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PACIFIC JUVENILE DEFENDER CENTER

RECOGNIZING YOUTH IN PRACTICE: Juvenile Delinquency Defense

Beyond the Bench 24

San Diego, California

December 18, 2017

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HANDOUTS

Recognizing Youth in Practice: Juvenile Delinquency Defense
Beyond the Bench 24, San Diego, California (December 18, 2017)

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Introduction to Juvenile Law -- Philosophy and Overview of Court Process

INTRODUCTION TO JUVENILE DELINQUENCY TERMS AND CONCEPTS

Recognizing Youth in Practice: Juvenile Delinquency Defense Beyond the Bench 24, San Diego, California (December 18, 2017)

Because juvenile delinquency law is so different from adult criminal law practice, we created this handout to provide a quick overview of common terms and concepts in juvenile delinquency practice.

As contrasted with the adult criminal system, once a youth is adjudicated in the juvenile system they are referred to as "wards" of the court. If the youth is a "300[1] ward," this means they have been adjudicated in the dependency system and that the local Department of Children's Services is responsible for their care, custody and control. If the youth is a "602" or "601" ward, then s/he is in the delinquency system and under the care, custody and control of the probation department. These concepts will be more fully explained below.

LEGAL/COURT TERMS

AB12/Nonminor Dependent Status – These are benefits for youth who had foster care aid and/or placement orders (dependency and delinquency) on their 18th birthday, thus qualifying them for financial assistance until their 21st birthday. Note that "NMD" is a common acronym used for Nonminor Dependent. "AB 12" refers to the legislation that enacted these provisions.

Adjudication – The equivalent of trial in juvenile court. There is no statutory or constitutional right to a jury and the standard in delinquency court to sustain a petition is beyond a reasonable doubt. Some judges and courts also refer to this proceeding as a jurisdictional hearing.

Admission – This is the equivalent of a guilty plea in adult court.

Camp – This often refers to camps offered by the local probation department as a wardship disposition option. (Welf. & Inst. Code, § 880 et seq.)[2] Not every county offers camps. For purposes of time credits, camps are considered secure facilities. (§ 726.)

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[1] Number references throughout this document refer to the section of the Welfare and Institutions Code defining the relevant status, offense, procedure, etc.

[2] Statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

CBO – Community Based Organizations. Some of these organizations can provide after-school programs, counseling, home services, and in some cases residential treatment. The services offered by CBO's vary from county to county.

CDP/JEM/GPS (Juvenile Electronic Monitoring) — Some counties refer to juvenile electronic monitoring as "CDP" (Community Detention Program). Other countries use "JEM" (Juvenile Electronic Monitoring) or "GPS." A youth subjected to electronic monitoring must wear an ankle bracelet and must remain confined to the home except for school, court, and medical appointments as ordered by the court. Pre-adjudication, the proper term is "Home Supervision," pursuant to Welfare and Institutions Code section 628.1, but very few courts or judges use that term.

Crossover Youth – This refers to youth who were in the dependency system but have committed an offense which now places them in the delinquency system. Some courts also refer to these youth as "Dual Jurisdiction" youth.

Denial – This is equivalent of a "Not Guilty" plea in adult court.

Detention Report – This is a report completed by the probation department detailing the reasons they detained a youth pending his/her court appearance.

Developmental Immaturity – This is a concept used to describing the differences in multiple areas of functioning between adolescence and adulthood, including cognitive, behavioral, emotional, and social development. It may relate to competence, capacity to commit a crime and mens rea.

Direct File – Prior to the passage of Proposition 57, this term referred to the power of a prosecutor to file certain offenses directly in adult court. Proposition 57 eliminated district attorneys' this power, and cases now may be transferred to adult court only after a judicial hearing pursuant to Welfare and Institutions Code section 707.

Disposition – This is the juvenile court's equivalent of sentencing.

Disposition Report – In some counties the "social study" required for disposition is referred to as a disposition report; it is generated after adjudication/jurisdictional hearing.

DJF/DJJ/CYA - Division of Juvenile Facilities (DJF), sometimes referred to as Department of Juvenile Justice (DJJ), and formerly known as the California Youth Authority (CYA). This is "prison" for the youth of California, and the Division resides in the Department of Corrections and Rehabilitation. (§ 1710.)

Dual Jurisdiction – If the county is a dual jurisdiction county by virtue of having developed a protocol pursuant to section 241.1, dual status allows youth to be in both the dependency and delinquency systems at the same time.

Foster Care -- Residential care provided in any setting authorized by Welfare and Institutions Code, section 11402, including an approved relative's home, a licensed foster

home, a licensed group home, the home of a legal guardian, and a licensed transitional housing placement facility. (§§ 727.4(d)(1), 11402.) Extended Foster Care (EFC) provides an opportunity for young adults, in foster care at age 18, to voluntarily agree to continue receiving foster care services, including placement services, while the youth completes a secondary or postsecondary academic or vocational program, or participate in a program or activity designed to promote employment.

