The adult system says:

innocent
guilty
prisoner
sentence
trial

The juvenile system says:

the charges are not sustained / the petition is not true
the charges are sustained / the petition is found true
ward
disposition
adjudication hearing

The Juvenile Justice System Can Hold You Responsible For What Your Child Does:

The juvenile system is also different from the adult system because the juvenile court can hold parents legally responsible for the acts of their minor children. If your child is ordered by the court to pay money to a victim (usually called a restitution fine), the court can make you pay the fine. The juvenile court can also order you to attend counseling or parenting classes if the court decides it would be good for your child. In rare cases, you can also face separate criminal charges for “contributing to the delinquency of a minor” if the court thinks you helped your child break laws.

The Juvenile Justice System Can't Charge You For The Cost Of Keeping Your Child:

In the past, parents have been charged for the costs associated with keeping minors in the juvenile justice system. However, due to the enactment of SB 190, as of Jan 1, 2018, families of juveniles under the age of 21 will not be held responsible for the following costs:

- Detention (not just juvenile hall) (Welf. & Inst. Code 903, 903.25)
- Probation supervision (Welf. & Inst. Code 903.2)
- Electronic monitoring (Penal Code 1208.2)
- Drug testing (Welf. & Inst. Code 729.9, 729.10; Penal Code 1203.1ab)
- Representation by counsel (Welf. & Inst. Code 634, 903.1, 903.15)
- Diversion and other service programs (education, counseling, etc.) (Welf. & Inst. Code 652.5, 654, 654.6)
- Costs of transporting minor to juvenile facility (Welf. & Inst. Code 207.2)

Families and youth will still be responsible for payment of any fines or restitution. If you find that you are being asked to pay any of the costs outlined above, please contact the attorney appointed to your case immediately.

The Juvenile Justice System Can Take Away Many of Your Parents Rights and Responsibilities:

If a juvenile court finds that your child has broken a law and your child becomes a “ward of the court,” you also lose some of your parental rights to decide what is best for your child. The juvenile court can decide where your child will live, what services your child needs, and where your child will receive education. If your child is sent to a county probation camp or the Division of Juvenile Facilities (DJF), the staff at these institutions can decide what doctor or dentist your child will see if she or he has medical problems, and they can decide if your child has been rehabilitated enough to be released.

Your Advocacy Can Make A Difference In Your Child's Case:

As a parent, you can make a difference in the outcome of your child's case. You should talk to your child about what is going on and the juvenile justice system. Always work with your child to figure out what your child really needs. Always remember these tips when you advocate:

Keep Copies of All Your Child's Paperwork:

You will get a lot of different documents throughout the time your child is in the juvenile justice system. Keep a folder in a safe place with copies of everything you receive. When you talk to people about your child's case, you can take the paperwork with you so that you know what has been happening in the case and what is going on now.

Write Down The Names And Numbers Of Everyone You Talk To:

When you advocate for your child, you will probably talk to many different people who will tell you a lot of different information. It is very important that you write down the names and numbers of everyone you talk to and what they said. If you can get a business card from everyone you talk to, that will also be helpful to keep track.

Keep Asking Questions And Gathering Information:

The juvenile justice system can be very difficult to understand. It can be frustrating listening to people tell you all kinds of different things without explaining what is going on. No matter how frustrating it gets, keep on advocating for your child. Keep asking questions and getting information. The more you show that you are concerned about your child and want to know what is going on, the more people will respond to you.

The rest of this handbook will describe ways you can advocate to get the best possible outcome for your child.

YOUR CHILD AND THE POLICE

If a police officer thinks your child broke the law, the police can arrest your child. Your child should know what to do if this happens. You should make sure your child knows how to protect his or her safety and how to protect his or her rights.

Talk To Your Child About How To Be Safe When Contacted By The Police:

For most people, being stopped by the police can be very upsetting and tense. Even though it is upsetting, how people act when stopped by the police makes a big difference in what happens. Even the smallest mistakes can sometimes make a bad situation much worse.

Tell your child to remain as calm as possible, no matter how the police act. Even if the situation is very minor, confusion or stress can quickly lead to an unnecessary arrest, additional charges, or violence. Your child should not yell, cuss, run, or make sudden movements. Tell your child she or he should always move slowly and keep her or his hands visible.

Talk To Your Child About How To Assert His or Her Rights When Contacted By The Police:

Your child always has a right to remain silent and a right to a lawyer. Even if your child thinks she or he did nothing wrong, your child should always express his or her right to remain silent and ask for a lawyer. The only questions your child should answer are questions about his or her identity. If the police arrest your child, your child should give the police his or her name, age, and address and show identification.

Other than questions about identity, your child should not answer other questions. Tell your child that no matter what the police say, your child should say, **“I would like to**

remain silent. I will not answer any questions until I talk to a lawyer.” If the police keep asking questions, tell your child to say this phrase again and again.

People often think they can talk their way out of trouble and they share a bunch of information with the police. But, in reality, even information that may seem like it



would help can cause problems later on. Make sure your child understands that she or he can share information with police later on, but it is really important to get the advice of a lawyer BEFORE talking to police.

Tell your child that she or he should absolutely never lie to the police. Your child can get in much more trouble than necessary for lying to police. It's better to say nothing than to lie. A lot of people give false information thinking they can get away with it and it won't harm anything, and they may even know people who have had such luck. The reality is, however, that in the vast majority of situations, it will make matters much worse. Giving false information can result in getting additional charges or getting much more strict treatment later on.

If The Police Arrest Your Child ...

If the police arrest your child, the police have two options. The police can either release your child after giving out a citation that will ask him or her to show up in court on a later date, or the police can take your child into custody. When your child is taken into custody, in most counties that means your child is taken to juvenile hall.

If your child is taken into custody, the police are obligated to notify you within a reasonable amount of time that your child has been arrested. The police must tell you why your child was arrested and where your child is being held.

If your child is taken into custody, you should:

Tell The Police You Will Get To Where Your Child is Being Held As Soon As You Possibly Can

When you receive the phone call notifying you that your child has been arrested, you should tell the police that you will get to where your child is being held as soon as you possibly can. Then do whatever you can to get to the police station or juvenile hall as soon as possible. Police and probation sometimes assume that parents who do not come to the station are not responsible and they may decide it is best for your child to stay detained.

Tell The Police or Probation That You Want Your Child Released To Your Custody

When you arrive at juvenile hall or wherever your child is being held, tell the officers that you want your child to be released. Tell them that you will make sure your child appears for court and stays out of trouble before the court date. The police and/or probation must be convinced that your child will not get into trouble and will show up for his or her court date before they will release him or her to your custody.

Tell The Police That You Want Your Child To Talk To A Lawyer Before Being Questioned And Ask To Speak To Your Child

Even if you think your child is completely innocent, your child still needs to talk to a lawyer BEFORE she or he says anything to police or probation. Tell the police that you want your child to talk to a lawyer as soon as possible. Tell the officers that you do not want them to ask your child any questions until your child talks to a lawyer. Ask probation or police if you can speak to your child. If you can speak to your child, tell your child that she or he does not have to answer any questions and she or he should say that she or he wants to talk to a lawyer.

If You Can Talk To Your Child, Tell Your Child Not to Sign Any Statements Without Talking to A Lawyer First

If you can talk to your child, tell your child not to answer any questions until your child has spoken to his or her lawyer and tell your child that she or he should not sign any statement without first talking to a lawyer.

Do Not Complain To The Police About Your Child

Even if you think your child is guilty and you feel like you cannot deal with your child's problems, it NEVER helps to complain to the police or probation about your child. It can only make matters worse. If the police or probation think you do not want your child or that your child's home life is not stable, they will decide your child should be detained and not released.

Talk To Your Child's Lawyer As Soon As Possible

After an attorney is appointed to your case, you can ask for the lawyer's name and phone number. Call the lawyer and ask to make an appointment to meet with him/ her as soon as possible. Make sure that they meet with your minor to talk about the case.

YOUR CHILD AND THE PROBATION OFFICER

If your child is arrested and taken into custody, soon after the arrest, she or he will have to go through an “intake” meeting. An intake meeting is when a probation officer (PO) meets with your child and decides what to do with your child’s case. At the intake, the PO has three options. The PO can:

- **Close the case.** If the PO closes the case, your child is free to go home and does not have to come back.
- **Keep the case open but handle it informally.** If the PO handles the case informally, the officer can place your child on informal probation or place your child into a diversion program. Your child will have to follow the rules of probation or the diversion program but your child will not have to go to court.
- **Handle the case formally.** If the PO handles the case formally, the PO gives the case to the District Attorney who will decide if she or he wants to file charges. If charges are filed, the DA will begin to investigate the case and your child will probably have to go to court. At court, the judge will listen to the DA, the public defender or your child’s lawyer, and the PO. The judge will then decide what will happen to your child. The PO has to decide whether to keep your child detained in juvenile hall until the court date or release your child to you.

