West's Annotated California Codes
Welfare and Institutions Code (Refs & Annos)
Division 2. Children
Part 1. Delinquents and Wards of the Juvenile Court
Chapter 2. Juvenile Court Law (Refs & Annos)
Article 3. Probation Commission (Refs & Annos)

West's Ann.Cal.Welf. & Inst.Code § 241.1

§ 241.1. Minor who appears to be dependent child and ward of court; initial determination of status; dual status children; creation of protocol; modification of jurisdiction

Effective: January 1, 2015
Currentness

(a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(b)(1) The probation department and the child welfare services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the development of recommendations by these departments for consideration by the juvenile court.

(2) These protocols shall require, but not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies that have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child welfare services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which filing a new petition is required to change the minor's status.

(3)(A) These protocols may also require immediate notification of the child welfare services department and the minor's dependency attorney upon referral of a dependent minor to probation, procedures for release to, and placement by, the child welfare services department pending resolution of the determination pursuant to this section, timelines for dependents in secure custody to ensure timely resolution of the determination pursuant to this section for detained dependents, and nondiscrimination provisions to ensure that dependents are provided with any option that would otherwise be available to a nondependent minor.

(B) If the alleged conduct that appears to bring a dependent minor within the description of Section 601 or 602 occurs in, or under the supervision of, a foster home, group home, or other licensed facility that provides residential care for minors,

the county probation department and the child welfare services department may consider whether the alleged conduct was within the scope of behaviors to be managed or treated by the foster home or facility, as identified in the minor's case plan, needs and services plan, placement agreement, facility plan of operation, or facility emergency intervention plan, in determining which status will serve the best interests of the minor and the protection of society pursuant to subdivision (a).

(4) The protocols shall contain the following processes:

(A) A process for determining which agency and court shall supervise a child whose jurisdiction is modified from delinquency jurisdiction to dependency jurisdiction pursuant to paragraph (2) of subdivision (b) of Section 607.2 or subdivision (i) of Section 727.2.

(B) A process for determining which agency and court shall supervise a nonminor dependent under the transition jurisdiction of the juvenile court.

(C) A process that specifically addresses the manner in which supervision responsibility is determined when a nonminor dependent becomes subject to adult probation supervision.

(c) Whenever a minor who is under the jurisdiction of the juvenile court of a county pursuant to Section 300, 601, or 602 is alleged to come within the description of Section 300, 601, or 602 by another county, the county probation department or child welfare services department in the county that has jurisdiction under Section 300, 601, or 602 and the county probation department or child welfare services department of the county alleging the minor to be within one of those sections shall initially determine which status will best serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court in which the petition is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. In making their recommendation to the juvenile court, the departments shall conduct an assessment consistent with the requirements of subdivision (b). Any other juvenile court having jurisdiction over the minor shall receive notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(d) Except as provided in subdivision (e), this section shall not authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.

(e) Notwithstanding subdivision (d), the probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county may create a jointly written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court. This protocol shall be signed by the chief probation officer, the director of the county social services agency, and the presiding judge of the juvenile court prior to its implementation. A juvenile court shall not order that a child is simultaneously a dependent child and a ward of the court pursuant to this subdivision unless and until the required protocol has been created and entered into. This protocol shall include all of the following:

(1) A description of the process to be used to determine whether the child is eligible to be designated as a dual status child.

(2) A description of the procedure by which the probation department and the child welfare services department will assess the necessity for dual status for specified children and the process to make joint recommendations for the court's consideration prior to making a determination under this section. These recommendations shall ensure a seamless transition from wardship to dependency jurisdiction, as appropriate, so that services to the child are not disrupted upon termination of the wardship.

(3) A provision for ensuring communication between the judges who hear petitions concerning children for whom dependency jurisdiction has been suspended while they are within the jurisdiction of the juvenile court pursuant to Section 601 or 602. A judge may communicate by providing a copy of any reports filed pursuant to Section 727.2 concerning a ward to a court that has jurisdiction over dependency proceedings concerning the child.

(4) A plan to collect data in order to evaluate the protocol pursuant to Section 241.2.

(5) Counties that exercise the option provided for in this subdivision shall adopt either an "on-hold" system as described in subparagraph (A) or a "lead court/lead agency" system as described in subparagraph (B). There shall not be any simultaneous or duplicative case management or services provided by both the county probation department and the child welfare services department. It is the intent of the Legislature that judges, in cases in which more than one judge is involved, shall not issue conflicting orders.

(A) In counties in which an on-hold system is adopted, the dependency jurisdiction shall be suspended or put on hold while the child is subject to jurisdiction as a ward of the court. When it appears that termination of the court's jurisdiction, as established pursuant to Section 601 or 602, is likely and that reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and the child welfare services department shall jointly assess and produce a recommendation for the court regarding whether the court's dependency jurisdiction shall be resumed.

(B) In counties in which a lead court/lead agency system is adopted, the protocol shall include a method for identifying which court or agency will be the lead court/lead agency. That court or agency shall be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.

(f) Whenever the court determines pursuant to this section or Section 607.2 or 727.2 that it is necessary to modify the court's jurisdiction over a dependent or ward who was removed from his or her parent or guardian and placed in foster care, the court shall ensure that all of the following conditions are met:

(1) The petition under which jurisdiction was taken at the time the dependent or ward was originally removed is not dismissed until the new petition has been sustained.

(2) The order modifying the court's jurisdiction contains all of the following provisions:

(A) Reference to the original removal findings and a statement that findings that continuation in the home is contrary to the child's welfare, and that reasonable efforts were made to prevent removal, remain in effect.

(B) A statement that the child continues to be removed from the parent or guardian from whom the child was removed under the original petition.

(C) Identification of the agency that is responsible for placement and care of the child based upon the modification of jurisdiction.

Credits

(Added by Stats.1989, c. 1441, § 1. Amended by Stats.1998, c. 390 (S.B.2017), § 2; Stats.2001, c. 830 (S.B.940), § 3; Stats.2004, c. 468 (A.B.129), § 1; Stats.2006, c. 538 (S.B.1852), § 684; Stats.2006, c. 901 (S.B.1422), § 13; Stats.2009, c. 140 (A.B.1164), § 186; Stats.2010, c. 559 (A.B.12), § 5.5; Stats.2011, c. 459 (A.B.212), § 5, eff. Oct. 4, 2011; Stats.2014, c. 760 (A.B.388), § 4, eff. Jan. 1, 2015.)

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West's Ann. Cal. Welf. & Inst. Code § 241.1, CA WEL & INST § 241.1
Current with urgency legislation through Ch. 859 of 2017 Reg.Sess

End of Document

California Rules of Court

Rule 5.512. Joint assessment procedure

(a) Joint assessment requirement (§ 241.1)

Whenever a child appears to come within the description of section 300 and either section 601 or section 602, the responsible child welfare and probation departments must conduct a joint assessment to determine which status will serve the best interest of the child and the protection of society.

(1) The assessment must be completed as soon as possible after the child comes to the attention of either department.

(2) Whenever possible, the determination of status must be made before any petition concerning the child is filed.

(3) The assessment report need not be prepared before the petition is filed but must be provided to the court for the hearing as stated in (e).

(4) If a petition has been filed, on the request of the child, parent, guardian, or counsel, or on the court's own motion, the court may set a hearing for a determination under section 241.1 and order that the joint assessment report be made available as required in (f).

(Subd (a) amended effective January 1, 2007.)

(b) Proceedings in same county

If the petition alleging jurisdiction is filed in a county in which the child is already a dependent or ward, the child welfare and probation departments in that county must assess the child under a jointly developed written protocol and prepare a joint assessment report to be filed in that county.

(Subd (b) amended effective January 1, 2007.)

(c) Proceedings in different counties

If the petition alleging jurisdiction is filed in one county and the child is already a dependent or ward in another county, a joint assessment must be conducted by the responsible departments of each county. If the departments cannot agree on which will prepare the joint assessment report, then the department in the county where the petition is to be filed must prepare the joint assessment report.

(1) The joint assessment report must contain the recommendations and reasoning of both the child welfare and the probation departments.

(2) The report must be filed at least 5 calendar days before the hearing on the joint assessment in the county where the second petition alleging jurisdictional facts under sections 300, 601, or 602 has been filed.

(Subd (c) amended effective January 1, 2007.)