Gladys R. – Under Penal Code section 26, youth under the age 14 are presumed not to have the capacity to commit an offense. *Gladys R.* is a common term used by law enforcement and by juvenile court bench officers regarding this capacity issue.

HOP – Home on Probation. This means the youth has been declared a ward but has not been removed from the home.

ILP – Independent Living Program. -- The ILP provides training, services, and benefits to assist current and former foster youth in achieving self-sufficiency prior to, and after leaving, the foster care system. In California, each county has the flexibility to design services to meet a wide range of individual needs and circumstances, and to coordinate services with other Federal and State agencies engaged in similar activities.

Informal Probation (or 654) **–** This is a pre-plea diversion program pursuant to Welfare and Institutions Code section 654 under which a youth must abide by certain conditions for a six-month period and if he or she is successful, the petition is dismissed at the end of that period.

Inter-County Transfers – When a youth commits an offense in one county but lives in another, after adjudication the matter is often transferred to the county of residence for disposition.

Jurisdictional Hearing – See the definition of *Adjudication*.

JACI – Juvenile Adjudicative Competency Interview. This is an assessment tool used by psychologists and psychiatrists to determine the competency of youth to be adjudicated.

Level 14 Facility – This is a high level group home providing intensive psychiatric services for youth who have been identified as severely emotionally disturbed and who meet additional criteria. (§ 11462.01.) This placement category will be phased out as a result of AB 403 (Stats. 2015, ch.773), which substantially revised California's group home system, including the level system. When AB 403 is fully implemented, there will be a single licensing category to be known as Short Term Residential Treatment Centers (STRTC). These placements will offer an equivalent of level 14 care with a high emphasis on mental health treatment. Practitioners need to check the applicable code sections as all of this is in flux.

Non-Wardship Disposition (See §§ 654, 654.2, 725(a), 790) – Generally these are programs of informal probation for a designated amount of time. No formal declaration

of wardship has occurred. Each has its own rules for eligibility, terms and conditions, and procedures for failure to comply with terms and conditions.

OHP – Out-of-Home Placement, see definition of *Placement*.

Petition – This is the equivalent of a "complaint" in adult court. The petitions are generally filed by the local prosecuting agency. There are "detained petitions" meaning the youth is in custody at the time of filing. There are "non-detained" petitions meaning the youth has not been detained by the probation department pending filing of the case.

Placement/ Suitable Placement – This is when the court removes the youth from the home and places him/her in a designated group home or treatment facility pursuant to Welfare and Institutions Code section 726 et seq. (including foster care, group home, non-family placement, family placement in certain counties like Alameda.) This category of placement is normally considered non-secure for purposes of time credits.

PPR – This stands for Pre-Plea Report. This term is mainly used in Los Angeles County. It refers to the social study that must be completed by the probation department before the case can result in disposition. It is completed prior to adjudication.

Ranch – This refers to a wardship disposition available in some counties where youth are placed in a ranch. (§ 880.) Ranches are treated the same as camps in the Welfare and Institutions Code, and are considered secure for purposes of time credits. (§ 726.)

Sealing – Certain juvenile offenses are eligible for sealing, meaning the juvenile court and police records are destroyed and the youth can report that the arrest and case did not occur. Sealing laws have changed dramatically in the past several years, so it is important to go directly to the statutes (e.g., § 781) when trying to understand the rules.

SIJS – Special Immigrant Juvenile Status.

SILP – Supervised Independent Living Placement – The Supervised Independent Living Placement (SILP) is one of the placement options for youth participating in extended foster care. Of all placement options available, the SILP provides the least amount of support and supervision, and the highest amount of autonomy. The SILP is not a licensed placement, but one that is approved by a NMD's county social worker or probation officer.

Social Study – Before the court can go to disposition, the court must consider the "Social Study" prepared by the probation department. Some counties call this a disposition report, or PPR (Pre-Plea Report). Regardless of which term is used in your jurisdiction, the law requires the juvenile court to consider this study before disposition. (See § 706, et seq.)

Statistical Information – Some counties ask counsel at arraignment whether the information detailing the date of birth, address, parents, etc. is correct. Some counties refer to this information as the "Statistical Information" on the petition.

Sustained Petition/Petition is Not True – The terms "guilty" and "not guilty" are never used in juvenile court. If a youth who is alleged to have committed a crime and does not prevail, the court will "sustain" the petition. It is the equivalent of "guilty." Likewise should the youth prevail, the petition is found "not true."

THP + FC – THP-Plus Foster Care (THP+FC) is a licensed placement for youth, ages 18-21 who are participating in extended foster care made available by Assembly Bill 12. THP+FC is modeled after the original THP-Plus Program, and provides housing and comprehensive supportive services. THP+FC providers are certified by county departments of social services and licensed as Transitional Housing Placement Providers by the Community Care Licensing (CCL) Division of the California Department of Social Services.