You have the right to be notified of the date and time of the intake meeting with the PO. Make sure you attend the intake meeting. Any information you provide to the PO will impact which of the three options listed above the PO chooses. Therefore, what you say to the PO about your child is extremely important.

When You Talk To Your Child's Probation Officer:

Regardless of whether you think your child is guilty or innocent, your child really needs your assistance to get the fairest treatment possible and to get into helpful programs. POs have a tremendous amount of power in juvenile cases. They decide whether the case goes to court or is handled informally. They also make case recommendations to the judge at every stage of the juvenile system. Judges take recommendations from POs very seriously. Because probation officers have so much power in juvenile cases, you have to proceed with caution when you interact with them. Sometimes probation officers have your child’s best interest in mind, but sometimes they do not. You cannot automatically trust the probation officer. Be careful what you say and do.

Do Not Complain About Your Child

No matter how frustrated you may be with your child, do not complain to the PO. It can only make matters worse. If the PO thinks you do not want your child, the home is not stable, or that you cannot care for your child properly, the PO will recommend that your child stay in detention.

Tell The P.O. About All Positive Aspects Of Your Child's Life

Share with the probation officer all the positive aspects of your child's life. Important things to mention include:

- **School:** tell the officer if your child is in school and if your child is doing well in school and bring in any positive report cards, progress reports, or awards or certificates your child may have received
- **Home:** tell the officer if your home life is stable and secure
- **Work:** tell the officer if your child has a job
- **Mentoring/Counseling:** tell the officer if your child participates in any kind of mentoring program or gets any sort of support group or counseling
- **Other Activities:** tell the officer if your child is involved in any activities, like church, sports, after school programs, youth groups, or anything else you can think of that will reflect positively on your child. If your child has received any awards or certificates for involvement in any of these activities, bring those in to the probation officer.

For Minor Offenses, Advocate for the P.O. To Close Your Child's Case

For minor offenses or first time offenses, probation may be willing to close the case and send your child home or handle the case informally. If your child is in this situation, you should advocate strongly for probation to close the case. Tell the PO that you will discipline your child and you can ensure that your child will not get in any more trouble.

It is much better to take responsibility for supervising your child yourself rather than allowing probation to take control. If probation takes control, then your child will have a juvenile record. You might think your child will learn a lesson if your child has to answer to the probation department. But, in reality, young people with juvenile records are much more likely to get in trouble with the juvenile justice system again and much more likely to get in more serious trouble the next time they get in trouble.

Immediately Enroll Your Child In Any Services She Or He May Need

If your child needs services of any kind, like tutoring, mentoring, job placement, or drug treatment enroll your child in these services as soon as possible, even before you talk to the PO. If you enroll them immediately, it will show the PO that you and your child are concerned and you have a much stronger case to have the case diverted or closed.

If your child admits that she or he did the offense, when you meet with the PO, be very specific about what you plan to do to make sure this never happens again. Tell the PO how you will discipline your child and how you will supervise your child. Will you put your child on restriction? Will you keep your child from going to certain places? Will you make sure your child stays in school? It is much more likely that your child will be released to you with no charges if you can convince the probation officer that your child will be properly supervised and disciplined for his or her actions.

Be Assertive and Persistent

Sometimes PO's do not return phone calls or communicate with you. You have to be persistent. Even if you feel like they should return your call because you left a message, do not hesitate to leave more than one message and to keep calling until you get through. If the probation officer continues to ignore you no matter what you do, you can talk to their supervisor.

Tell Your Child To Talk To A Lawyer Before Accepting Informal Probation or Diversion

Your child's lawyer should make sure that the evidence against your child is sufficient to prove the charges before your child enters the informal placement. Usually informal case handling means your child will be placed on informal probation or placed in a diversion program. It is important to talk to your child's lawyer before your child accepts being placed on informal probation or into a diversion program. Although the placement is considered "informal," your child's record will still indicate that your child has had a prior contact with the juvenile justice system that resulted in a diverted case. If your child has future contacts with the juvenile justice system, it may be harder to ask for informal probation or diversion if your child has already had informal probation or diversion in the past. A judge or probation officer may think your child needs more serious discipline.

Make Sure Your Child Follows All Probation or Diversion Rules

You must make sure your child follows all the rules of probation or the diversion

program. Too many young people get in trouble for violating simple probation or diversion rules. These violations lead to much more serious punishment for your child, like detention. You and your child have a right to understand these rules. If you do not understand the rules your child must follow, ask your child's lawyer and the probation officer to explain them. Make sure you know what time your child must be home every night, how often your child must report to probation, what times she or he must be at school and any programs your child must attend.

YOUR CHILD'S LAWYER

Your child has a constitutional right to have a lawyer. If you cannot afford a private lawyer, your child has a right to a free lawyer, assigned by the court.

Make sure your child understands that she or he should NEVER waive her or his right to have a lawyer. It is impossible to get through the court system without a lawyer. Even if you or your child do not like your child's lawyer, having a lawyer is always better than not having a lawyer. If you or your child have problems with your child's lawyer, help your child figure out how to share the concerns, but your child should never try and represent her or himself alone.

The lawyer assigned will represent your child, not you. Your child has the right to meet alone with the lawyer, but if your child wishes to have you present at her or his meetings with the lawyer, your child can request to have you there.

Encourage your child to talk to the lawyer as often as possible and answer all of the lawyer's questions. The lawyer will not be able to decide what is helpful and what is not unless the lawyer has every bit of information they need. Tell your child that whatever she or he tells the lawyer is confidential – the lawyer is bound by law not to tell anyone. It is not the same as talking to police or probation.

If the probation officer decides to handle the case formally, your child will have several hearings in front of a judge:

- **Detention hearing:** the judge decides whether your child should be held in juvenile hall before his or her trial
- **Transfer Hearing:** if the DA recommends that your child be tried as an adult, this is the hearing when the judge decides whether your child is fit to be tried as an adult
- **Pre-trial hearing:** your child's lawyer and the district attorney bargain for a deal to solve the case without a trial
- **Adjudicatory hearing:** this is the trial where the judge will decide if the charges against your child are true or false
- **Dispositional hearing:** if your child admits to an offense or a judge finds that the charges against your child are true, then this is the sentencing hearing where the judge decides whether your child will be placed on probation, in an out of

home placement, sent to a county camp or ranch, or sent to the Division of Juvenile Facilities (DJF)

Your child has a right to a lawyer at all of these hearings. Before and during each of these hearings, you must be advocating for your child to make sure she or he gets treated fairly and benefits from as many helpful programs as possible.

HOW TO WORK WITH YOUR CHILD'S LAWYER:

Talk To Your Child's Lawyer Immediately

You should try as hard as possible to meet with your child's lawyer as soon as possible after your child's arrest. Your input is extremely important. You can share information with your child's lawyer that will help give your child's lawyer a full understanding of the circumstances surrounding your child's arrest.

Ask A Lot of Questions and Take Notes

The goals of meeting with your child's lawyer are to share as much information as possible that will help your lawyer defend your child and to ask questions that will help you understand what is happening. Write down questions before you meet with the lawyer and ask them when you meet the lawyer.

Make sure you know:

- what your child is being charged with
- what the consequences are if your child admits to the charges or the judge decides the charges against your child are true
- what all the options are for your child

Make sure you ask:

- what information you can provide to help the lawyer with the case
- what information you can provide that may help your child benefit from services and programs instead of detention, like probation or alternative programs instead of detention

Tell Your Child's Lawyer As Many Details As Possible About Your Child's Life

Your child's lawyer will be able to defend your child and advocate for what your child needs instead of detention if the lawyer knows what is happening in your child's life. Tell the lawyer about:

- your child's school record,
- your child's job if she or he has one,

-
- any after school activities, sports or church involvement,
 - any mental health issues,
 - any learning disabilities, or any special educational needs
 - any mentors or counselors that know your child,
 - any relatives that spend time with your child,
 - any traumatic events that have happened,
 - any special skills or hobbies,
 - any drug or alcohol related issues,
 - any unique circumstances your child was facing at the time of her or his arrest,
 - or anything else you can think of that may be important information related to your child's case or your child's needs.

Tell Your Child's Lawyer That You Can Supervise Your Child Closely

Make sure the lawyer knows that you can supervise your child, keep your child out of trouble, and make sure your child follows all of the court's rules. Lawyers, probation officers, and judges often make assumptions about whether parents are capable of supervising their kids without asking parents. So, it is up to you to tell your child's lawyer that you are responsible and capable of taking care of your child. Ask your lawyer to assist you in setting up services to help you supervise your child.

Keep In Close Touch With Your Child's Lawyer

Keep calling your child's lawyer even if your child's lawyer takes a long time to respond. Most attorneys that represent youth have many cases and not enough support. So, even if the lawyer wants to do the best possible job she can, it is often difficult because of the pressures of the job. Keep calling and providing information, even if it seems like the lawyer is not as available as you would like him or her to be.