(d) Joint assessment report

The joint assessment report must contain the joint recommendation of the probation and child welfare departments if they agree on the status that will serve the best interest of the child and the protection of society, or the separate recommendation of each department if they do not agree. The report must also include:

(1) A description of the nature of the referral;

(2) The age of the child;

(3) The history of any physical, sexual, or emotional abuse of the child;

(4) The prior record of the child's parents for abuse of this or any other child;

(5) The prior record of the child for out-of-control or delinquent behavior;

(6) The parents' cooperation with the child's school;

(7) The child's functioning at school;

(8) The nature of the child's home environment;

(9) The history of involvement of any agencies or professionals with the child and his or her family;

(10) Any services or community agencies that are available to assist the child and his or her family;

(11) A statement by any counsel currently representing the child; and

(12) A statement by any CASA volunteer currently appointed for the child.

(Subd (d) amended effective January 1, 2007.)

(e) Hearing on joint assessment

If the child is detained, the hearing on the joint assessment report must occur as soon as possible after or concurrent with the detention hearing, but no later than 15 court days after the order of detention and before the jurisdictional hearing. If the child is not detained, the hearing on the joint assessment must occur before the jurisdictional hearing and within 30 days of the date of the petition. The juvenile court must conduct the hearing and determine which type of jurisdiction over the child best meets the child's unique circumstances.

(Subd (e) amended effective January 1, 2007.)

(f) Notice and participation

At least 5 calendar days before the hearing, notice of the hearing and copies of the joint assessment report must be provided to the child, the child's parent or guardian, all attorneys of record, any CASA volunteer, and any other juvenile court having jurisdiction over the child. The notice must be directed to the judicial officer or department that will conduct the hearing.

(Subd (f) amended effective January 1, 2007.)

(g) Conduct of hearing

All parties and their attorneys must have an opportunity to be heard at the hearing. The court must make a determination regarding the appropriate status of the child and state its reasons on the record or in a written order.

(h) Notice of decision after hearing

Within 5 calendar days after the hearing, the clerk of the juvenile court must transmit the court's findings and orders to any other juvenile court with current jurisdiction over the child.

(i) Local protocols

On or before January 1, 2004, the probation and child welfare departments of each county must adopt a written protocol for the preparation of joint assessment reports, including procedures for resolution of disagreements between the probation and child welfare departments, and submit a copy to the Judicial Council.

Rule 5.512 amended and renumbered effective January 1, 2007; adopted as rule 1403.5 effective January 1, 2003.

6 Cal.App.5th 414
Court of Appeal,
Fourth District, Division 1, California.

IN RE J.S., a Person Coming
Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
J.S., Defendant and Appellant.
San Diego County Health and Human
Services Agency, Plaintiff and Respondent,
v.
J.S., Defendant and Appellant.

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Filed 12/5/2016

Synopsis

Background: The Superior Court, San Diego County, No. SJ13146, Carolyn M. Caietti, J., sustained wardship petition alleging that minor committed vandalism and used force and violence against another minor, and declared the minor a "dual status" child as both a dependent and a ward of the court. Minor appealed.

Holdings: The Court of Appeal, Aaron, J., held that:

[1] juvenile court acted within its discretion by designating minor a "dual status" child, and

[2] juvenile court acted within its discretion in detaining minor in juvenile hall rather than releasing her to the county child welfare agency.

Affirmed.

APPEAL from a judgment of the Superior Court of San Diego County, Carolyn ****407** M. Caietti, Judge. Affirmed. (Super. Ct. No. J138205) (Super. Ct. No. SJ13146)

Attorneys and Law Firms

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Brendon W. Marshall, Deputy Attorneys General, for Plaintiff and Respondent the People (D070163).

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Lisa Maldonado, Deputy County Counsel, for Plaintiff and Respondent San Diego County Health and Human Services Agency (D070164).

Opinion

AARON, J.

[1] ***417** While J.S. was a dependent of the juvenile court, a delinquency petition was filed alleging that she committed vandalism and used force and violence against another minor. The juvenile court declared her a "dual status" child, making her both a dependent and a ward of the court. (Welf. & Inst. Code, § 241.1, subd. (e).) [1] On appeal, J.S. argues that: (1) the juvenile court erred by failing to dismiss the delinquency petition and declaring her a dual status youth, (2) the court erred by detaining her in juvenile hall pending placement in a residential treatment facility, and (3) she was prejudiced by being declared a ward. [2] We reject J.S.'s arguments and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In early 2015, J.S. was hospitalized multiple times because of suicide attempts and cutting herself. She was approximately 13 years old at the time. J.S. had been raped by her biological father when she was between the ages of six and nine, and suffered from sexual trauma, night terrors, feelings of detachment, difficulty falling asleep and staying asleep, and concentration problems. Since 2014, J.S.'s family had been referred to San Diego Child Protective Services 13 times based on allegations of physical abuse, emotional abuse, general neglect, and sexual abuse. In May 2015, the court ordered J.S. placed

in a group home. As a result of J.S.'s family's unwillingness and inability to care for her, J.S. became a dependent of the juvenile court in July 2015.

In January 2016, J.S.'s mother moved out of state. J.S. reported that she was sad without her family and wanted to be near them. That month, J.S. destroyed property at the school associated with her group home. She damaged computers, broke a door, and poured paint on the floor. J.S. had a history of discipline problems resulting from her defiant and disruptive behavior.

***418** In early February 2016, while at a psychiatric hospital, J.S. engaged in an altercation with another patient, 14-year-old Olivia G. J.S. pulled Olivia's hair and punched her in the face several times. The San Diego Police Department arrested J.S. and transported her to juvenile hall. A delinquency petition was filed alleging that J.S. unlawfully used force and violence on ****408** the person of Olivia in violation of Penal Code section 242, a misdemeanor.

At the time of the detention hearing, the San Diego County Probation Department (Probation Department) recommended that J.S. remain detained in juvenile hall because she posed a risk to herself and to the community as a result of her escalating violent behavior, history of substance abuse, and mental health needs. The court ordered that J.S. remain detained in juvenile hall and undergo a competency evaluation. The court further ordered the Probation Department and the Agency to meet and confer in order to determine whether the dependency or delinquency system would better serve J.S.'s needs.

Dr. Michael Stewart conducted a competency screening of J.S. He noted that she had a significant history of behavioral and emotional instability, relating in part to significant traumas she had suffered during her childhood, chronic family instability, and stress. Dr. Stewart concluded that J.S. had posttraumatic stress disorder and major depressive disorder with psychotic features, and that she abused cannabis. He further found that J.S. was competent to stand trial and that there was no indication that she posed an imminent danger to herself or others.

The Probation Department and the Agency met to discuss services and recommendations for J.S. After discussing the matter, they jointly recommended that it would be in J.S.'s best interests for her to continue to receive rehabilitative and mental health services through the Agency. This recommendation was based on J.S.'s age, her significant history of suicide attempts, her lack of criminal sophistication, and her lack of delinquency history. The agencies also recommended that the court dismiss the delinquency petition once J.S. was placed in a suitable dependency placement.

Shortly thereafter, in late February 2016, the San Diego County District Attorney amended the delinquency petition against J.S. to add allegations pertaining to the vandalism incident at J.S.'s school. The Probation Department requested a continuance of the delinquency proceedings to allow the agencies to discuss the new offense, because their prior recommendation was based solely on the battery charge. The juvenile court granted the request for a continuance and ordered the Agency and the Probation Department to meet and confer regarding whether J.S. should be designated a dual status youth.

***419** The Agency and the Probation Department met and conferred again to discuss J.S.'s services. This time, they recommended that J.S. be designated a dual status youth. Based on the nature of J.S.'s offenses, her troubled past, and her self-harming behavior, both agencies agreed that her mental health rehabilitative needs should be addressed by both agencies via dual jurisdiction services. The Agency sought placement for J.S. at Vista Del Mar, a residential treatment facility in Los Angeles, and was working diligently to move forward with that placement. The Probation Department and the Agency recommended that J.S. remain detained at juvenile hall until a placement was secured for her.

In March 2016, the court held a jurisdiction hearing. J.S. admitted the vandalism charge as a misdemeanor in exchange for dismissal of the battery charge. The court accepted J.S.'s admission, designated the vandalism charge a misdemeanor, and continued the matter for disposition.

At the disposition hearing, the Probation Department and the Agency both recommended designating J.S. a dual status youth because the dependency system alone had not been successful in rehabilitating ****409** her. J.S.'s counsel requested that the delinquency case be dismissed. The court refused to dismiss the delinquency case because of

concerns over J.S.'s safety, as well as the safety of others. The court adjudged J.S. a ward under section 602 and designated her a dual status youth under section 241.1, subdivision (e). The court ordered that the Agency serve as the lead agency and that the dependency court serve as the lead court in the matter.