TILCP – Transitional Independent Living Case Plan is the nonminor dependent's case plan, updated every six months, that describes the goals and objectives of how the nonminor will make progress in the transition to living independently and assume incremental responsibility for adult decision making, the collaborative efforts between the nonminor and the social worker, probation officer, or Indian tribe and the supportive services as described in the transitional independent living plan (TILP) to ensure active and meaningful participation in one or more of the eligibility criteria described in subdivision (b) of section 11403, the nonminor's appropriate supervised placement setting, and the nonminor's permanent plan for transition to living independently, which includes maintaining or obtaining permanent connections to caring and committed adults, as set forth in paragraph (16) of subdivision (f) of section 16501.1.

TILP –Transitional Independent Living Plan is the written unique, individualized service delivery plan for a child or nonminor mutually agreed upon by the child or nonminor and the social worker or probation officer that identifies the child's or nonminor's current level of functioning, emancipation goals, and the specific skills needed to prepare the child or nonminor to live independently upon leaving foster care.

Transfer – This relates to a motion filed by the prosecution when they want to prosecute a youth in adult court. The court will conduct a "Transfer Hearing" to determine whether the youth is amenable to continued juvenile court treatment when measured against statutory criteria in section 707.

Wardship – This is where the court formally places the youth in the juvenile system. The wardship declaration occurs at disposition. The result is that in delinquency court the youth is under the care, custody and control of the probation department, and the court

may make a variety of placement or probation orders and impose a series of additional conditions on the youth.

241.1 Report – This report is for youth who are in both the dependency and delinquency systems. The report must be a joint report of both agencies to determine the best disposition for the youth's case.

300 Ward – This refers to a youth who has had a formal declaration of wardship in dependency court and has been placed under the care, custody and control of the county department of child welfare.

601 Ward – This refers to a youth who has had a formal declaration of wardship for delinquency court either because the youth was a "habitual truant" or an "incorrigible." The term "incorrigible" means that the youth has been found to be habitually disobedient to the reasonable and proper orders of directions of parents and guardians, and is beyond the control of parents or guardians.

602 Ward – This status refers to the fact that the youth has had a formal declaration of wardship in delinquency court, and that the youth has had a sustained petition for a criminal offense.

707(b) Offense – This refers to a list of offenses under Welfare and Institutions Code section 707, subdivision (b). This list is important because it can be the basis for juvenile strikes, transfer motions, DJF eligible offenses, and whether an offense is sealable or not.

737/15 Day Reviews – After a court has fashioned a disposition necessitating removal from the home, the court sets 15 day reviews pursuant to section 737, to ensure that the youth is placed at his or her new location in a timely manner.

JUVENILE SPECIFIC MOTIONS

The following list includes the most common motions utilized in the juvenile court. Each motion is referred to by the relevant section of the Welfare and Institutions Code.

682 – This section provides for a motion to continue, the equivalent of a Penal Code section 1050 motion.

700.1 – This section provides for a motion to suppress, equivalent to a Penal Code section 1538.5 motion.

701.1 – This section provides for a motion to dismiss, the equivalent of a Penal Code section 1118.1 motion in adult court.

777 (aka "Triple 7") – This refers to a petition alleging a probation violation. These petitions can be filed either by the probation department or the prosecutor.

778 – This section provides for a petition to obtain a "change of plan" for a youth. These are generally filed by defense counsel or probation, and are used either to modify terms of probation or to change a previously ordered disposition.

779 – This section provides for a petition to obtain a "change of plan" for a youth committed to the DJF, including bringing the youth back from DJF. These can be filed by either staff at the DJF or defense counsel.

782 – This section provides for a motion to dismiss. This motion may be filed at any time, even after juvenile court jurisdiction has terminated.

827 – This section provides a mechanism for obtaining juvenile court records by petition. It is often used to obtain confidential juvenile court records of individuals who are either witnesses or victims in a case.

EDUCATIONAL ADVOCACY FOR JUVENILES

Recognizing Youth in Practice: Juvenile Delinquency Defense Beyond the Bench 24, San Diego, California (December 18, 2017)

This handout includes basic educational terms that all juvenile practitioners must be familiar with to ensure competent representation. At the end of this handout there are suggested websites for resources to assist you in your practice.

EDUCATIONAL TERMS:

Community Day Schools – In California, community day schools are operated by individual public school districts as well as county offices of education. Community day schools serve mandatory and other expelled students, students referred by a school attendance review board, and other high-risk youth. Community day schools are a type of opportunity school. (Ed. Code, § 48660 et seq.)

Community Schools – Community schools (also referred to as county community schools) are public schools operated and administered by county offices of education to serve students in grades kindergarten through 12. Community schools provide an educational placement for students who are: (1) expelled from their regular schools; (2) referred by a school attendance review board or at the request of the student's parent or guardian; (3) referred by the county probation department (Welf. & Inst. Code, §§ 300, 601, 602, 654); (4) on probation or parole; (5) not in attendance in any school; or (6) homeless.) (Ed. Code, § 1980 et seq.)