Duties of Your Child's Lawyer

1. Duties Before Trial

Your child's lawyer has a lot of responsibilities under rule 1479 of the California Rules of Court. Make sure she or he is fulfilling them. To begin with, the lawyer must explain to your child why he or she is in court, describe the current stage of the case and what may happen at that stage, and inform your child of her or his legal rights. Your child should know that conversations with the lawyer are confidential. The lawyer should prepare your child for possible con-

tact with law enforcement, including what your child should do if he or she is rearrested.

If there are any documents, reports, photographs, or tapes that your child's lawyer receives for use in your child's case, the lawyer should review these items with your child. If your child will be making a statement, the lawyer must prepare your child to be interviewed. The lawyer must also investigate the charges against your child, while maintaining confidentiality with your child.

The lawyer should also gather personal records relating to social services, mental and physical health, education, and other services, as this may also help your child's case. Your child's background in the court system and with social services is important, so the lawyer should learn about any such history. Part of this involves speaking with you. This information may help your child's lawyer convince the judge of an alternative to incarceration for your child. If you think certain people would be relevant as witnesses at any of your child's hearings, let the lawyer know so she or he can interview these people.

Your child has the ultimate say in decisions about her or his case, so the lawyer's job is to find out what result your child wants in the case, and then enable your child to make informed decisions about the case. Part of this entails thoroughly explaining the possible consequences of admitting or contesting charges against your child. Possible defenses, recommendations, case plans and the disposition report should all be discussed with your child. Throughout the representation, the lawyer should be in communication with your child, who should have the lawyer's contact information.

2. Duties at Trial

The lawyer should be a zealous advocate for your child during the hearings and trial. This means that the lawyer should be fighting for your child's interests. When court action is needed, the lawyer should request and set hearings or trials. For the hearings, the lawyer will prepare whatever papers and arguments are necessary to help your child. The lawyer should arrange for any experts, psychological evaluations, needs assessments, or dispositional recommendations that will strengthen your child's defense. The lawyer should contact probation to learn about options that will ensure proper rehabilitation. It is also the lawyer's duty to look beyond the juvenile proceedings and let the court know if your child has other interests—like family, drug treatment, mental or physical health needs—that may require other proceedings. If your child does have other pro-

ceedings, the lawyer should advocate for someone to represent your child in those proceedings.

3. Duties After Sentencing (if charges are sustained)

Importantly, your child's lawyer must stay involved even after the disposition hearing. The lawyer should assess whether an appeal or writ is necessary, tell your child what his or her rights are, and give a recommendation.

The lawyer can interview treatment providers and talk to your child's PO in order to do this effectively. Some other types of proceedings that your child's lawyer might recommend and actually represent your child in are: dependency cases and placement, educational, or other administrative hearings.

YOUR CHILD AND COURT

Once the District Attorney files a petition with the court, you have rights to be notified and to see that petition. The petition lists the charges against your child and the facts of the case according to the District Attorney.

Your child and your child's lawyer will begin to prepare for hearings at court. At each hearing, the District Attorney, the PO, and your child's lawyer will present information or discuss the case and the judge will supervise or monitor the proceeding and make final decisions about what to do.

You have the right to attend your child's hearings at court.

You should try as hard as possible to attend every court hearing.

Even if you say nothing, your presence is extremely important. It shows the judge, the PO, and the DA that you care about your child and that you are a stable parent. You should also try as hard as possible to bring relatives and other people who support your child to court.

Preparing for each hearing is extremely important. Before and during each hearing, you must be advocating for your child to make sure she or he gets treated fairly and gets what she or he needs.

THE DETENTION HEARING: Advocating For Pre-Trial Release

If the PO decides that your child should stay in juvenile hall while waiting for the trial, your child will have a detention hearing in front of a judge. The judge will decide if keeping your child in detention is necessary. To release your child from detention, the judge must be convinced that your child is not a threat to public safety and will not run away.

It is extremely important that you advocate for your child to be released from custody and sent home to you while waiting for the court date. If your child is kept in detention pre-trial, it can increase the chances that your child will get more severe punishment at trial. Getting detained pre-trial signals to the court that there is some reason your child cannot be trusted outside of detention. Youth who are detained pre-trial have a harder time convincing judges that they should be allowed to participate in alternative programs or placed on probation.

To advocate for your child to be released:

Share Positive Information About Your Child with the PO

The PO's opinion on whether your child should be released or not is very influential. The PO will share his or her opinion with the judge. When you talk to the PO, tell the PO any information that demonstrates that your child will not be harmful if released. If your child does well in school, has adult support, attends after school programs or counseling, plays sports, or if your child works, make sure the PO knows this information.

Talk to Your Child's Lawyer As Soon As Possible

Before the detention hearing, make sure you talk with your child's lawyer. Tell the lawyer that you really want your child released while she or he is waiting for the trial. Tell your lawyer about how you plan to make sure your child is safe and out of trouble and you will closely supervise your child at all times. Ask the lawyer what kind of information would be helpful for the lawyer to advocate for your child's release. Provide that information if you can. It is extremely important that you emphasize to the lawyer that you want your child released.

Visit With Your Child In Juvenile Hall As Much As Possible

It is really important that you visit your child in juvenile hall as often as you can. Your child will need as much support as possible while detained in juvenile hall. It is a very difficult environment to be in and your visits can make it more manageable. In addition, it is another way to show the probation officer and judge how much you support your child and how much you are involved in your child's life.

Work With Your Child To Make a Detailed Supervision Plan

POs and judges are usually reluctant to release a youth from custody if they feel the youth will not be properly supervised and can get into trouble or will cause problems for the community. One way to show that support and supervision exists is to write a supervision plan for your child. Tell your child's lawyer that you want to make a specific supervision plan to present it to the court.

A supervision plan is a document that outlines what the youth will be doing with his or her time on a daily and weekly basis. When you write this plan out, you want to write it out with your child. Input from your child is very important. Working on this together will increase the likelihood that your child will be able to abide by it and it will give you a chance to meet your child's needs.

Write down the days of the week and where your child will be throughout each day. For example, the plan may include being in school and being picked up by

SAMPLE SUPERVISION PLAN

NOTE: the more detail you can provide, the better.

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
7:30 am	School	School	School	School	School		Church with Mom, Sister
8:30 am							
9:30 am							
10:30 am						Chores at home with Mom	
11:30 am							
12:30 pm						Sports Team Practice	
1:30 pm							
2:30 pm	Mom picks up, drops off	Aunt drops off at home	Mom picks up, drops off	Aunt drops off at home	Mom picks up		
3:30 pm	Tutoring Program	Home to Baby Sit Sister	Tutoring Program	Home to Baby Sit Sister			
4:30 pm	Mom picks up		Mom picks up		Aunt picks up for night	Check in w/ PO	
5:30 pm	Chores						
6:30 pm	Dinner					Dinner at Aunt's	Dinner
7:30 pm		Check in w/ PO	Youth group counseling 'til 9, Mom picks up	Check in w/ PO			
8:30 pm	Homework until 10	Homework until 10		Homework until 10			Homework until 10
9:30 pm			Homework until 10				
10:30 pm							
11:30 pm	Sleep						
12:30 am						Sleep	

a relative after school. Or, your plan may show that your child will be participating in after school activities that are structured with adult supervision. Include a schedule of what your child will do on weekends as well as weekdays.

If you can, you should include letters from the programs listed on the supervision plan or letters from adults that verify that your child will be with them during the times indicated in the supervision plan. If your child needs counseling or therapy, set that up immediately so you can put it in your supervision plan and tell the judge that you have an appointment already scheduled. Below is a sample supervision plan for a young person. Each plan will be very different depending on the youth's needs. For example, the young person may need tutoring to catch up in school, a chance to participate in an after school sports program, drug counseling, job training, or a mentor to spend time with him or her on the weekends. Let the young person make suggestions about what he or she wants to do with his or her time.

If Your Child Is Not Involved In Any Activities, Encourage Your Child To Get Involved in Some Activities

If your child does not work, play sports or participate in any community-based or after school activities other than attending school, you may want to help your child find some activities that interest him or her and register him or her in these activities. Often times, it is hard to find programs, and the lack of available programs and services for youth is a huge problem in many communities. It is still really important to try. Ask your child what they like to do and see what you can find. Young people have fewer chances of interacting with police if they are involved in a lot of activities.

Attend the Detention Hearing

Do everything you can to attend the detention hearing. Before the detention hearing, tell the lawyer you want to speak at the hearing and bring with you your supervision plan and any other information that you and your child's lawyer think will be helpful for arguing that your child should be released pretrial.

Speak Up at the Hearing

At the hearing, when the judge asks for your input, tell the judge how you plan to make sure your child is closely supervised, stays out of trouble, remains safe, and appears for trial. Assure the court that you will be responsible for making sure your child appears at all probation meetings and at court hearings.