J.S. volunteered to go to Vista Del Mar. The Agency informed the court that a bed at the facility would be available later that week and requested that the court approve the out-of-county placement and travel. The court granted the Agency's requests and ordered that J.S. be detained in juvenile hall until a bed became available at a residential treatment facility.

DISCUSSION

I

The Juvenile Court Acted Within Its Discretion in Designating J.S. a Dual Status Youth

[2] J.S. argues that the juvenile court abused its discretion by designating her a "dual status" child. She contends that the juvenile court should have dismissed the delinquency petition against her and designated her solely a dependent of the juvenile court. We reject these arguments.

***420** "In California, the juvenile court's jurisdiction over a minor can be invoked in two ways: (1) by a dependency petition (§ 300), which alleges the child's home is unfit due to parental abuse or neglect; or (2) by a delinquency petition, which accuses the child of either disobedience or truancy (§ 601) or the violation of a law that defines a crime (§ 602)." (*In re W.B.* (2012) 55 Cal.4th 30, 42, 144 Cal.Rptr.3d 843, 281 P.3d 906.) "The dependency and delinquency systems serve overlapping but slightly different aims.... Whereas the dependency system is geared toward protection of a child victimized by parental abuse or neglect, the delinquency system enforces accountability for the child's own wrongdoing, both to rehabilitate the child and to protect the public." (*Id.* at p. 46, 144 Cal.Rptr.3d 843, 281 P.3d 906.) "Although California juvenile courts address the needs of dependent and delinquent minors differently, some minors who come before the court seem to fall under *both* systems.... In general, however, California law prohibits a minor from simultaneously being declared a dependent child and a delinquent ward." (*Ibid.*)

"In 2004, the Legislature created a small exception to the ban on dual jurisdiction. Section 241.1, subdivision (e) allows a minor to be designated a 'dual status child,' and treated simultaneously under the court's dependency and delinquency jurisdiction, but only in accordance with a precise written protocol." (*In re W.B., supra*, 55 Cal.4th at pp. 46–47, 144 Cal.Rptr.3d 843, 281 P.3d 906.) The bill creating the exception was cosponsored by the Judicial Council of California and the Children's Law Center of Los Angeles to address the situation some children face when they are "caught between the dependency and delinquency juvenile justice systems" and "need the interventions of both [systems]." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 129 (2003-2004 Reg. Sess.) as amended Jan. 5, 2004.) The sponsors of the bill recognized that the existing ban on dual jurisdiction "inhibit[ed] the state's 'ability to address in a comprehensive and effective manner the multifaceted concerns and needs associated with these children.' " (Sen. Health & Human Services Com., Analysis of Assem. Bill No. 129 (2003-2004 Reg. Sess.) as amended March 8, 2004.) The sponsors noted that dual jurisdiction protocols would ensure that ****410** "the county and the court [would] have new flexibility and resources and tools to address the needs of the youths in question" and that the child welfare and probation agencies would not provide duplicative services. (*Ibid.*) San Diego County is one of 18 counties in the state that has established a written protocol "to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court." (§ 241.1, subd. (e); Protocol for Coordination Between County of San Diego's Probation Department and Health and Human Services Agency/Child Welfare Services in Crossover Youth Matters Before the Juvenile Court (July 2015) < http://www.courts.ca.gov/documents/san_diego_dual_status_protocol.pdf> [as of Dec. 2, ***421** 2016]; Assembly Bill 129 Protocols < http://www.courts.ca.gov/documents/ab_129_summaries_by_county.pdf> [as of Dec. 2, 2016].)

"Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare

services department shall ... initially determine which status will serve the best interests of the minor and the protection of society." (§ 241.1, subd. (a).) The county probation department and the child welfare services department recommend to the juvenile court whether the child should be a dependent child, ward of the court, or dual status child. (§ 241.1, subds. (a), (e).) "Once the recommendations of both departments are presented to the juvenile court, it remains for the court to 'determine which status is appropriate for the minor.' " (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1506, 171 Cal.Rptr.3d 519; § 241.1, subd. (a).)

We review the juvenile court's determination under section 241.1 regarding the designation applied to a child who qualifies as both a dependent and a ward of the court for abuse of discretion. (*In re M.V., supra*, 225 Cal.App.4th at p. 1506, 171 Cal.Rptr.3d 519.) " 'To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice.' [Citation.] ... [W]e will not lightly substitute our decision for that rendered by the juvenile court. Rather, we must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings where there is substantial evidence to support them." (*Id.* at pp. 1506–1507, 171 Cal.Rptr.3d 519.)

We conclude that the juvenile court did not abuse its discretion when it designated J.S. a dual status child. J.S. had been in the dependency system for more than a year before a delinquency petition was filed against her. During that time, she received extensive services, including ongoing therapy and placement in a group home where she received assistance with developing coping mechanisms. Despite the services that she received through the Agency as a dependent, J.S. continued to act out. She engaged in multiple physical altercations, including with a student at her school and individuals at the hospital, vandalized classrooms on at least two occasions, threatened a teacher, engaged in self-harming behavior, and exhibited suicidal behavior. It is thus clear that the services the Agency had provided to J.S. were not sufficient to address her complex rehabilitative needs and hold her accountable for her actions. Based on the record before us, the juvenile court could reasonably have concluded that J.S. would benefit from being a dual jurisdiction child. As a ward of the court, J.S. would be subject to ****411** probation conditions aimed at holding her accountable for her actions, including reporting to a probation officer, complying with a curfew and restrictions on ***422** travel, participating in counseling and education directed by the probation officer, paying restitution, and requiring her to participate in substance abuse treatment if directed by the probation officer.

We further conclude that the juvenile court did not abuse its discretion when it declined to dismiss the delinquency petition against J.S. The juvenile court may dismiss a delinquency petition "if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation." (§ 782.) In this case, the court found both that it would not serve the interests of justice to dismiss the petition and that J.S. needed further rehabilitation and treatment. These findings are supported by the evidence in the record. As we have detailed, services through the dependency system did not sufficiently address J.S.'s problems. She continued to engage in acts that were harmful to herself and others. In fact, her aggressive behavior escalated while she was receiving services through the dependency system. Thus, she required further rehabilitation and treatment.

Although it is clear that J.S. suffered serious trauma in the past and required significant mental health services, she also continued to engage in harmful, destructive behavior. As a result, she could also benefit from "the delinquency system[, which] enforces accountability for the child's own wrongdoing, both to rehabilitate the child and to protect the public." (*In re W.B., supra*, 55 Cal.4th at p. 46, 144 Cal.Rptr.3d 843, 281 P.3d 906.) Because J.S. continued to pose a threat to herself and the public, the court could have reasonably concluded that it would not serve the interests of justice to dismiss the delinquency petition.

Based on foregoing, we conclude that the juvenile court did not abuse its discretion by designating J.S. a dual status child and declining to dismiss the delinquency petition against her.

II

The Juvenile Court Acted Within Its Discretion in Detaining J.S. at Juvenile Hall

[3] J.S. argues that the juvenile court abused its discretion by detaining her at juvenile hall until a suitable placement became available. Specifically, she challenges her detention at juvenile hall after she was adjudicated a ward of the court. She argues that she should have been released to the Agency until a suitable placement was available. We reject J.S.'s argument.

[4] **[5]** "The statutory scheme governing juvenile delinquency is designed to give the court 'maximum flexibility to craft suitable orders aimed at rehabilitating the particular ward before it.' [Citation.] Flexibility is the hallmark of ***423** juvenile court law.... [Citation.] [T]he juvenile court has long enjoyed great discretion in the disposition of juvenile matters [citation]." (*In re Greg F.* (2012) 55 Cal.4th 393, 411, 146 Cal.Rptr.3d 272, 283 P.3d 1160.) Juvenile courts have broad discretion " ' "to impose conditions to foster rehabilitation and to protect public safety." ' " (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1152, 115 Cal.Rptr.3d 869.) "[T]he court [can] choose probation and/or various forms of custodial confinement in order to hold juveniles accountable for their behavior, and to protect the public. [Citation.] ... [T]he court [does not] necessarily abuse its discretion by ordering the most restrictive placement ****412** before other options have been tried." (*In re Eddie M.* (2003) 31 Cal.4th 480, 507, 3 Cal.Rptr.3d 119, 73 P.3d 1115; §§ 727, subd. (a)(1), 730, subd. (a) [if the minor is adjudged a ward of the court, the court can make any reasonable order for the custody of the minor, including placing the minor in juvenile hall].)