Continuation Schools – Continuation education is an alternative high school diploma program. It is for students who are 16 years of age or older, have not graduated from high school, are still required to attend school, and are at risk of not graduating. Many students in continuation education are behind in high school credits. Others may need a flexible school schedule because they have jobs outside of school. Some students choose continuation education because of family needs or other circumstances. Students who attend continuation high schools must spend at least 15 hours per week or three hours per day at school. (Ed. Code, §§ 48400, et seq & 48430, et seq.)

Educational Rights Holder (ERH) – The default ERH is a child's biological parent(s). However, a court can limit a parent's education rights and appoint a "Responsible Adult" or "Educational Representative" to make educational decisions. If the court is unable to appoint a responsible adult AND a child has been referred for a special education assessment or has an IEP or is subject to disciplinary proceedings, then the school district

must appoint a "Surrogate Parent" as ERH. Once a child turns 18 years old, he or she holds his or her own education rights. (Welf. & Inst. Code, §§ 319, 361, 726; California Rules of Court, rules 5.649-5.650.)

IEP – An Individualized Education Program (IEP) is a plan developed to ensure that a child, who has a disability identified under the law and is attending an elementary or secondary educational institution, receives specialized instruction and related services. (34 C.F.R., § 300.22, Ed. Code, §, 56040 et seq.)

Independent Study – Independent study is a different way of learning. In independent study, a student is guided by a teacher but usually does not take classes with other students every day. The student works independently. School districts cannot force students into independent study programs; students and parents choose this type of study on their own. Independent study programs are designed to help students who have health problems, are parents, are gifted, are working, or who find that regular classroom settings do not meet their needs. However, many juvenile practitioners have found that school districts encourage students to partake of independent study so the school does not have to spend as many resources on the students. (Ed. Code, § 51745 et seq.)

Non-Public Schools (NPS) – Nonpublic schools are private, nonsectarian institutions certified by the state of California to provide special education services to students based on their Individualized Education Plan (IEP). These schools provide an environment to help youth who are struggling academically, behaviorally and socially. Many of these schools are affiliated with group homes housing foster youth. A nonpublic school can be located on the site of a group home, or made available to youth through an agreement with the group home. Many of the youth who attend nonpublic schools have an "ED" (Emotional Disturbance) designation on their IEP. (Ed. Code, § 56365 et seq.)

504 Plan – The "504" in "504 plan" refers to Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (ADA) which prohibit discrimination on the basis of disability. Section 504 prohibits recipients of federal funds from discriminating on the basis of disability. Title II of the ADA prohibits discrimination on the basis of disability in state and local government services by state and local governmental entities, whether or not they receive federal funds "Disability" in this context refers to a "physical or mental impairment which substantially limits one or more major life activities." This can include physical impairments; illnesses or injuries; communicable diseases; chronic conditions like asthma, allergies and diabetes; and learning problems.

A 504 plan spells out the modifications and accommodations that will be needed for these students to have an opportunity to perform at the same level as their peers, and might include such things as wheelchair ramps, blood sugar monitoring, an extra set of

textbooks, a peanut-free lunch environment, home instruction, or a tape recorder or keyboard for taking notes. A 504 plan is not part of Special Education.

RESOURCES TO ASSIST YOU:

The following are links to the Alliance for Children's Rights website which provides sample requests for school records, special education assessments, and IEP's. For those unfamiliar with special education, the link to the FAQ's and educational manual will provide a wealth of information.

http://kids-alliance.org/programs/education/special-education/records-requests-guides-sample-letters/

http://kids-alliance.org/programs/education/special-education/assessment-requests-guides-sample-letters/

http://kids-alliance.org/wp-content/uploads/2013/04/IEP-Request-Letter.pdf

http://kids-alliance.org/wp-content/uploads/2013/04/Special-Education-FAQs.pdf

http://kids-alliance.org/wp-content/uploads/2013/01/Education-Manual-English-2015-with-citations.pdf (Explains simply everything about special education in a way that can be understood.)

EDUCATION AND DISABILITY-RELATED RESOURCES FOR CALIFORNIA JUVENILE DEFENDERS

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Even if your office does not have an education specialist to help you, a great many resources on education and disability are available on line. You can quickly access materials on school discipline, special education rules and procedures, and sample letters on various topics. You can also easily find articles on the impact of disabilities on behavior and comprehension. In addition, you can locate organizations that provide support in school discipline or special education proceedings, or that can help with regional center eligibility or services.