THE TRANSFER HEARING: Advocating Against A Transfer To Adult Court

More and more, state governments are passing laws that make it very easy to take youth facing charges out of the juvenile justice system and place them in the adult criminal justice system. People who support these laws argue that young people who commit really serious crimes should serve adult time. In reality, young people who are placed in the adult system get far fewer education or rehabilitation services, they are eligible for longer sentences, they maintain a permanent criminal record, and they may experience a lot of trauma. If you are a parent whose child is being threatened with an adult transfer, it is really important that you work with your child's lawyer to advocate against it.

Most of the time, the prosecutor makes the recommendation to transfer a youth to adult court and a judge schedules a "transfer hearing" (formerly known as "fitness hearings") to decide whether the youth should be transferred. At the transfer hearing, if the judge thinks the youth is not a "fit and proper subject to be dealt with under the juvenile court law," the judge will order the youth to be transferred.

At the transfer hearing, your child has a right to have a lawyer present and that lawyer should argue that your child should not be transferred. The probation officer and prosecutor will also be present to make recommendations to the court. You and your child should provide as much information as possible to the lawyer to help him or her advocate in court. As well, whenever you talk to the probation officer before the hearing, you should make it very clear that you do not want your child transferred to adult court.

Share Information With Your Child's Lawyer To Demonstrate That Your Child Should Not Be Transferred

The judge is supposed to make the decision based on five factors. For each of these factors, there is information you can provide to demonstrate that your child should not be transferred.

- 1) **Is your child a sophisticated criminal?** If your child planned out the crime carefully or tried to cover up evidence, the judge will probably think your child is a sophisticated criminal. Talk to your child's lawyer about anything that shows your child is not a sophisticated criminal, like if your child did it without thinking or was pressured into it. Also, tell the lawyer about any information you have that demonstrates that your child is not competent to be tried as an adult. If your child has any disabilities, is immature for his or her age, or has suffered trauma in the past, tell your child's lawyer because these things may indicate that your child is not able to understand the consequences of his or her actions and should not be tried as an adult.
- 2) **Can your child be rehabilitated before age 25?** Talk to your child's lawyer about how your child will be able to be rehabilitated through education, coun-

seling, or other services that the juvenile system can provide.

- 3) **Does your child already have a record?** Talk to the lawyer about any prior offenses your child has been involved in. If they were not violent or they were a long time ago, or there were special circumstances surrounding these offenses, tell the lawyer.
- 4) **Has your child already failed in the juvenile system?** Talk to your child's lawyer about any past encounters your child had with the juvenile justice system. If they helped your child, tell the lawyer. If they did not, explain why they did not and how this does not prove that your child is unable to be rehabilitated.
- 5) **Is the crime really serious?** Talk to your child's lawyer about the seriousness of the crime your child is accused of having committed. If there is any information you can provide to show it is less serious than it seems, then point that out.

Even if the judge decides to transfer your child to adult court, you should continue to raise your concerns. There is a small possibility that an adult court judge could decide that your child is not competent to stand trial as an adult. Share the same information listed above with the lawyer that gets assigned to represent your child in adult court to see if that lawyer can advocate for a transfer back to juvenile court.

THE PRE-TRIAL HEARING: Advocating For Alternatives

The purpose of the pre-trial hearing is to decide if the case can be resolved without going to trial. At pre-trial hearings, the probation officer can make a recommendation and the district attorney can agree that the case can be handled without going to trial if your child admits to the charges. The District Attorney may also offer to reduce the charges against your child if your child admits them. If your child refuses to admit the charges, at trial more charges may be sustained against your child and the consequences can be more serious.

Talk to Your Child's Lawyer Before The Pre-Trial Hearing

Make sure you talk to your child's lawyer before the pre-trial hearing. Ask the lawyer what the District Attorney wants and what all the options are for your child. Make sure you understand what the lawyer plans to say and do.

Tell your child's lawyer that you can supervise your child and make sure your child doesn't get into any more trouble. Ask if there is any information you can provide that will be helpful for your child's case. If your home situation is unstable, see if you can find a relative who has a good home situation and advocate for your child to be released to there.

Also, tell your child to talk to his or her lawyer before the pre-trial hearing. Your child must understand what the charges are and what the consequences are. If the evidence against your child is sufficient, it is very important that your child's lawyer uses the pre-trial hearing to get the best result for your child possible.

Attend the Pre-trial Hearing

Do everything you can to attend the pre-trial hearing. Bring with you any information that you and your child's lawyer think will be helpful for arguing for the best possible outcome for your child.

Your Child Should Never Admit To The Charges Before Consulting With His Or Her Lawyer

It is extremely important that your child asks the lawyer for advice before admitting any charges. Even if your child is told that admitting the charges means she or he will get off easier than if your child does not admit the charges, you still really need to consult with your child's lawyer first. If your child admits that the charges against him or her are true, then your child will have a juvenile record. If your child gets in trouble with police again, the next time it will be a second offense. Prior offenses usually result in harsher treatment the next time your

child gets in trouble. So make sure that your child talks to his or her lawyer first. You and your child should ask questions and find out if the evidence against him or her is sufficient before your child admits the charges.

THE ADJUDICATORY AND DISPOSITIONAL HEARINGS: Advocating For Alternatives

The adjudicatory hearing is the trial. At the adjudicatory hearing, the judge will decide if the charges against your child are true. If the charges are found to be true, then your child will have a dispositional hearing to determine what the consequences will be. Your child may be placed on probation, in an out-of-home-placement program, in the county detention center sometimes called a probation camp or ranch, or sent to the Division of Juvenile Facilities (DJF), which is like the statewide prison for youth. SEE THE JUVENILE JUSTICE MAP FOR DESCRIPTIONS OF ALL OF THESE OPTIONS.

Your advocacy is extremely important to ensure that your child gets the benefit of programs that will help. You must begin early to work with your child's lawyer and prepare for trial and the dispositional hearing.

Talk To your Child's Lawyer Before the Trial

Make sure you talk to the lawyer before the trial. Make sure you know what the lawyer expects will happen at the trial. Ask the lawyer what alternatives to detention are available and what it would take to get your child placed in one of these programs if it is likely the district attorney or the probation officer will try to lock your child up. Tell the lawyer you want your child to avoid being locked up at all costs. Tell the lawyer that you want to make sure any programs that may be good placements for your child are investigated. Tell the lawyer you plan to ask supporters of your child to write letters and attend trial.

Research Alternative Programs That May Help Your Child

If it is likely that the judge will find that the charges against your child are true, it is best to start looking into possible programs that may help your child as early as possible. It may be possible to convince the judge to sentence your child to program placement that will keep your child from long term detention in DJF. The judge must be convinced that it would be in the best interest of your child. Some examples include placement with a relative, drug programs, counseling pro-grams, mental health programs, training programs, or group home placements.

Your child's lawyer may not take the time to investigate possible program placements for your child. It is up to you to make sure this happens. Talk to your

child's lawyer about it, but do not rely on your child's lawyer to do the research. You can ask the lawyer to help you find programs for your child. Your lawyer can give you names and phone numbers of people who may be helpful.

Ask yourself what your child needs. To advocate for your child to be placed in a program instead of DJF you need to be able to state what your child's needs are and why detention will not help. Ask yourself questions like:

- Does your child have a learning disability or special education needs?
- Does your child need adult mentoring or peer group support?
- Does your child need mental health therapy?
- Does your child need skills training or structured work environment?

Once you think through your child's needs, talk to your child's lawyer about what programs exist that may be able to meet these needs. Make a list of program options.

Contact Programs and Ask For Their Support

Once you have identified programs that may be better for your child than detention, tell your lawyer you would like to contact these programs to see if they would be willing to work with your child. Contact these programs and see if you can meet with the program coordinator or director.

Explain to the program director your situation and ask for help. If you can convince the program director to express interest in working with your child, it will be much easier to make the case in court that your child can benefit from these services. If you can convince the program director to express interest in your child, ask for a letter of support. Ask the program director to write a letter to the judge explaining what the program does and that the program would be interested in working with your child. Even if the program director cannot guarantee that your child will be accepted into the program, if the program director can write a letter indicating that their program would be willing consider the possibility of working with your child, that is very helpful.

Contact Adults Who Support Your Child

The more responsible adults that demonstrate support for your child, the more likely it is that your child will be able to avoid getting locked up. As soon as you have a court date for the trial, make a list of adults who know and support your child and may be willing to appear in court with your child.

- Does your child have a teacher or coach that knows your child well?

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- Does your child have a mentor or counselor?
 - Is your child in a youth program or community program?
 - Does your child have a work supervisor?
 - Does a neighbor or religious leader that knows your child well?

Contact these individuals to ask for their help. Tell them your child is in trouble and has a trial coming up. Tell them you want them to write a letter to the judge and that you want them to attend your child's trial.

Gather Letters of Support From Adults Who Support Your Child

When you talk to responsible adults that support your child, ask them to write letters to the judge. These letters should discuss your child's positive qualities and your child's needs. The purpose of the letters is to demonstrate that support for your child exists in his or her community.