[6] **[7]** " 'An order of disposition, made by the juvenile court, may be reversed by the appellate court only upon a showing of an abuse of discretion....' [Citation.] It is not the responsibility of this court to determine what we believe would be the most appropriate placement for a minor. This is the duty of the trial court, whose determination we reverse only if it has acted beyond the scope of reason." (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1135, 15 Cal.Rptr.2d 882; see also *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395, 234 Cal.Rptr. 103.)

After the juvenile court adjudged J.S. a ward of the court, it continued her detention at juvenile hall until a bed became available at a residential treatment facility. We find no abuse of discretion in the juvenile court's order. J.S. had assaulted a student at her school and had engaged in three separate physical altercations during her hospitalization, including the incident in which she grabbed Olivia by the hair and punched her in the face six times. J.S. also caused significant property damage at her school and engaged in self-harming behavior. It was thus clear that J.S. posed a danger to herself and also to other persons and their property. On these facts, it was reasonable for the juvenile court to determine that J.S. should remain in juvenile hall until an appropriate residential treatment facility placement was available for her.

J.S. relies on *In re Bianca S.* (2015) 241 Cal.App.4th 1272, 1275, 194 Cal.Rptr.3d 404 to argue that the juvenile court cannot detain a minor in juvenile hall simply because the Agency does not have a suitable placement available for the minor at the time of the court's order. *Bianca S.* is not applicable in this case. In *Bianca S.*, the district attorney had filed delinquency petitions against two juvenile dependents, alleging they committed petty theft and vandalism. (*Id.* at p. 1274, 194 Cal.Rptr.3d 404.) The probation officer's detention ***424** report recommended detaining the minors in juvenile hall and suggested that alternative placements were unavailable. (*Id.* at pp. 1274–1275, 194 Cal.Rptr.3d 404.) The juvenile court ordered the minors detained in juvenile hall pending further hearing. (*Id.* at p. 1274, 194 Cal.Rptr.3d 404.) On review, this court concluded that detention at juvenile hall was inappropriate because there was no evidence of an "urgent necessity" for the detention, as required under sections 635 and 636. (*Bianca S.*, at pp. 1274–1275, 194 Cal.Rptr.3d 404.)

Bianca S. involved detention of minors at the detention phase of the case and was governed by sections 635 and 636, which require a showing of an "urgent necessity" for detention. In contrast, the case before us concerns J.S.'s detention at juvenile hall *after* she was adjudicated a ward of the court. As we explained, the juvenile court is afforded broad discretion and flexibility in crafting dispositional orders, including placement decisions. Based on the significant evidence in the record that J.S. posed a risk to herself and others, we conclude that the juvenile court did not act beyond the scope of reason when it decided to detain her in juvenile hall until a bed was available for her at Vista Del Mar or another residential treatment facility.

III

J.S. has not Shown That the Collateral Consequences of the Juvenile Court's Orders Warrant Reversal

J.S. argues that the juvenile court's orders adjudicating her a ward of the court, ****413** designating her a dual status child, and detaining her in juvenile hall after disposition should be reversed because the collateral consequences of those orders will prejudice her. Specifically, she contends that these orders may impact her in the areas of military service, obtaining a driver's license, employment, public benefits and housing. Further, she cites to research indicating that juvenile incarceration harms rather than rehabilitates minors.

J.S. has not cited to any legal authority to support her argument that the collateral consequences of the court's orders require reversal. In any event, although J.S. may suffer some collateral consequences as a result of her delinquency adjudication, the fact is that she engaged in wrongful conduct and poses a risk to herself and others. The juvenile court therefore had to craft orders aimed at both rehabilitating J.S. and protecting the public. (*In re Greg F., supra*, 55 Cal.4th at p. 411, 146 Cal.Rptr.3d 272, 283 P.3d 1160; *In re E.O., supra*, 188 Cal.App.4th at p. 1152, 115 Cal.Rptr.3d 869.) We find no abuse of discretion in the trial court's orders in this case because the court's orders were intended to enforce accountability for J.S.'s conduct, were aimed at providing her rehabilitative services, and were intended to protect the public. Accordingly, we reject J.S.'s argument that the potential collateral consequences of the juvenile court's orders require reversal.

***425** DISPOSITION

The judgment is affirmed.

WE CONCUR:

HUFFMAN, Acting P.J.

NARES, J.

All Citations

6 Cal.App.5th 414, 211 Cal.Rptr.3d 405, 16 Cal. Daily Op. Serv. 12,831, 2016 Daily Journal D.A.R. 11,988

Footnotes

1 Undesignated statutory references are to the Welfare and Institutions Code.

2 The San Diego County Health and Human Services Agency (Agency) did not initially file a respondent's brief in this matter. However, J.S. appealed in both her dependency and delinquency cases. Thus, the Agency (Agency) and the People are both proper respondents. By separate order, we consolidated the appeals for purposes of this opinion.

6 Cal.App.5th 1038
Court of Appeal,
Fourth District, Division 1, California.

IN RE RAY M., a Person Coming Under the Juvenile Court Law.
Imperial County Department of Social Services, Plaintiff and Respondent,
v.
Ray M., Appellant.
In re Ray M., a Person Coming Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
Ray M., Defendant and Appellant.

D070157
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D070174
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Filed 12/16/2016

Synopsis

Background: Juvenile appealed orders of the Superior Court, Imperial County, Nos. JJP02715, JJL26173, William Derek Quan and Juan Ulloa, JJ., declaring him a delinquent ward after a juvenile court in another county deemed him a ward, and not a dependent, without providing proper notice to his dependency attorney or to the Imperial County court. Juvenile appealed.

Holdings: The Court of Appeal, McConnell, P.J., held that:

[1] the failure of proper notice was not harmless error in dependency proceedings;

[2] juvenile court had authority to revisit juvenile's status as a delinquent ward or a dependent; and

[3] agency had a duty to make further inquiry regarding juvenile's possible Indian status under Indian Child Welfare Act (ICWA).

Reversed and remanded.

****798** CONSOLIDATED APPEALS from orders of the Superior Court of Imperial County, William Derek Quan, Judge and Juan Ulloa, Judge. Reversed and remanded with directions. (Super. Ct. Nos. JJP02715, JJL26173)

Attorneys and Law Firms

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant, a minor.

Katherine Turner, County Counsel, Haislip W. Hayes and Laura Berumen, Deputy County Counsel, for Plaintiff and Respondent Imperial County Department of Social Services (D070157).

Kamala D. Harris, Attorney General, Gerald Engler, Chief Assistant Attorney General, Julie L. Garland, Peter Quon, Jr. and Anthony Da Silva, Deputy Attorneys General, for Plaintiff and Respondent the People (D070174).

Opinion

McCONNELL, P.J.

***1041** Ray M. appeals orders of the Imperial County juvenile court denying his motion to conduct a new assessment under Welfare and Institutions Code section 241.1 [1] and declaring him a delinquent ward under section 602. Ray filed his motion after the Kern County juvenile court determined he should be deemed a ward, and not a dependent, without providing notice to his dependency attorney or to the Imperial County court as required by section 241.1 and California Rules of Court, rule 5.512. [2] Ray also contends, and the Imperial County Department of Social Services (Department) concedes, that the juvenile court erred at the outset of the dependency by failing to provide notice as required by the Indian Child Welfare Act (ICWA) ****799** (25 U.S.C. § 1901 et seq.). We agree with Ray that because the Kern County juvenile court did not comply with the notice requirements set forth in section 241.1 and rule 5.512, the Imperial County juvenile court had the authority to revisit the Kern County court's assessment under section 241.1. Accordingly, we reverse the orders and remand the case for the juvenile court assigned to hear Ray's dependency matter to conduct a new assessment under section 241.1 and, if Ray is deemed a dependent, to comply with the notice provisions of ICWA.

FACTUAL AND PROCEDURAL BACKGROUND

Ray, his older brother David M., and their two younger half-siblings were removed from the custody of their mother, Teresa P., in November 2012, after she was arrested for disturbing the peace and child endangerment. The police were called by neighbors because of loud music coming from the home during the early hours of the morning. When the police arrived, they found ***1042** Teresa intoxicated and belligerent. The home was filled with trash and the social workers called to the scene described it as deplorable. Teresa was arrested and the four minors were taken into protective custody.