California Laws and Procedures

California Department of Education. Special Education website, http://www.cde.ca.gov/sp/se/; laws and regulations are at http://www.cde.ca.gov/sp/se/lr/

Collateral Consequences of Juvenile Delinquency Proceedings in California, Pacific Juvenile Defender Center (2011), Chapter 11, "Educational Consequences," [covers impact of juvenile court on school discipline and alternative school programs] available on the PJDC web site, www.pjdc.org

Discipline in California Schools: Legal Requirements and Positive School Environments, ACLU of Northern California (2010) [a good source of ideas, however, be advised that some statutes this document refers to have changed since it was written], https://www.aclunc.org/sites/default/files/discipline_in_california.pdf

Educational Injustice: Barriers to Achievement and Higher Education for Youth in California Juvenile Court Schools, Youth Law Center (2016) [provides useful ammunition to help keep your client out of confinement and in regular school], http://www.ylc.org/wp/wp-content/uploads/EDUCATIONAL%20INJUSTICE.pdf

Fix School Discipline [tremendous website with many articles on policy in relation to school discipline, legal framework, and alternatives], http://www.fixschooldiscipline.org/

Know Your Rights: School Discipline, Suspensions. Expulsions, Involuntary Transfers (2012), ACLU of California, https://www.aclunc.org/sites/default/files/kyr_school_discipline_0.pdf

Special Education Rights and Responsibilities, Disability Rights California (2011) [includes special education law and procedures, and sample letters/pleadings], http://www.disabilityrightsca.org/pubs/PublicationsSERREnglish.htm

Trauma and Learning (on the *Peter P.* case web site) [excellent resources on how trauma affects learning and what can be done to help], http://www.traumaandlearning.org/

California Organizations Offering Free or Low Cost Assistance

Autism Society Inland Empire [lists multiple resources and advocates working on special education in the Inland Empire], http://www.ieautism.org/children/advocates-attorneys-special-education-and-regional-center/

California Rural Legal Assistance (many offices in Central California), http://www.crla.org/office-locations

Community Alliance for Special Education, San Francisco, http://www.caseadvocacy.org/services.html

Disability Rights California (special education and regional center advocacy - multiple locations), http://www.disabilityrightsca.org/; Office of Clients Rights Advocates [advocacy regional center clients], http://www.disabilityrightsca.org/about/OCRA.htm

Disability Rights Legal Center, Los Angeles, http://drlcenter.org/contact/

East Bay Community Law Center [East Bay cases], http://ebclc.org/need-services/education-defense-justice-for-youth-services/

Learning Rights Law Center, Los Angeles, http://www.learningrights.org/

Legal Services for Children, San Francisco, http://www.lsc-sf.org/how-we-can-help/education-services/

Legal Services of Northern California [serving 23 counties in Northern California], https://lsnc.net/how-contact-us

Public Counsel [direct educational services in Los Angeles only], http://www.publiccounsel.org/contact_us?id=0001

Parents Helping Parents [has an extensive alphabetical list of organizations and agencies helping children with disabilities statewide], http://my.php.com/resources

Youth Justice Education Clinic, Loyola Law School, Los Angeles, http://www.lls.edu/academics/experientiallearning/clinics/socialcriminaljusticeclinics/theyouthjusticeeducationclinic/

Federal Law

Americans with Disabilities Act, U.S. Department of Justice, Civil Rights Division, Information and Technical Assistance on the Americans with Disabilities Act, http://www.ada.gov/

Civil Rights of Institutionalized Persons Act (CRIPA) [application in juvenile facilities], http://www.ojjdp.gov/pubs/walls/sect-01.html

A Guide to Disability Rights Laws – with links to federal laws, http://www.ada.gov/cguide.htm#anchor65310

Individuals with Disabilities Education Act (IDEA), U.S. Department of Education web page https://sites.ed.gov/idea/

"Your Rights Under Section 504 of the 1973 Rehabilitation Act," U.S. Department of Health and Human Services, Office for Civil Rights, http://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/504.pdf

U.S. Department of Education, http://www2.ed.gov/about/landing.jhtml; Prevention and Intervention Programs for Children and Youths Who are Neglected, Delinquent, or at Risk, http://www2.ed.gov/programs/titleipartd/index.html; Office of English Language Acquisition, http://www2.ed.gov/about/offices/list/oela/index.html; Office of Indian Education, http://www.ed.gov/about/offices/list/oese/oie/index.html

National Organizations

The National Center on Education Disability and Juvenile Justice, http://www.edjj.org; including "Tools for Promoting Educational Success and Reducing Delinquency" http://www.edjj.org/focus/prevention/JJ-SE/TOOLS_Complete%20(4-16-07).pdf

National Disability Rights Network (NDRN) [national network of advocacy organizations with legal authority to assist people with disabilities, including those in institutions], http://www.ndrn.org/index.php

Pacer Center, Champions for Children with Disabilities, http://www.pacer.org/jj/issues/

INTRODUCTION TO REGIONAL CENTERS

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Regional Centers (RCs) are private, non-profit agencies under contract with the state agency, the Department of Developmental Services (DDS). RCs provide services to anyone who has or is suspected of having a developmental disability, and to anyone at risk of giving birth to a child with a developmental disability. (Welf. & Inst. Code, §§ 4500.5, 4501, 4620-4639.75.)