These letters do not need to address the specific charges and they are not about your child's innocence or guilt. Do not ask supporters to write letters that mention your child's innocence or guilt. Ask supporters to write letters that highlight your child's positive qualities and your child's needs. For example, a teacher could write a letter about her experiences with your child demonstrating that your child is well behaved and does well in school. Or, if there is a teacher that knows your child has a learning disability and needs special education that your child will not receive if your child is locked up, then ask that teacher to write about this in a letter to the court. Or, a mental health counselor that knows your child's mental health needs can write a letter about what kind of help your child needs.

The purpose of writing a letter of support is to give the court a fuller picture of the young person facing charges. Often judges make decisions about what to do with youth who have been arrested when the court does not know anything about their background, the positive aspects of their lives, the challenges they face, their needs, or the people that know the youth and support them.

The letter should focus on who the youth is, positive aspects of the child's life, the youth's needs, and any support the person writing the letter can offer to the youth. You want to demonstrate to the court that the youth does not need to be detained in juvenile hall, a probation camp, or the Division of Juvenile Facilities by showing why these places are either not necessary or would actually harm the young person more than help. For example, if the youth is doing well in school, taking him or her out of school and detaining him or her will make it much harder for the youth to graduate or go onto college or get a job later in life.

Sample Pieces Of Information You Can Ask Supporters To Include In The Letter:

- How long you have known the youth
- How you know the youth (for example, as a parent, relative, employer, teacher, mentor, counselor, coach, etc.)
- What you think about the youth's character and what type of person he or she is (be specific if you can, give examples)
- Any programs the youth is involved in (like after school programs, sports, religious activities, counseling programs, mentorship programs, etc.)
- Any special needs the youth may have that would make it hard for the youth to cope in juvenile hall, a probation camp or ranch, or the Division of Juvenile Facilities
- Anything positive about the youth's home environment that may be important to share (for example, the parents are capable of holding the youth accountable for his or her actions without the assistance of a social worker or probation officer, or without formal court action, or the youth is very close to a sibling that is willing to spend time with the youth to make sure she or he does not get in any trouble in the future)
- Anything the person writing the letter wants to do to support the youth (for example, a relative may be able to tutor the youth for school, a counselor may know of a program the youth could join, or a parent may make more time to supervise and spend time with the youth)
- If it is appropriate, anything the youth has done or said in which the youth acknowledged his or her behavior or activity was inappropriate and wants to resolve the situation positively
- If the youth is detained and you support his or her release, you also may want to talk about:
 - How and why you think he or she is not a danger to the community
 - How you will help to ensure she or he makes court appearances
 - How and why you think he or she will comply with whatever rules, restrictions, or conditions the judge, probation, or parole officer might impose as conditions for his or her release

If Your Child Can Be At Home, Make a Specific Plan For Your Child's Supervision

If your child's lawyer thinks it is possible to get your child sentenced to probation

or another program that will allow your child to stay at home with you, you need to convince the judge that your child will be safe and supervised at home. Tell your child's lawyer that you want to make a specific plan and present it to the court. The plan should include details about what your child will be doing at all times. Write down the days of the week and where your child will be throughout each day. For example, the plan may include being in school weekdays, then being picked up by a relative after school and taken to that relative's house until you get off work. Or, your plan may include that your child will be participating in after school activities that are structured with adult supervision. Include a schedule of what your child will do on weekends as well as weekdays. You can include letters from the programs or adults that verify that your child will be with them during the times indicated in the plan. SEE PAGE 26 FOR A SAMPLE SUPERVISION PLAN.

Preparing Evidence to Create a Good Record for Your Child

Because your child's lawyer should be preparing evidence that will create a good record for your child, the lawyer should help you gather these materials together. Generally, the lawyer needs to document your child's needs and submit the documentation as evidence. Some needs that your child might have are programs, mental health attention, etc. The lawyer should also be preparing a social history of your family, which should include information about education, your family's general situation, and medical and/or psychiatric histories. Even if the lawyer believes that commitment to the Division of Juvenile Facilities is a "done deal," he or she should make sure that your child's needs are preserved on the record, in case you want to appeal the judge's decision later. This is because you can better show that your child's needs are not being met in DJF or at another placement if there is a record of what your child's needs are.

The lawyer should also be gathering potential witnesses: teachers, counselors, and/or juvenile hall people who will testify positively. It is also the public defender's job (under 1479) to try to find an alternative placement to DJF and get that placement to write a recommendation.

By law (California Rule of Court 1492), the probation officer must file his or her social study (which is mandatory before your child can be sent to DJF) of your child at least 48 hours before the disposition hearing. That means that whatever the PO recommends, your child's lawyer has 48 hours to respond, giving him or her time to get reports and evidence together in order to create a record that will be helpful in later actions.

Showing That DJF is an Inappropriate Placement

You should also get your child's lawyer to call experts who can show that DJF's "services" are totally inadequate. At the disposition hearing, encourage your child's lawyer to mention Welfare and Institutions Code section 734. According to this law, the judge must be "fully satisfied that the mental and physical condition ... of the ward are such as to render it probable that he will be benefited ... by the [Division of Juvenile Facilities]." Your child's attorney should emphasize that this is a high standard ("fully satisfied"), which the *prosecutor* must meet. The lawyer can use expert testimony and expert reports to support this argument.

An expert can do a risk assessment of your child, to see if detention is appropriate. The lawyer should be careful to talk to the expert first and have the expert sign an agreement not to talk to the DA. That way, if the assessment is negative, the lawyer need not use it, and it won't do any damage. The Center on Juvenile & Criminal Justice can also prepare a sentencing report, but charges for this service.

The lawyer can also use expert reports from *Farrell v. Allen*, which document the lack of services and overall failures of the DJF. These are available on the Department of Juvenile Justice website: http://www.cdcr.ca.gov/Juvenile_Justice/. The Office of the Inspector General's audits of the services and safety issues in DJF are also available online, and can be more recent. The Prison Law Office issues periodic monitoring reports, which will be the most up-to-date information.

It might be impossible for an attorney to accomplish all of this before your child's trial, especially under the Speedy Trial Act, which requires that a criminal defendant be brought to trial within a specified time. If the lawyer asks your child to agree to waive her or his right to a Speedy Trial, your child should strongly consider doing it so that the lawyer can prepare better for your child's trial. If the lawyer does not ask for this and you or your child feels it will be helpful, your child or you can suggest it.

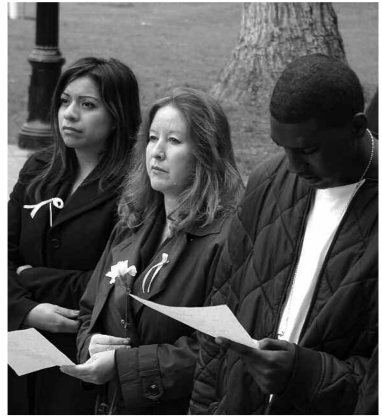
Attend The Hearings

Do everything you can to attend your child's trial. Bring as many other adult supporters as possible to attend the hearing with you.

Speak Up At The Hearings When You Can

At the disposition or detention hearings, ask to give input. Many parents and

supporters do not speak up in court because they feel intimidated or scared. No matter how uncomfortable you may feel, it is helpful to speak up in support of your child. Even though you are not on trial, judges do often make opinions about what they think about the child's home life and parent supervision. For better or worse, these opinions influence what the judge thinks is best for your child. You need to demonstrate to the judge that you are a very concerned parent and you want to supervise your child and participate in your child's rehabilitation closely. Tell the judge that you plan to make sure your child never gets in trouble again and you plan to help with your child's rehabilitation.



If Your Child Admits the Charges, Talk to Your Child About the Importance Of Showing Remorse To The Judge

If your child admits that the charges against him or her are true, your child needs to know that judges need to see that she or he feels remorseful. Judges want to see that your child knows that his or her actions were wrong, regrets these actions, and will never do these actions again. Children who express remorse are much more likely to benefit from alternative programs instead of getting locked up. Your child needs to express this remorse to the judge. Talk to your child about this honestly.

Like it or not, the judge has all the power in this situation. Many young people feel scared in court or feel angry at the whole system. These emotions are important, but when the trial comes, your child needs to understand that expressing emotions other than remorse will not help. There are other times when your child can express his or her feeling of frustration or anger. At the trial, remorse is the most important emotion your child can express.

Talk To Your Child's Lawyer About Writing A Letter To The Judge

Sometimes it is very helpful for you to write a letter to the judge. You want the judge to have a full picture of the kind of support that exists for your child. You can show this by writing a letter and stating in the letter what you do to support

your child. You should tell your child's lawyer you are willing to write a letter and talk to the lawyer about it.