The Department filed petitions under section 300 on behalf of Ray and David, alleging they were at substantial risk of suffering serious physical harm or illness as a result of Teresa's inability to protect them.[3] At the time, Ray was 12 years old and David was 15. Teresa had a long history of involvement with the Department related to allegations of neglect and also had several prior criminal convictions. Teresa had participated in a voluntary family maintenance case with the Department from August 2011 to August 2012, and during that time received mental health counseling and substance abuse services. After the minors were taken into custody, however, Teresa became completely uncooperative with the Department.

At the detention hearing, the juvenile court found the Department had made a prima facie showing that Ray and David were minors described under section 300 and ordered them detained. After being taken into protective custody Ray and David both tested positive for methamphetamine and the Department amended the petitions to include the positive drug tests. At a hearing on the amended petition the following month, the court again found the Department had made a prima facie showing that the minors were described by section 300. At the hearing, the minors' father made his first appearance. He requested placement of the minors and also stated he might have Cherokee heritage. By January, however, he lost contact with the Department and failed to return numerous telephone calls from the family's social workers.

Before the contested jurisdiction and disposition hearing in February 2013, Ray and David were placed in separate foster homes. The Court Appointed Special Advocate (CASA) for the minors reported that Ray disclosed to her that Teresa had subjected him to severe physical abuse. At the hearing, the court declared Ray and David dependents and removed them from parental custody. The court ordered reunification for both parents and continued the minors' foster placements. The following month, Ray and David's maternal uncle, ****800** Omar P. and his wife, Bianca P., who resided in Arizona, requested placement of the minors. The Department requested and received an order from the juvenile court for an evaluation of Omar and Bianca's home under the Interstate Compact for the Placement of Children (ICPC) (Fam. Code, § 7900 et seq.). Ray and David were placed with Omar and Bianca in Arizona the following June.

***1043** For the six-month review hearing, the Department reported that Teresa had failed to participate in any reunification services. The Department requested that services be terminated before the 12-month review hearing and that the court set a permanency planning hearing under section 366.26. The social worker assigned to the case stated Teresa wanted to regain custody of the minors, but steadfastly refused to cooperate with the Department or to visit with Ray and David under the Department's supervision. Ray had started attending therapy on a weekly basis and had disclosed further details about the physical abuse he and his siblings had suffered while in Teresa's care. Ray told the therapist that Teresa beat them with belts, pipes, wires, and burned them with metal utensils. At the time of the six-month review hearing, Ray and David were both doing poorly in school, and Ray had been suspended from school several times for fighting.

The minors' counsel joined in the Department's request to terminate reunification services and set a permanency planning hearing. After a contested hearing in August 2013, the juvenile court terminated both parents' services and set a permanency planning hearing for December 2013. Thereafter, Ray continued to struggle academically and with anger issues. He was diagnosed with attention deficient and hyperactivity disorder and prescribed medication. In its report for the permanency planning hearing, the Department stated that Omar and Bianca, who remained the minors' caretakers, loved them and wanted to continue to care for them, but were not willing to consider adoption because of the financial commitment it entailed. The Department also reported that the ICPC request for a foster care license had been closed because Omar and Bianca had not provided requested documentation. At the permanency planning hearing,

the juvenile court ordered the minors to continue their placement with Omar and Bianca, and set a subsequent review hearing under section 366.3.

Before the next hearing, Omar and Bianca notified the Department that they were no longer willing to continue to care for Ray and David because they required constant supervision and were impacting their ability to care for their own two children. In February 2014, the minors were placed in a group home in San Diego, California. Once at the group home, Ray began experimenting with drugs and alcohol, engaged in aggressive behavior toward David, and also fell in with other residents who were affiliated with a local gang. As a result, in June 2014, Ray was moved to another group home in nearby La Mesa. There, however, Ray continued to use drugs, ran away several times and exhibited aggressive and disruptive behavior. After an episode in which Ray attacked another group home resident, he was moved again to a group home in Mentone, California in San Bernardino County.

While in Mentone, on December 19, 2014, Ray was arrested for robbing a convenience store with two other individuals. The San Bernardino County ***1044** District Attorney filed a petition alleging Ray was within the jurisdiction of the juvenile court under section 602. The matter was transferred to Imperial County. The probation department in Imperial County, with the ****801** agreement of the Department, submitted a report under section 241.1 recommending that Ray be designated a ward of the juvenile court under section 602, rather than a dependent under section 300. The report stated that Ray had been suspended from the middle school he was attending multiple times since his placement in Mentone, was failing all of his classes, admitted to regular drug and alcohol use, and was associating with gang members. In January 2015, the Department also submitted a proposal for Ray to remain a dependent but to enter an intensive, structured program in Michigan where he would receive individual and group therapy, alcohol and drug treatment, medication support and anger management services.

At the March 10, 2015 hearing on the section 241.1 assessment report to determine Ray's status, Ray's attorney, James Smith, argued he should remain a dependent. Smith asserted the Department had not adequately dealt with the underlying trauma Ray had suffered in Teresa's care. The juvenile court agreed. The court found Ray's interests were best served by remaining a dependent and being provided with additional services through the dependency system. The parties agreed at the hearing that the Department would pursue the placement in Michigan and start the ICPC process. Because of Ray's behavior, however, finding an immediate placement was difficult. Once released from juvenile hall, he was placed in another group home but then removed several days later after punching another resident. Thereafter, he was placed in another group home in San Diego.

In its report for a section 366.3 review hearing in July 2015, the Department indicated Ray's current placement was in jeopardy. Ray continued to act out aggressively. In August 2015, the Department again recommended that the court order Ray placed at the program in Michigan, and in September the juvenile court specifically ordered the Department to start the ICPC process for that placement.

The record is sparse from September 2015 to January 2016. Ray was eventually moved to the Tehachapi Mountain Boys Home in Kern County. Then, on January 21, 2016, he was arrested for brandishing a knife at another resident of the home. On January 25, 2016, the Kern County district attorney filed a petition on Ray's behalf alleging he was within the jurisdiction of the juvenile court under section 602. The following day, January 26, 2016, the Kern County juvenile court conducted a delinquency detention hearing. After appointing public defender Stephen J. Adelson as counsel for Ray, the court found detention was necessary and set a hearing for a joint assessment under section 241.1.

***1045** The following day, January 27, 2016, a review hearing under section 366.3 was scheduled in Ray's dependency case. At the hearing, the court noted it had not received a report from the Department for Ray. The Department requested a continuance and Ray's counsel, Smith, stated that he was "told by the social worker that Ray got into some trouble in Bakersfield" and that he knew things were "in flux" as a result and, therefore, he did not oppose a continuance. The court continued the hearing to February 22, 2016.

On February 2, 2016, a report titled "WIC 241.1 Joint Assessment Notification to the Court" and signed by a representative of the Kern County Probation Department was filed with the Kern County juvenile court recommending wardship for Ray. The report

stated that Ray's case "was reviewed and assessed by Joel Walton and Steven Webdell of the Kern County Probation Department and by Esther Martinez of the Imperial County Department ****802** of Children and Family Services." [4] The four-page report recounted Ray's arrest and contained a brief history of his dependency in Imperial County. The report also stated that Adelson was asked to provide input and recommended dependency. [5]

On February 5, 2016, the Kern County juvenile court conducted a hearing on the assessment report and found that proceeding under the delinquency provisions would best serve the interest of Ray and the protection of society. At the contested jurisdiction hearing on February 16, 2016, the Kern County juvenile court heard the testimony of the victim, a facility manager at the Tehachapi Mountain Boys Home, and Ray. At the conclusion of the hearing, the court found the allegations contained in the district attorney's petition true, then ordered the case transferred to Imperial County for disposition.

On February 18, 2016, the Department submitted a status review report to the Imperial County juvenile court in Ray's dependency proceeding stating that Ray had been arrested in Kern County and adjudged a ward of the court by the Kern County juvenile court. The report stated that Ray's delinquency matter in Kern County was pending transfer to Imperial County and that Ray would soon be transported from the Kern County juvenile hall to the Imperial County juvenile hall. The report stated that Ray was no longer eligible to be supervised under section 300 and recounted Ray's history of difficult behavior. The Department recommended the juvenile court issue an order terminating dependency jurisdiction and dismissing the proceeding.