Juvenile practitioners must possess basic knowledge of Regional Center (RC) eligibility and services. Knowledgeable practitioners have discovered many clients with severe cognitive impairment who should have been but were never referred to an RC. The services an RC can provide to our clients can assist counsel in litigating competency, capacity, specific intent, willful violations of probation and *Miranda* issues. Moreover, RC services enable attorneys to argue for more appropriate dispositions, informal diversion, and dismissals. In addition, the receipt of RC services may help to justify modification of certain conditions of probation, such as reducing or eliminating community service. Once a youth is an RC consumer, the court and the probation department understand that his/her case is a special one, and take that into consideration when fashioning the youth's program of rehabilitative services.

In order to become an RC consumer, one must have a "developmental disability" which:

- Is expected to continue indefinitely,
- Originates before the age of 18, and
- Constitutes a "substantial disability."

For purposes of RC eligibility, a "developmental disability" does not include conditions which are "*solely*" physical, learning disabilities, or psychiatric in nature. (Welf. & Inst. Code, § 4512, subd. (a); 17 Cal. Code of Regs., § 54000, subd. (a), § 54010.)

The qualifying categories of a "developmental disability" are the following:

1. Intellectual disability (formerly known as mental retardation)
2. Autism
3. Cerebral palsy
4. Epilepsy, or

5. The "fifth category" or "condition similar"
    - A disabling condition found similar to intellectual disability *or*
    - A disabling condition that requires treatment similar to that required for persons with an intellectual disability

(Welf. & Inst. Code, § 4512, subd. (a), 17 Cal. Code of Regs., § 54000, subd. (a).) In order to meet the "substantial disability" criteria, significant functional limitations in *three* or more of the following areas must be established.

- Self-care,
- Receptive and expressive language,
- Learning,
- Mobility,
- Self-Direction,
- Capacity for independent living, and
- Economic self-sufficiency.

(Welf. & Inst Code, § 4512(l)(1); 17 Cal. Code of Regs., § 54001, subd. (a).)

Once an individual is determined to be eligible, eligibility for consumer services continue throughout his/her lifetime.

The law requires the RC to develop an Individual Program Plan (IPP) that must be based on the unique needs and living situation of the consumer. The services listed below are an example of services provided by the RC.

- Behavior training and behavior modification programs
- Special training for parents
- Adaptive equipment such as wheelchairs, hospital beds, etc.
- Community integration services
- Advocacy assistance
- Counseling
- Day Programs
- Emergency and crisis intervention
- Respite (in-home or out-of-home) for caregivers
- Social skills training
- Specialized medical and dental care
- Transportation services
- Independent Living Skills services

A more extensive description of services is contained in Welfare and Institutions Code section 4500, subdivision (b).

If you have a client that you suspect may suffer from an intellectual disability or other qualifying category, you need to have a thorough evaluation and testing completed by a psychologist. Usually, the evaluation includes cognitive testing (IQ) and adaptive living skills testing. You may need to have an expert appointed to conduct the evaluation and testing. It is also extremely important to gather school and other records for the psychologist to review.

Most common diagnosis seen that supports a referral are: intellectual disability, autism, and "fifth category." Counsel can make a referral by written request to the appropriate RC, then the RC will conduct its intake and psychological assessment within 120 days or 60 days if the youth is in a restrictive placement or risk of a more restrictive placement. (Welf. & Inst. Code, § 4643.) These timelines can sometimes be short circuited by engaging the Clients' Rights Advocate at the local regional center.

The Regional Center must send written notice by certified mail not more than 5 days after it decides eligibility. If found eligible, the IPP must be developed within 60 days. Counsel can appeal denials of eligibility.

The following websites may assist you in these types of cases:

Regional Center

http://regionalcenter.org/home

Department of Developmental Services

www.dds.ca.gov

Disability Rights California

www.disabilityrightsca.org

Office of Administrative Hearings

http://www.dgs.ca.gov/oah/Home.aspx

Office of Clients' Rights Advocacy (OCRA) at Disability Rights California

http://www.disabilityrightsca.org/about/ocra.htm

Public Counsel

http://www.publiccounsel.org/tools/publications/files/2010-Regional-Center-Basics.pdf

LGBT YOUTH IN JUVENILE COURT

PRACTICE TIPS FOR JUVENILE DEFENDERS

Hidden Injustice:
Representing LGBT Youth in Juvenile Court

THE EQUITY PROJECT

THE EQUITY PROJECT a unique collaboration initiative of organizations and individuals, was founded to ensure that lesbian, gay, bisexual and transgender (LGBT) youth in juvenile delinquency courts are treated with dignity, respect, and fairness. In 2009, The Equity Project released the groundbreaking report, *Hidden Injustice*, which examined issues impacting LGBT youth throughout the delinquency process, ranging from arrest through post-disposition, and put forth corresponding recommendations for juvenile justice professionals.

The information below, largely extracted from *Hidden Injustice*, provides tips for juvenile defenders to ensure the equitable treatment of their LGBT clients.