Try to Limit the Sentence the Judge Orders

If the judge finds that the charges against your child are true, your lawyer should try to limit your child's sentence. The lawyer should mention mitigating factors, which help to explain why your child acted the way he or she did, making her or his case more sympathetic to the judge. Rule 731(b) states that the juvenile court should set the maximum term of physical confinement based on the "facts and circumstances" of your child's case. The judge has to consider your child's age, the circumstances and gravity of the offense, and your child's previous delinquent history (if any), in addition to other relevant evidence.

According to *In re Sean W.*, the court must use this discretion because the law requires it. This means that they have to consider mitigating factors, or your child will be denied a fair hearing

YOUR CHILD AND INCARCERATION

If the judge finds that your child did break the law, the judge can recommend your child be sent to many different places. If the judge does not simply place your child on probation and send your child home with you, the judge can send your child to:

- **Treatment Programs:** Your child participates in a program that is supposed to help your child, usually this is like a drug program, alcohol program, or anger management program. Some programs are “residential” that means your child lives at the program. There are also day programs that do not require your child to reside there.
- **Out Of Home Placement:** Your child lives in a foster home or a group home instead of living at home. A foster home is a type of placement where your child is placed with another family. The judge places your child in a foster home when the judge thinks you are not able to handle the child. A group home is where the youth lives with many other youths in a home and there are counselors on staff and there is usually a treatment program that all the youth participate in.
- **County Probation Camp or Ranch:** This is a secure facility for young people who have committed more serious crimes or who have failed at other placements. It is similar to a county jail for youth, with education and training programs.
- **Division of Juvenile Facilities (DJF):** This is like the statewide prison system for youth. It is usually for serious offenses or young people who have failed at all the other placement options. It is the last option in the juvenile system. While there are education, training and treatment programs, it is extremely similar to adult jail or prison.

If your child is detained in juvenile hall, the county camp or ranch, or the Division of Juvenile Facilities it is very important that you support your child as much as possible. Being locked up can be a very intense experience for young people and adjusting to life after being locked up is also extremely difficult. The more support your child has throughout the experience, the easier it will be for your child to deal with the situation.

While your child is in detention your child has the right to:

- Be free from abuse from other people detained or staff
- Have access to adequate health care and education, including special education

- Have access to recreation and exercise
- Have sanitary living conditions
- Have access to visitation

When your child enters the facility, your child will be assigned an officer that will monitor your child during the time she or he is in the facility. The type of officer assigned depends on where your child is being held. For most juvenile halls, camps and ranches, your child will be assigned a probation officer. For the Division of Juvenile Facilities (DJF) your child will be assigned a parole officer.

VISIT YOUR CHILD AS MUCH AS POSSIBLE

Being incarcerated in a camp, ranch, juvenile hall, or the Division of Juvenile Facilities is a very difficult experience. Young people often experience depression, anger, frustration, and pain. The most important thing you can do to minimize the impact of this experience on your child is visit him or her as often as possible. Each facility has different rules about when you can visit, what you can bring, and what you can wear when you visit. Make sure you contact the facility before you go so that you can learn all the visiting regulations before you attempt to visit. *For LA County juvenile hall locations and contact information, please see page 5.*

Call To Introduce Yourself As Soon As The Officer In Charge Of Your Child's Case Is Assigned

Officers are more likely to be attentive to your child if they feel your child has outside support monitoring his or her care. Your child should be assigned a probation or parole officer as soon as your child is admitted into the facility. You should call and introduce yourself. Tell the officer that she or he can call you anytime with any problems. Tell the officer you are very concerned about your child and you want to maintain contact with the officer. Tell the officer you expect a lot of communication about your child's well being.

Make Regular Calls to Check-In On How Your Child Is Doing

Do not be afraid to call your child's officer when you want to know how things are going. The officer should understand that you want to be involved in your child's rehabilitation. Keep in mind that many officers are not used to parents calling to check in on their children, so the officer may be rude. No matter how frustrating, it is important to keep calm and simply express how important it is to you that your child keep on track to get released as soon as possible. The officer has a lot of power over your child, so if you have a bad relationship with this officer it may impact your child.

Responding To Problems In Incarceration

If your child is having problems while detained, you should help your child address them immediately. To help your child, there are several things you can do:

Call The Officer Assigned To Your Child

Call to talk to the officer responsible for your child. Tell them your concerns and ask for their help. Explain to them what you understand to be the problem and ask what they can do to help your child. Ask them to address the problem and talk to your child as soon as possible. Take notes during the call so you remember what they say.

Keep in mind that the staff have a lot of power over your child and your child's experience. Do not yell at the staff or get angry with them. Even if the staff person is rude or unhelpful, it will not help your child to confront them directly. If the staff person is rude or inappropriate, it is best to remain calm and write down everything that was said. Later you can talk to the staff person's supervisor about the incident.

Meet With the Officer Assigned To Your Child In Person

When you call to talk to the officer assigned to your child, it may be helpful to ask for an in person appointment. In person, you may be able to get more information and encourage the officer to respond to your child's issues. You can also ask to see any records or policies that the officer refers to during the conversation.

Record The Names And Numbers Of Everyone You Talk To

Whenever you talk to anyone on staff, make a record of the phone call for your private files. Write down the date, name and number of everyone you talk to and the details of the conversation. This will be helpful for you later to recall what others have said and promised to do for you and your child. Often staff people do not talk to other staff people or do not follow through with tasks they promise to do. If you have personal records about the conversations, you can remember what has been said and done.

If Your Child Is Being Mistreated, File A Complaint Immediately

Some counties have an "Ombudsperson" office that receives formal complaints from people detained in the county facilities. These complaint offices have the authority to investigate and take action if a problem is discovered. It is very important that you encourage your child to file a complaint as soon as possible. Some offices let you file a complaint as a parent. Be as specific and detailed as possible. It is much more effective to file the complaint early rather than later. Follow up with a phone call to the office to find out the status of the complaint.

Write a Letter To The Supervisor of the Facility

If you are having difficulty getting assistance from the officer assigned to your child, you may consider writing a letter expressing your concerns to the head of the facility. You should ask for assistance from the head of the facility in handling your child's problem. Keep a copy for your own records. Follow up with a phone call to make sure the letter was received and ask for a meeting to discuss the letter, either over the phone or in person.

Ask Your Child's Lawyer for Assistance

Even though the court appearances are over, once your child is assigned a lawyer from the court, that lawyer may be willing to continue to assist your child for the entire time your child is in the juvenile justice system. Call this lawyer to explain what is happening and ask for assistance. Ask this lawyer for advice on what you can do. If the situation is serious, this lawyer may also talk with your child and help.

File a 779 Motion

You may want to file a 779 motion, which could get your child out of DJF. If you can show that DJF can't or won't provide the treatment required by Section 734 (which states that the prosecutor must satisfy the judge that DJF would benefit the child) the judge can change your child's DJF commitment. This is where it will help you to have records of your child's needs. Of course, you'll also need documentation of any abuse, neglect, or other problems specifically within the facility. You may want to ask your lawyer to find experts who can testify to your child's mental or physical health, whether she or he would benefit from an alternative placement, or any other relevant information. Remember that the lawyer should first have the expert sign an agreement not to talk to the DA. This way, if the expert's conclusion is negative, it won't harm your child in court because the DA will not have access to the expert's opinion. Your lawyer should also use the *Farrell v. Allen* expert reports about DJF's failures in this motion, specifically the reports related to your child's needs.

HOW TO SEAL YOUR JUVENILE RECORD

Juvenile Ward of the Court Orders:

Without an application to seal records, juvenile court files are destroyed five years after sealing if the juvenile committed a “status” offense (something that is an offense due to the child’s age, i.e. curfew violations, or truancy) and are destroyed on the individual’s 38th birthday for other certain offenses. Records for certain violent or sex offenses will not be destroyed.

Who Can Petition to Seal a Juvenile Record:

1. A person with a juvenile record who has reached the age of 18 years and/or;
2. Any person for whom five years or more has passed since the termination of juvenile probation, last arrest, or last case closed;
3. A probation officer may petition on behalf of a qualifying youth.

How to Seal Juvenile Ward of the Court Cases:

One may petition to have juvenile records sealed five years after the disposition of the case, or upon reaching 18, whichever comes first.

1. Call the juvenile court clerk, juvenile probation department or juvenile public defender, and request a “Petition to Seal Juvenile Records.” Ask what the procedure is for getting juvenile records sealed in that court.
2. Prepare a petition to seal juvenile records for each case desired to be sealed.
3. Return the original completed form to the court clerk’s office. The fee ranges from \$75-\$120 depending on the county. Some county have fee waivers. In some cases, the probation office will submit the petition, if the youth is eligible.

One Cannot Petition to Seal Their Juvenile Record If:

1. Convicted of certain violent or sex offenses (707 (b) offenses) when 14 or older;
2. The conviction was for traffic violations or offenses, to which insurance companies have access for the purpose of setting rates;
3. The case was transferred from juvenile court and resulted in an adult criminal conviction;

4. The conviction was for a felony or misdemeanor of moral turpitude (crimes that violate “accepted moral standards”) after a release from probation
5. The individual has an open civil suit regarding the actions that caused the juvenile record;
6. The individual is currently on probation;
7. The individual has an adult record;
8. The individual has a suspended/revoked driver’s license.