***1046** At the continued February 22, 2016 review hearing in Ray's dependency proceeding, the Department's counsel stated the Department had been notified of Ray's delinquency matter in Kern County and had participated in the joint assessment report filed in that case. Department counsel also stated the section 241.1 hearing took place on February 5, 2016, and that the Department requested, but had not yet received, a copy of the minute order from that hearing. Smith alerted the court that notice of the determination made in Kern County under section 241.1 had not been provided to him as required by rule 5.512. The Imperial County juvenile court acknowledged the error, but posited that any issues with the section 241.1 hearing that occurred in Kern County needed to be addressed by that court and not it. On Smith's request, the court again continued the review hearing to March 14, 2016, to provide additional time to address the section 241.1 determination made in Kern County.

At the February 25, 2016 transfer-in hearing in Imperial County on Ray's delinquency petition, Ray's delinquency counsel objected to the transfer on the grounds that the section 241.1 protocol used in Kern County did not comply with the notice provision in rule 5.512(c). [6] The juvenile court overruled the objection and stated that the objection was best addressed either ****803** to the Kern County juvenile court or to the Court of Appeal. On March 8, 2016, the Imperial County juvenile court in the delinquency matter conducted a disposition hearing, declared Ray a ward of the court pursuant to section 602, and placed Ray in his maternal grandmother's home.

Prior to the disposition hearing in the Imperial County delinquency court, on March 4, 2016, Smith filed a "Motion To Reconsider or Redo Section 241.1 Hearing" in the dependency court. Smith argued the court should conduct a new section 241.1 hearing because notice had not been given to all of the required parties, including the Imperial County juvenile court itself, in the Kern County proceeding. Smith asserted the court had the authority under both section 385 and Code of Civil Procedure section 1008 to set aside the Kern County juvenile court's order.

At the March 14, 2016 hearing on Ray's motion, the Department's counsel stated his client's agreement with Ray's position that it was appropriate to rehear the section 241.1 determination. The juvenile court, however, did not agree that it had the authority to review the order of the Kern County juvenile court. Smith requested a one-week continuance to discuss the matter with Ray, which the court granted. Smith also stated that he had attempted to file a motion to reconsider in Kern County, but that the Kern County juvenile court ***1047** had rejected the motion on the grounds that the case had been transferred to Imperial County and it no longer had jurisdiction.

At the continued hearing on March 21, 2016, Ray's dependency counsel reiterated his position that the Imperial County juvenile court had the authority to revisit the delinquency determination made by the Kern County

court. The dependency court disagreed, again stating that it did not believe it had authority to address the errors made by the Kern County court. The juvenile court suggested instead that any relief to correct those errors would have to be obtained through an appeal. The court also suggested that the motion would have been better addressed to the juvenile court department assigned to the delinquency matter. At the conclusion of the hearing, the court denied Ray's motion to reconsider the section 241.1 determination and, on the recommendation of the Department in its February 18, 2016 report, terminated dependency jurisdiction.

On April 15, 2016, Ray filed notices of appeal for both the delinquency court's March 8, 2016 order declaring him a delinquent ward and placing him with his maternal grandmother, and the dependency's court's March 21, 2016 order denying his petition to reconsider the Kern County court's determination under section 241.1 and terminating dependency jurisdiction. [7]

DISCUSSION

I

Ray's central contention is that the Kern County juvenile court's failure to provide notice as required by section 241.1 and rule 5.512 requires reversal of the status determination made by that court to afford him the opportunity to be heard. [8]

****804 *1048** A

"A child who has been abused or neglected falls within the juvenile court's protective jurisdiction under section 300 as a 'dependent' child of the court. In contrast, a juvenile court may take jurisdiction over a minor as a 'ward' of the court under section 602 when the child engages in criminal behavior." (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1505, 171 Cal.Rptr.3d 519.) In cases where a child qualifies as both a dependent and a ward of the juvenile court, section 241.1 sets forth the procedure the juvenile court must follow to determine under which framework the case should proceed. Generally, the child cannot be both a dependent and a ward of the court. [9] (See § 241.1, subd. (d) ["Except as provided in subdivision (e), this section shall not authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court."]; *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1012, 87 Cal.Rptr.2d 84 (*Marcus G.*).)

Under section 241.1, subdivision (a), when it appears a minor fits the criteria for both dependency under section 300 and wardship under section 601 or 602, "the county probation department and the child welfare services department shall ... initially determine which status will serve the best interests of the minor and the protection of society." The provision calls for the recommendations of both departments to "be presented to the juvenile court with the petition that is filed on behalf of the minor" and for the court to "determine which status is appropriate for the minor." (Section 241.1, subd. (a).) The provision also states that "[a]ny other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments." (*Ibid.*) The notice must include "the name of the judge to whom, or the courtroom to which, the recommendations were presented." (*Ibid.*)

Subdivision (c) of section 241.1 addresses the situation presented here, when a minor under the jurisdiction of one county's juvenile court is later alleged to come under the jurisdiction of another county's juvenile court. The provision states: "Whenever a minor who is under the jurisdiction of the juvenile court of a county pursuant to Section 300, 601, or 602 is alleged to come within the description of Section 300, 601, or 602 *by another county*, the county probation department or child welfare services department in the ***1049** county that has jurisdiction under Section 300, 601, or 602 and the county probation department or child welfare services department of the county alleging the minor to ****805** be within one of those sections shall initially determine which status will best serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court in which the petition is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor.... *Any other juvenile court having jurisdiction over the minor shall receive notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments*. The notice shall include the name of the judge to whom, or the courtroom to which, the

recommendations were presented." [10] (§ 241.1, subd. (c), italics added.)

When a minor comes within the description of both a delinquent ward and a dependent, subdivision (b) of the statute requires the "probation department and the child welfare services department in each county [to] jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor ... and the development of recommendations by these departments for consideration by the juvenile court." The protocol must require the "consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies that have been involved with the minor and his or her family." [11] (§ 241.1, subd. (b)(2).)

The statutory mandate is "augmented by rule 5.512, which requires the joint assessment under section 241.1 to be memorialized in a written report." (*In re M.V., supra*, 225 Cal.App.4th at p. 1506, 171 Cal.Rptr.3d 519.) In addition to the eight factors set forth in section 241.1, subdivision (b)(2) that must be considered in any joint assessment, "rule 5.512 demands evaluation of four additional items: (1) the history of any physical, sexual, or emotional abuse of the child; (2) any services or community agencies available to assist the child and his or her family; (3) a statement by any counsel currently representing the minor; and (4) a statement by any court appointed special advocate (CASA) currently appointed for the child. (Rule 5.512(d).)" (*Ibid.*)

***1050** The augmenting rule also addresses who is responsible for preparing the assessment if the proceedings involve different counties. It states, "[i]f the petition alleging jurisdiction is filed in one county and the child is already a dependent or ward in another county, a joint assessment must be conducted by the responsible departments of each county. If the departments cannot agree on which will prepare the joint assessment report, then the department in the county where the petition is to be filed must prepare the joint assessment report." (Rule 5.512(c).) The same provision states that the "report must contain the recommendations and reasoning of both the child welfare and the probation departments" and "must be filed at least 5 calendar days ****806** before the hearing on the joint assessment in the county where the second petition alleging jurisdictional facts under sections 300, 601, or 602 has been filed." (*Ibid.*) Importantly here, the rule also requires that, "[a]t least 5 calendar days before the hearing [on the joint assessment], notice of the hearing and copies of the joint assessment report must be provided to the child, the child's parent or guardian, all attorneys of record, any CASA volunteer, and any other juvenile court having jurisdiction over the child." (Rule 5.512(f).)

With respect to the timing of the status determination required under section 241.1, the statute is silent. The rule, however, provides that the joint assessment "must be completed as soon as possible after the child comes to the attention of" the responsible child welfare and probation departments, and "[w]henever possible, the determination of status must be made before any petition concerning the child is filed." (Rule 5.512(a)(2).) Rule 5.512 also provides that if "the child is detained, the hearing on the joint assessment must occur as soon as possible after or concurrent with the detention hearing, but no later than 15 court days after the order of detention and before the jurisdictional hearing. If the child is not detained, the hearing on the joint assessment must occur before the jurisdictional hearing and within 30 days of the date of the petition." [12] (Rule 5.512(e).)