For more information, contact the Equity Project at info@equityproject.org

Advocate with a Client-Centered Approach

- Treat - and ensure others treat – all LGBT youth with fairness, dignity, and respect, including prohibiting any attempts to ridicule or change a youth's sexual orientation or gender identity.

- Effectively counsel clients about all legal options, potential advantages and disadvantages of each option, and to advocate in a manner that respects all clients, regardless of sexual orientation or gender identity.

- Zealously represent a client's expressed interests, which includes respecting the client's decisions about whether, how and to whom he/she chooses to disclose his/her sexual orientation and gender identity.

- Maintain up-to- date lists of LGBT-competent services, programs and placements, as well as those that have been unsupportive of LGBT youth in the past. Defenders should share this information with courts, probation officers, and prosecutors and advocate for those services and placements that are LGBT-competent and challenge those which are not.

Develop Meaningful Attorney-Client Relationships

- Inform youth of the attorney-client privilege and confidentiality and ensure that you will maintain client confidentiality accordingly. Specifically, explain that defenders are ethically bound to allow the client to decide whether to disclose his or her sexual orientation or gender identity in the course of the case.

- Explain that defenders need to know as much as possible about their clients to be able to advocate for their interests and convey a nonjudgmental attitude.

- Do not make assumptions about a youth's sexual orientation or gender identity. Avoid language that assumes anything about a youth's sexual orientation or gender identity. For example, rather than asking a youth "Do you have a boyfriend?" ask "Are you dating anyone?" or "Are you in a romantic relationship?"

- Signal affirmation of all sexual orientations or gender identities through posters, stickers, or other office displays that include LGBT youth.

- If a youth raises issues related to sexual orientation or gender identity, remain open and supportive.

- Ask youth what name they would like to be called and what pronoun they prefer. Defenders should call a young client by the name and pronoun preferred by that youth, even if it differs from the client's legal name.

- Remember that the youth is the gatekeeper of information pertaining to his or her sexual orientation and gender identity. Always ask his or her permission before revealing this information to others. [1]

Interview Youth Prior to the Initial Hearing

- Defenders won't necessarily know that a youth is LGBT. Talk to youth without parents present in a setting that provides the greatest amount of privacy possible. Clearly explain and maintain attorney-client confidentiality.
- Find out if your client is afraid for her or his safety if detained and why.
- If your client was detained after arrest, ask if he or she was harassed or mistreated while in detention and investigate the circumstances.
- Ask about attendance and performance at school and obtain school records. If the youth is not attending school, ask why.
- Ask about the youth's home life. If the youth does not get along with her or his family, ask why.
- If your client tells you that he or she is LGBT, respond in a way that indicates that you will fully advocate for him or her. Ask your client who else knows his or her sexual orientation or gender identity and tell your client you will not reveal this information in court or elsewhere without his or her permission.
- If your client is transgender, ask what name and pronoun the youth uses and if the youth requests, ask the judge to use the youth's preferred name and pronoun. Discuss with the youth the advantages and disadvantages of wearing gender-nonconforming clothing during court hearings or while in placement in order to assist the youth in making an informed decision. Ask the youth about any hormones or other transition-related medications he or she is currently taking and ensure the youth receives them if detained or in any other placement.
- Inform the youth of his or her rights in detention and explain that he or she should contact you if he or she has problems

Prepare for the Initial Hearing

- If the youth's family is not accepting of her or his sexual orientation or gender identity and returning home is not an option, explore alternatives, such as a the home of a relative or mentor or other appropriate placement. Investigate possible options before the hearing and support youths' connections to their extended families.

- Be familiar with risk-screening instruments, their potentially disparate impact on LGBT youth, and be ready to challenge the validity of such instruments.

- Keep informed about the conditions in the facilities in your jurisdiction, particularly as to whether facilities have policies of nondiscrimination based on sexual orientation and gender identity, treat all youth fairly, and engage in practices that ensure the safety of all youth.

Advocate During the Initial Hearing

- If you have your client's consent, educate the judge, if appropriate, about the high risk of abuse for LGBT youth in detention facilities and explain that transgender youth are particularly vulnerable to abuse.

- If your client does not want his or her parents or others to hear in court that he or she is LGBT but you think it is important for the judge to know, ask the judge to have a discussion in chambers.

- Challenge the application of risk criteria used to make detention decisions if they have a disparate impact on LGBT youth.

- Zealously argue for the least restrictive placement possible.

- Keep informed of alternatives to detention for LGBT youth and present these alternatives to the court at detention hearings.

Prepare for the Disposition Hearing

- Be familiar with community-based programs and resources that provide competent and nondiscriminatory services to LGBT youth.
- Explain all possible disposition options to your clients after adjudication and solicit input from the youth about the services with which he or she feels most comfortable.
- Request additional evaluations or expert witnesses if necessary to prepare for the disposition hearing.