How to Seal Successful Completion of a Drug Diversion Case:

To qualify the following must be true:


1. The petitioner was convicted of a misdemeanor or felony nonviolent drug offense and sentenced under Proposition 36 or Deferred Entry of Judgment and
2. The individual successfully completed the drug program sentenced by the court and paid any fines, fees, and restitution.

GETTING INVOLVED

Parent advocacy can make a big difference, not only in individual youth’s cases, but also in changing how the juvenile justice system works. Families and youth need to organize together to advocate for a system that lifts youth up instead of locks youth down.

To get involved, visit ellabakercenter.org/member today!





The Ella Baker Center for Human Rights organizes with Black, Brown, and low-income people to shift resources away from prisons and punishment and towards opportunities that make our communities safe, healthy, and strong. Our goal is to channel resources and opportunities into communities of color who have been most harmed by the lack of investment and prejudicial policies that have resulted in poverty and incarceration. We organize every day people to build power and to win jobs not jails, books not bars and healthcare, not handcuffs. The Ella Baker Center's membership is a way for anyone, anywhere—especially those who have been harmed by the justice system—to join the movement to create a truly safe and just nation. Please learn more and consider joining today: ellabakercenter.org/member

Ella Baker Center for Human Rights
1970 Broadway, Suite 1125
Oakland, CA 94612
510-428-3939
www.ellabakercenter.org



EXHIBIT 10

Panel Members,

Welcome to our monthly newsletter!

This is our way of keeping you abreast of items relevant to your work in the juvenile courts. Our goal is to use this platform to share some of your accomplishments with our community and let you know what we've been up to on your behalf.

In addition, we will feature articles, upcoming events and trainings that may be of interest to folks working in the delinquency courts.

Upcoming Events

September 16

ICDA Fall 2016 Training

October 7

Nuts and Bolts of Experts Training

October 9-10

*CEB Presents:
The Basics Criminal Defense
Conference 2017*

To register
call LACBA Member Services
(213) 896-6560

A lawyer dies and goes to Heaven. "There must be some mistake," the lawyer argues, "I'm too young to die. I'm only 55." "Fifty-five?" says Saint Peter. "No, according to our calculations, you're 82." "How'd you get that?" the lawyer asks. Answers St. Peter, "We added up your billable hours."

SHOUT OUT

This month's shout out goes to Steven Liner and David Daugherty. In addition to their consistently stellar work in the courtroom, Steve and David have proven themselves dedicated and generous players on the IJD team. Within the last month alone, the two of them have covered no fewer than six last minute duty days for us. Both of these attorneys can always be counted on by the IJD staff as leaders on their panels. We appreciate all your hard work and your embrace of what it means to be an IJD Panel Attorney!

LACBA Website

The [IJD website](#) has been made public and is now accessible from the LACBA homepage. This website will be a resource mostly for clients and their families and was designed specifically with the intention of helping them navigate the juvenile justice system. Direct clients here for court addresses, public transit trip planners, attorney contact information, and informative resource packets on juvenile court processes. We hope to provide hard copies of the client resource packets to the families without internet access.

IJDP Online Forum and Resource Library

IJD is proud to present its members with exclusive access to a new online forum. This forum will include a growing resource library while also creating an open space for discussion regarding the best practices of juvenile law. You can use this forum to post questions, share advice, access motion templates and forms, and make use of the invaluable information garnered from the panel's collective experience working within the Juvenile Justice System. We will be sending out the user agreement and registration link next week, so stay posted!

Investigator and Social Worker Panels

IJD has assisted in establishing investigator and social worker panels headed by our Leads Karin White and Dr. Angela Zartuche. In June, Judge Bork welcomed six highly regarded and experienced investigators onto the IJD Investigator Panel. These handpicked investigators have joined Investigator White in the field gathering valuable information and supporting our attorneys in the courtroom. Similarly, the IJD Social Worker Panel has taken shape over the last few months. While some of you have already benefitted from Dr. Zartuche's comprehensive assessments and reports, our new panel of social workers is equipped to handle an even larger volume of cases, and we are excited to have begun referring attorneys to them with great success. IJD will continue to expand both of these panels over the coming months. In the spirit of IJD's mission to provide clients with the best possible defense, referrals are both welcomed and encouraged.

FEATURED ARTICLES

**Dubious Arrests Damaged Lives;
How Shelters Criminalize
Hundreds of Children**

The San Francisco Chronicle reports that "shelters in the nation's largest foster care system are supposed to serve as a refuge for vulnerable children removed from unsafe homes. Instead, they have funneled hundreds of children, some as young as 8 years old, into the criminal justice system for relatively minor incidents, a Chronicle investigation has found..."

"There's something wrong with the culture of these places when the answer to any behavior problem is calling the cops," said Marin County attorney Jan Sherwood, a leading specialist in child welfare law. "By definition, you're dealing with kids who have been neglected and abused and traumatized, so it's insane to say the minute the kids get angry and upset, we call the cops and send them to juvenile hall."

To read the whole article
click [HERE](#).

**A California Court for
Young Adults Calls on Science**

The New York Times reports, "in a study published in February of this year in *Developmental Cognitive Neuroscience*, Ms. Cohen and her collaborators used the impulse-control test to predict the "emotional brain age" of individual participants [...]"

"If you pick a random 18- to 21-year-old, you have no idea what level of maturity you're going to get," said Dr. Steinberg, a co-author of the study. "So in this period with the most variation, why would the law draw a bright line right there?"

Currently, a few states are considering legislation to move that line by trying anyone under age 21 as a juvenile. San Francisco's experiment in placing young adults into a separate category, neither juvenile nor fully adult, "is a smarter approach, and one that's more consistent with the science," Dr. Steinberg said."

To read the whole article
click [HERE](#).

FOR CLIENTS:

[Inside Out Writers!](#), a nonprofit dedicated to reducing rates of juvenile recidivism by providing a range of services that evolves to meet the needs of currently and formerly incarcerated youth and young adults.

Please don't forget to recommend this wonderful resource and any others to your clients and their families.

FOR ATTORNEYS:

The Immigrant Legal Resource Center has created a fantastic [Quick Reference Chart for Determining Key Consequences of California Offenses](#). As noted on the website, any donations to this project for keeping the material up to date are greatly appreciated.

UPCOMING TRAININGS AND SEMINARS

Pacific Juvenile Defender Center's 14th Annual Roundtable *Resist Together: Community Engagement and System Accountability*

(6 hours of General CLE credit)

This intensive training will offer legislative updates and workshops in critical areas of juvenile law and policy.

Details:

Saturday, September 16, 2017

8:30 am- 4:15 pm

UC Berkeley Law School

215 Bancroft Way, Berkeley, California

To register for this event online click [HERE!](#)

Helping Your Clients with New Laws, Experts and Skills

(4 hours of General CLE credit and 1 hour Competence Credit)

This seminar focuses on "updates in marijuana laws, the effects of bail on our clients, tips on police tactics for motion practice, DUI trial skills, and helpful diversion drug programs. The Lawyer Assistance Program will also provide information about lawyer competence and lifesaving skills for our colleagues and ourselves."

Guest Speakers:

Timothy Williams

Pamela Tedeschi, Esq., Bar Panel Attorney

John Raphling, Esq., Attorney at Law

Carey Caruso, Esq., Bar Panel Attorney

Richard Hutton, Esq., DUI Attorney

Erik Sherman and Cory Brosch, Phoenix House Representatives

Details:

Saturday, September 16, 2017

La Brea/La Cienega/Figueroa, Conference Room

1055 W. 7th Street, Suite 2700

Los Angeles, CA 90017

To register for this event online click [HERE!](#)

The Nuts and Bolts of Experts, with an Emphasis on Transfer

(3 hours of General CLE credit)

This practical, hands-on training will feature a presentation on the effective use of experts.

Guest Speakers:

Jennifer Friedman, Los Angeles County Public Defender and Forensic Science Coordinator

Rourke Stacy, Los Angeles Juvenile Expert
Maureen Pacheco, Los Angeles Juvenile Expert

Details:

Saturday, October 7, 2017
9:00 am-12:00 pm
1055 W. 7th Street, Suite 2700
Los Angeles, CA 90017

To register for either event, please call LACBA Member Services at (213) 896-6560

Presents The Basics Conference 2017: Criminal Defense

(12 hours of MCLE credit including 1 hour of Ethics)

"Learn the essentials of practicing criminal defense, from client intake to handling a criminal trial. This program provides a full introduction to the fundamentals of defending a criminal case."

Sessions include:

- Clients and Practice Management
- Infractions and Misdemeanors
 - Introduction to Felonies
 - Criminal Discovery
 - Pretrial Procedures
- Case Settlement Before Trial
 - Trial
- Sentencing and Post-Trial

Details:

Monday 9:00 am-5:00 pm
Tuesday 9:00 am- 3:45 pm
Monterey Marriott
350 Calle Principal
Monterey, CA 93940, US

To register for this event click [HERE!](#)



GET IN TOUCH!