[1] **[2]** This court reviews a "juvenile court's determination under section 241.1 for abuse of discretion." (*In re M.V., supra,* 225 Cal.App.4th at p. 1506, 171 Cal.Rptr.3d 519.) " 'To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd ***1051** manner that resulted in a miscarriage of justice.' " (*Ibid.*) "A discretionary order that is based on the application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion, and is subject to reversal even though there may be substantial evidence to support that order." (*Mark T. v. Jamie Z.* (2011) 194 Cal.App.4th 1115, 1124–1125, 124 Cal.Rptr.3d 200.)

B

[3] The issue before us is whether the Imperial County juvenile court had the ability to remedy the Kern County juvenile court's failure to provide notice by revisiting

the section 241.1 assessment. The Department does not dispute that the Imperial County juvenile court and the parties' attorneys did not receive the notice required by section 241.1 and rule 5.512(f). Rather, the Department contends the error was harmless because: (1) "all *parties* were noticed of the hearing and the minor was represented by counsel"; (2) Ray's newly appointed delinquency attorney in Kern County was afforded the opportunity to weigh in and recommended continued dependency; and (3) because the joint assessment report prepared by the Kern County probation department with input from the Department provided "a relatively complete picture of the minor's history ****807** of abuse and the services being provided to him as a dependent...."

[4] These arguments are not persuasive. "In juvenile dependency litigation, due process focuses on the right to notice and the right to be heard." (*In re Matthew P.* (1999) 71 Cal.App.4th 841, 851, 84 Cal.Rptr.2d 269.) Rule 5.512(f) explicitly requires that at least five calendar days before a hearing under section 241.1 is conducted, both notice of the hearing and copies of the joint assessment report "must be provided to the child, the child's parents or guardian, *all attorneys of record*, any CASA volunteer, and any other juvenile court having jurisdiction over the child." (Rule 5.512(f), italics added.) Further, the rule requires that "[a]ll parties and their attorneys" be provided "an opportunity to be heard at the hearing." [13] (Rule 5.512(g).)

Ray's dependency attorney, and the dependency court in Imperial County, had familiarity with Ray's long history in the dependency system that the public defender assigned to Ray's delinquency case in Kern County, just 10 days before the assessment hearing, did not. If properly noticed, Ray's attorney could have provided additional information concerning Ray's background, including the physical abuse he suffered and the complicated status ***1052** of his ongoing dependency, that was not included in the joint assessment report submitted to the Kern County juvenile court. Because notice was not provided as required, Ray was effectively denied the opportunity to be heard on the issue of his status under section 241.1. This deficiency was not harmless; we cannot say beyond a reasonable doubt that the outcome of the status determination would not have been different with Ray's counsel participation. (*In re J.H.* (2007) 158 Cal.App.4th 174, 183, 70 Cal.Rptr.3d 1 [Errors in notice "are subject to the harmless beyond a reasonable doubt standard of prejudice."].)

C

[5] The Department next contends that even if the error was prejudicial, the Imperial County juvenile court correctly concluded it could not revisit the Kern County juvenile court's determination under section 241.1. Confusingly, the Department states that Ray's proper recourse was to challenge the Kern County court's status determination by filing an appeal from the subsequent dispositional hearing. Ray, however, did appeal from the dispositional order made by the delinquency court that accepted the case from Kern County, as well as from the order in the dependency court denying his request to revisit the section 241.1 hearing and dismissing the dependency matter. [14] These orders are appealable, and Ray's challenge to the earlier section 241.1 finding made by the Kern County juvenile court is properly reviewed on appeal from the orders. (See *In re Henry S.* (2006) 140 Cal.App.4th 248, 256, 44 Cal.Rptr.3d 418 [Juvenile court's finding treating minor "as a ward under section 600 was an interim order that affected his subsequent treatment by [the juvenile court]," which may be reviewed on appeal ****808** from the subsequent jurisdictional and dispositional judgment.].)

The Department asserts there is "no express statutory authority [or] case law to support [Ray's] assertion that the Imperial County juvenile courts had the authority to overturn Kern County[juvenile court's s]ection 241.1 determination." The Department also suggests Ray should have brought a section 388 petition asking the juvenile court in his dependency proceeding to revisit the status determination, but contradicts that statement by asserting there "is no indication that a Section 388 motion would allow the dependency court to set aside an order by a delinquency court." In his reply brief, Ray responds by stating that although the Imperial County juvenile court found it ***1053** "did not have the authority to police the Kern County courts," the department that accepted the transfer of the Kern County matter should have rejected the transfer until the Kern County court corrected the notice error.

The juvenile court's jurisdiction "is limited to hearing cases concerning delinquent and dependent children. The

Legislature has vested the juvenile court with the authority to fashion orders concerning the welfare of a dependent or a delinquent child. (§§ 19, 202, 245.5; see §§ 300.2, 350, subd. (a).) Within its limited jurisdiction, the authority of the juvenile court is extensive: 'In addition to all other powers granted by law, the juvenile court may direct all such orders to the parent, parents, or guardian of a minor who is subject to any proceedings under this chapter as the court deems necessary and proper for the best interests of or for the rehabilitation of the minor.' (§ 245.5.)" (*Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 111, 50 Cal.Rptr.3d 208 (*Nickolas F.*).) In addition, "[a]ll courts have inherent powers that enable them to carry out their duties and ensure the orderly administration of justice. The inherent powers of courts are derived from California Constitution, article VI, section 1, and are not dependent on statute." (*Id.* at p. 110, 50 Cal.Rptr.3d 208.)

Section 385, which governs modifications of orders in dependency proceedings, and section 775, which governs the same in delinquency matters, explicitly give the juvenile court the authority to modify prior orders. Those provisions both state: "Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article." [15] (§§ 385, 775.) This court's opinion in *Nickolas F.* is instructive. There, we held that a juvenile court had the authority to modify a prior order providing for reunification services for the father of a dependent minor without following the procedural requirements for a modification petition under section 388. (*Nickolas F., supra*, 144 Cal.App.4th at p. 116, 50 Cal.Rptr.3d 208.)

The appellant in *Nickolas F.* argued that section 385's language "subject to such procedural requirements as are imposed by this article" limited reconsideration of a prior order to only situations ****809** where "a party or interested person ***1054** has filed a petition for modification pursuant to section 388." (*Nickolas F., supra*, 144 Cal.App.4th at p. 112, 50 Cal.Rptr.3d 208.) We rejected this assertion, noting "section 388 applies only when a *party* petitions the court for modification *based on new evidence or changed circumstances*" and holding the juvenile court has authority to reconsider previous orders in situations where section 388 does not apply. (*Id.* at pp. 113–114, 50 Cal.Rptr.3d 208, second italics added.) In rejecting the limitation advanced by the appellant, we stated such an interpretation "would significantly diminish the juvenile court's general authority to ensure the orderly administration of justice, and would undermine the court's statutory authority to direct such orders as the court 'deems necessary and proper for the best interests' of the [minor]." (*Id.* at pp. 114–115, 50 Cal.Rptr.3d 208.) Likewise, precluding the juvenile court from correcting the error here because it occurred in Kern County, and not in Imperial County, undermined the juvenile court's ability to ensure the orderly administration of justice in this case. [16]

The Department points to no countervailing legal authority, statutory or otherwise, to support its contention that the juvenile court was precluded from reconsidering the section 241.1 status determination. Instead, the Department contends three general policy considerations precluded the Imperial County juvenile court from revisiting the section 241.1 determination. First, it asserts that allowing the Imperial County juvenile court to review the Kern County court's determination for legal sufficiency would usurp the role of the Court of Appeal. Next, the Department argues that allowing a new section 241.1 hearing would create a situation where there would be conflicting orders as to the minor's status. Third, it argues allowing another hearing would result in unnecessary delay in the final disposition, which conflicts with the overriding policy of prompt resolution of both dependency and delinquency matters.

We recognize the importance of the general policy interests identified by the Department, but conclude they did not warrant approval of the error made in Kern County by the juvenile court in Imperial County. Indeed, allowing the juvenile court to correct this error, which was explicitly acknowledged by the Department, serves the policy of ensuring prompt resolution of juvenile cases by speeding the resolution of the case without the significant delay created by this appeal. (See, e.g., *Los Angeles County Dept. of Children and Family Services v. Superior Court* (2001) 87 Cal.App.4th 320, 326, 104 Cal.Rptr.2d 425 [recognizing the importance of resolving status determinations quickly].) Further, there is no risk of a conflicting order. The Imperial County juvenile court has the authority to revisit the section 241.1 assessment ***1055** and make the determination anew. If the Imperial County juvenile court reaches a different conclusion than the one reached by the Kern County juvenile court, it does so properly with the participation of Ray's dependency

counsel. Finally, we do not agree with the Department's criticism that allowing the Imperial County juvenile court to revisit the section 241.1 determination usurps the function of this court. To the contrary, allowing the juvenile court to revisit the prior order and ****810** remedy the acknowledged error promotes efficiency and prevents judicial waste.

Because of the procedural posture of Ray's delinquency case, which was transferred to Imperial County before Ray's dependency counsel was notified of the Kern County juvenile court's status determination, Ray's attempt to challenge the order in the Kern County juvenile court was rejected. As soon as Ray's counsel learned of the status determination, he raised the error in both the delinquency and dependency courts in Imperial County. In this unusual situation, we conclude the juvenile court had the authority both under the Welfare and Institutions Code and article VI, section 1 of the California Constitution to rectify the acknowledged error that occurred before the case was transferred to Imperial County. (*Nickolas F., supra,* 144 Cal.App.4th at p. 110, 50 Cal.Rptr.3d 208.) As discussed, we reject the Department's contention that the error made in Kern County was harmless, and conclude that because the notice provisions of section 241.1 and rule 5.512 were not followed, the Imperial County juvenile court was authorized to revisit the section 241.1 assessment to allow the participation of Ray's dependency counsel. For these reasons, the orders challenged by Ray in this appeal are reversed and the matter is remanded for the juvenile court assigned to Ray's dependency matter to conduct a new assessment under section 241.1.

II

[6] Ray also asserts the notification requirements of ICWA were not satisfied in his case. The juvenile court and social worker have an affirmative and continuing duty in all dependency proceedings to inquire whether a dependent child is, or may be, an Indian child. (§ 224.3, subd. (a).) The circumstances that may provide reason to know the child is an Indian child include when a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe, or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of the tribe. (*Id.* at subd. (b).) A social worker who knows or has reason to know that the child is an Indian child is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members, to gather the information required for notice. (*Id.* at subd. (c); *In re A.G.* (2012) 204 Cal.App.4th 1390, 1396–1397, 139 Cal.Rptr.3d 727.)

***1056** Ray asserts that ICWA's notice requirement was not met and that reversal to remedy that error is required. The record shows, and the Department concedes, that despite Ray's father's statement that he might have Cherokee heritage, the Department made no further inquiry regarding Ray's possible Indian status. As the Department concedes, remand is necessary to effect and document proper inquiry under ICWA. (*In re J.N.* (2006) 138 Cal.App.4th 450, 461–462, 41 Cal.Rptr.3d 494.) In the event that the juvenile court determines Ray's status should be that of a dependent, and not a delinquent ward, the juvenile court is directed to order the Department to conduct the requisite ICWA inquiry and to provide notice accordingly.

DISPOSITION

We reverse the juvenile court orders entered on March 8, 2016, declaring Ray a ward of the court, and on March 21, 2016, denying Ray's request to conduct an assessment under section 241.1 and terminating dependency jurisdiction. The case is remanded for the juvenile court assigned to Ray's dependency matter to conduct a ****811** hearing under section 241.1 with the participation of all parties and their counsel as required by section 241.1 and rule 5.512. If the juvenile court determines Ray's status should be as a dependent and not a ward, the court is also ordered to direct the Department to conduct an ICWA inquiry, to provide ICWA notice to the Cherokee tribe, and to otherwise proceed in conformance with ICWA.

WE CONCUR:

O'ROURKE, J.

IRION, J.

All Citations

6 Cal.App.5th 1038, 211 Cal.Rptr.3d 797, 16 Cal. Daily Op. Serv. 13,236, 2016 Daily Journal D.A.R. 12,415

Footnotes

1 Undesignated statutory references are to the Welfare and Institutions Code.

2 All rule references are to the California Rules of Court.

3 Shortly after their removal, Ray's half-siblings were placed with their father. Neither they nor David are the subject of this appeal.

4 The first page of the report also stated "Ray [M.] has been assessed by the Kern County Probation Department and the Kern County Department of Human Services."

5 The report contains no explanation of Adelson's recommendation, stating only Adelson "was asked to provide his input regarding whether he felt Dependency or Wardship was in the best interest of the minor. He felt it was in the minor's best interest to remain a dependent."

6 The transfer-in hearing was conducted by a different judicial officer, Honorable Juan Ulloa, than the judicial officer assigned to Ray's existing dependency proceeding, Honorable William D. Quan.

7 On Ray's motion before briefing, this court consolidated the appeals. After Ray filed his opening brief, it came to the court's attention that Ray had not served the Attorney General with the motion to consolidate. On our own motion, we vacated our earlier order consolidating the appeals. Because the legal issue raised by Ray is the same with respect to both challenged juvenile court orders, we ordered the cases consolidated again for purposes of this opinion.

8 Ray does not challenge, and therefore we do not reach, the Kern County juvenile court's true finding on the allegations in the petition filed by the District Attorney after his arrest there. Ray also does not, contrary to the assertions made by both the Attorney General and the Department, directly challenge the sufficiency of the evidence supporting the status determination made in Kern County. His argument focuses solely on that court's failure to provide the requisite notice, which prevented his counsel from participating in the assessment determination. We take no position on the sufficiency of the evidence to support the Kern County juvenile court's status determination.

9 "[U]nder certain statutorily enumerated circumstances, the probation department and the child welfare department of a county, in consultation with the presiding judge of the juvenile court, may create a written protocol permitting a child to be 'dual status'—that is, both a dependent child and a ward of the court. (§ 241.1, subd. (e); see Assem. Bill No. 129 (2003-2004 Reg. Sess.) § 1.)." (*In re M.V., supra*, 225 Cal.App.4th at p. 1506, fn. 3, 171 Cal.Rptr.3d 519.) There is no indication in the record that such a protocol has been adopted in Imperial County or Kern County and that dual status was a possibility for Ray.

10 In *Marcus G., supra*, 73 Cal.App.4th 1008, 87 Cal.Rptr.2d 84 the Court of Appeal construed the statute, which is arguably imprecise as to whether the joint assessment is filed in the first court to have jurisdiction or the second, to "mean that the assessment of which status would be appropriate for the minor is to accompany the *later petition*, i.e., the petition that creates the potential for dual jurisdiction." (*Id.* at p. 1013, 87 Cal.Rptr.2d 84.)

11 There is no indication in the record that Kern County has developed a specific protocol as contemplated by section 241.1.

12 Another court recently pointed out that the timeframes set forth in the rule for the section 241.1 assessment are problematic because they call for the status determination to occur before "a determination that the jurisdictional allegations supporting the alternate status are true." (*In re M.V., supra*, 225 Cal.App.4th at p. 1507, fn. 4, 171 Cal.Rptr.3d 519.) One commentator has noted that " '[s]ince the full nature of the delinquency allegations may not become clear until after they have been litigated and the juvenile court may or may not find those allegations true,' there may be 'substantial merit' to deferring the 241.1 determination until after the jurisdiction hearing in the appropriate case." (*Ibid.* quoting Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2013 ed.) § 1.11[3][b], p. 1-13.)

13 Subdivision (d)(11) of the rule also requires the assessment report to contain "a statement by *any* counsel currently representing the minor...." (Rule 5.512(d)(11).)

14 We note unnecessary confusion in this case was created by the assignment of the delinquency matter transferred from the Kern County juvenile court to a different judicial officer than the one already presiding over Ray's dependency proceeding. When a case that is appropriate for treatment under section 241.1 arises, if it is possible the judicial officer to whom the first proceeding is assigned should also preside over any subsequent juvenile proceeding occurring in the same county.

15 Section 262 provides additional authority for the modification of a prior order by a juvenile court. That provision states: "Upon motion of the minor or his or her parent or guardian for good cause, or upon his or her own motion, a judge of the juvenile court may set aside or modify any order of a juvenile hearing officer, or may order or himself or herself conduct a rehearing. If the minor or parent or guardian has made a motion that the judge set aside or modify the order or has applied for a rehearing, and the judge has not set aside or modified the order or ordered or conducted a rehearing within 10 days after the date of the order, the motion or application shall be deemed denied as of the expiration of that period." (§ 262.)

16 In cases like this, where a minor under the dependency jurisdiction of one county's juvenile court commits a crime in another county, the juvenile courts should communicate and work cooperatively to fulfil the requirements of section 241.1 and rule 5.512 in order to prevent errors like one that occurred here.