IJD at LACBA

1055 W. 7th Street, Suite 2700
Los Angeles, CA 90017

213-896-6429
www.lacba.org/ijdp

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Want to change how you receive these emails?
You can [update your preferences](#) or [unsubscribe](#) from this list.

EXHIBIT 11

INDEPENDENT JUVENILE DEFENDER PROGRAM

LOS ANGELES COUNTY BAR ASSOCIATION

Client and Family Resources

Parents play an important role in the juvenile justice system, acting as both caregivers and advocates for their children. Here are a few online resources to help families stay informed and provide their juveniles with much-needed support.

Demystifying the Court Process

The California Courts provide this guide to the Juvenile Justice System.

<http://www.courts.ca.gov/1216.htm>

Direct Juvenile Advocacy

Loyola Law School offers a variety of free clinics that will help represent you in court. These clinics include the Juvenile Justice and Fair Sentencing Clinic, the Juvenile Justice Clinic, and the Youth Justice Information Clinic.

<http://www.lls.edu/academics/experientiallearning/clinics/clinics/>

Family, Probation, and Re-entry Services

The **Institute for Multicultural Counseling & Education Services** provides wraparound services for probation youth and their families. Their team model helps bring families together by offering separate supports for the parents and youth.

<http://www.imces.org/children-family-services>

The **CASASTART program** offers support and a safe space for children outside of regular school hours; the program aims to provide children with all the tools they need to succeed. All programs are composed of eight core services: social support, family services, education services (i.e., tutoring/homework assistance), out-of-school/summer activities, mentoring, morale-building incentives, community policing and juvenile justice intervention. Each child enrolled in CASASTARTSM receives an individual service plan featuring all of these eight core services. Each student has a case manager who meets with him/her several times a week. Case managers also meet with students' families at least once a month and make regular home visits to address the family context and see what additional services may be needed.

http://www.bscc.ca.gov/s_cppebpromisingcasastart.php

A Better LA funds several programs focused on youth employment, educational opportunities, counseling, re-entry adaptation, gang intervention, and more.

<http://www.abetterla.org/programs/>

CLE



Training with CLE



Tools and Documents



Indigent Criminal Defense Appointments



Independent Juvenile Defender Program



Who We Are

IJDP Events

Juvenile Justice in the News

Panel Attorneys

Client and Family Resources

Court Locations

Trip Planner

How to Help Your Child

IJDP Resources

Apply to Join IJDP

Contact IJDP

CLE Store



The Juvenile Law Center sponsors a program called **Juveniles for Justice**, which empowers juveniles by offering them the chance to become Youth Advocates. The role of a Youth Advocate is to try to effect change in the system that they were once a part of. The 2015-2016 team advocated for a higher education plan, which would support juveniles in planning and attending college.

<http://jlc.org/j4j>

Employment Opportunities

Archdiocesan Youth Employment Services (AYE) is a faith-based organization that empowers youth through training and employment services.

<http://www.ayela.org/youth-services/>

Funded by the United States Department of Labor, the **Urban Youth Empowerment Program (UYEP)** engages at-risk and adjudicated youth for entry into the workforce through a comprehensive set of services, including case management, restorative justice, education, mentoring, internships, on-the-job training, housing assistance, and legal advice.

<http://www.iamempowered.com/programs/urban-youth-empowerment-program>

For Foster and Out-of-Home Youth

Similar to their Juveniles for Justice program, **Youth Fostering Change** is a JLC youth engagement program, which offers youth who are currently or formerly involved in the child welfare system the opportunity to evaluate the system and develop and implement a campaign that works toward reform.

<http://jlc.org/yfc>

Multi-Dimensional Treatment Foster Care (MTFC) is an alternative to group home treatment or State facilities for youth who have been removed from the home due to substance use and/or involvement in the juvenile justice system.

<http://www.ncjfcj.org/multi-dimensional-treatment-foster-care-mtfc>

Continuing Your Education

The **LAUSD Juvenile Hall/ Camp Returnee Program** recognizes the obstacles that juveniles face when returning home after being detained and facilitates the back to school process for juvenile offenders. This brochure provides an overview of this program's mission and support services as well as contact information for aftercare counselors who will help guide you/ your child during the camp to school transition.

<https://www.lacba.org/docs/default-source/ijdp-documents/jh-camp-returnee-brochure.pdf>

SEA Charter High School currently operates seventeen education centers, which provide youth and families an alternative education model. This personalized educational program enables high-risk individuals to earn their high school diploma.

<http://seacharter.businesscatalyst.com/about/sea-at-a-glance.html>

Gang Intervention

Gang Intervention & Prevention Programs in the Los Angeles Metropolitan Area

<http://www.streetgangs.com/resources/programs#sthash.gpPAptAC.dpbs>

The **Gryd Foundation** offers family-oriented events that aim to deter youth away from gang related activities. They also offer tattoo removal and anonymous gun buyback programs.

<http://grydfoundation.org/>

A Better LA funds several programs specifically aimed at gang prevention and intervention.

<http://www.abetterla.org/programs/>

EXHIBIT 12

IJD MCLE Summer Training Seminar I

Utilization of IJD Human Capital, Immigration Law and Juvenile Dependency

Saturday, June 24, 2017

9 AM-12 PM

LACBA Offices

1055 W. 7th Street, Suite 2700

Los Angeles, CA 90017

IJD staff will address scenarios in which it would be appropriate and necessary to employ the IJD Resource Attorney, Writs and Appeals Attorney, or Social Worker, with special emphasis on referral procedures, services provided, and ethical considerations. Our speakers will cover a range of topics on the subject of juvenile justice, including issues of immigration as they apply to juveniles and understanding juvenile dependency records.

Speakers:

Markéta Sims, Writs and Appeals Attorney, IJD

Erik Rodstrom, Resource Attorney, IJD

Dr. Angela Zartuche, Social Worker, IJD

Graciela A. Martinez, Los Angeles County Public Defender, Immigration Law Unit

Albert Camacho, Los Angeles County Public Defender, Immigration Law Unit

Barbara Duey, Attorney Supervisor and Crossover Director, Children's Law Center of Los Angeles

CLE Credit:

2 hours of General CLE Credit

1 hour of Ethics Credit

Pricing:

Pre-Registration

General-\$80

LACBA Member-\$60

IJD Panel Member-\$50

APD/PD-\$50

Walk-in Registration

General-\$95

LACBA Member-\$75

IJD Panel Member-\$65

APD/PD-\$65



IJD Presents the Trial Lawyer's College

The Trial Lawyer's College Action Method for Discovering Your Client's Story

Saturday, August 26, 2017
10:00 AM -2:00 PM
LACBA Offices
1055 W. 7th Street, Suite 2700
Los Angeles, CA 90017

Please join us for an IJD exclusive training from the Gerry Spence Trial Lawyer's College. These trainings are rarely offered outside of Spence's ranch in Montana. This training will be dedicated to the Trial Lawyer's College methods of preparing criminal cases and be hosted by the organization's Vice President, Milton Grimes and Deputy Federal Public Defender Kim Savo. For more information, please visit www.triallawyerscollege.org.

*A note from our presenters—if you plan to attend, please have in mind a case to work on that you “know well.” You do not need to bring any materials with you or take notes, but you need to be familiar with the discovery.

Speakers:

Kim Savo, Deputy Federal Public Defender

Milton Grimes, Vice President, Trial Lawyer's College

CLE Credit:

4 hours of General CLE Credit

Pricing:

Pre-Registration

General-\$80

LACBA Member-\$70

IJD Panel Member-\$65

APD/PD-\$65



IJD Presents:

The Nuts and Bolts of Experts, With an Emphasis on Transfer

Saturday, October 7, 2017

9:00 AM –12:15 PM

LACBA Offices

1055 W. 7th Street, Suite 2700

Los Angeles, CA 90017

Please join us for a practical, hands-on training featuring a presentation on the effective use of experts by Los Angeles County Public Defender and Forensic Science Coordinator, Jennifer Friedman. After, Los Angeles Juvenile Experts Rourke F. Stacy and Maureen Pacheco will hold a panel style session honing in on transfer specific issues related to the use of experts.

Speakers:

Jennifer Friedman, Los Angeles County Public Defender

Rourke F. Stacy, Trainer, Juvenile Division, Los Angeles County Public Defender

Maureen Pacheco, Los Angeles County Alternate Public Defender

CLE Credit:

3 hours of General CLE Credit

Pricing:

Pre-Registration

IJD Panel Member-\$50

APD/PD-\$50

Walk-in Registration

IJD Panel Member-\$65

APD/PD-\$65

Registration:

Please note that registration for this event is exclusive to attorneys on the IJD Panel, Public Defenders and Alternate Public Defenders. Please identify your affiliation when you call.