Advocate During Disposition Hearing

- Inform the court of a clients' individual needs and expressed interests regarding treatment and placement alternatives.
- Zealously advocate against any placements that are not sensitive to LGBT youth or cannot keep LGBT youth safe.
- Present expert testimony and reports to challenge any recommendations for incarceration or other harmful treatment services that are not consistent with professionally accepted medical and mental health practices for LGBT youth.
- Recommend services and placements outside of the jurisdiction if there are no LGBT appropriate services available locally and if consistent with clients' expressed interests.

Respond to Bias in the Courtroom

- Immediately respond to jokes or other disrespectful comments about your client's actual or perceived sexual orientation or gender identity. Note your objection for the record.
- Challenge disproportionate and punitive juvenile court responses to consensual sexual conduct, particularly when based on gender, sexual orientation, or race.
- Advocate for youths' right to express their sexual orientation and gender identity in court, including requesting that court professionals address the client with their preferred name and pronoun, if so directed by client.
- Oppose assumptions made about the sexual activity of clients based on gender, sexual orientation, or race.
- Oppose introduction of evidence of sexual orientation or sexual conduct when not relevant or when used to punish or embarrass youth.
- Challenge assumptions that youth should be placed in secure facilities "for their protection."
- Cite research, expert testimony, and accepted professional standards that support fair treatment of LGBT youth.

Identify LGBT Competent Programs as those that:

- Do not make assumptions about the sexual orientation and gender identity of individual youth;
- Are designed with the understanding that at least some of the youth served will be LGBT;
- Do not rely on gender, race, or other stereotypes but make individualized assessments of the strengths and needs of each client;
- Unequivocally prohibit any attempts to change a youth's sexual orientation and gender identity;
- Adopt and enforce non-discrimination policies;
- Implement protocols that maintain confidentiality of information regarding youths' sexual orientation and gender identity;
- Require training of all service providers on issues related to sexual orientation and gender identity;
- Address developmental, physical, social and emotional concerns of LGBT youth;
- Understand and address the impact of societal bias on LGBT youth development;
- Provide LGBT youth with help in addressing issues of family rejection, school harassment, and societal stigma.; and
- Provide support to families of LGBT youth or refer families to appropriate programs.

Protect the Rights of LGBT Youth in Out of Home Placement

- LGBT youth should not be isolated, even if meant for their safety, as this practice violates the constitutional right to be free from unreasonably restrictive confinement. The law requires that facilities employ less stigmatizing responses to address the risk of violence rather than just isolating LGBT youth. [2]

- Confined youth have a constitutional right to be free from physical, emotional and sexual abuse. [3]

- Confined youth have a right to receive adequate medical and mental healthcare and nondiscriminatory treatment. [4] For instance, transgender youth diagnosed with Gender Identity Disorder ("GID") must receive appropriate health care, including continued hormone therapy, to address their needs while detained. (See forthcoming Equity Project issue brief on transgender healthcare fpr youth in the juvenile justice system). [5]

- All juveniles have a right to equal protection under the law while they are confined. Juvenile justice professionals must provide services and fair and equal treatment to all youth, including LGBT youth. LGBT youth may not be refused services or programs because of their sexual orientation or gender identity, nor should they be treated differently from other youth engaged in the program or residing at the facility. For instance, facility staff should not isolate LGBT youth for their protection, should not ignore LGBT-related violence or victimization, and should not move LGBT youth from one placement to another because of harassment without first addressing the problematic behavior. [6]

- All juveniles have the right to freedom of speech and expression, which includes the right to be open about one's sexual orientation and the right to express one's gender identity through clothing, accessories, and grooming. [7]

NOTES

[1] Some defender offices regularly inquire about sexual orientation and gender identity on client intake forms. This can be an effective practice in offices that regularly train their staff on LGBT-related issues. It is important to understand, however, that many youth are not comfortable coming out to others with whom they have not yet developed a trusting relationship.

[2] See R.G. v. Koller, 415 F. Supp.2d 1129, 1157 (D. Haw. 2006) (finding the state facility's use of isolation to protect LGBT wards was not within the range of acceptable professional practices and constituted punishment in violation of their due process rights).

[3] Youngberg v. Romeo, 457 U.S. 307 (1982); R.G. v. Koller, 415 F.Supp.2d at 1157 (D. Haw. 2006); A.M. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 579 (3rd Cir. 2004).

[4] Burton v. Richmond, 276 F.3d 973 (8th Cir. 2002); Jackson v. Johnson, 118 F. Supp. 2d 278, 289 (2000); Alexander S. v. Boyd, 876 F. Supp. 773, 788-789 (D.S.C. 1995), aff'd in part and rev'd in part on other grounds, 113 F.3d 1373 (4th Cir. 1997), cert. denied, 118 S.Ct. 880 (1998).

[5] LGBTQ youth who have unique health care needs also have a right to health care. A.M. v. Luzerne County Juvenile Detention Center, 372 F.3d at 584-85 (3rd Cir. 2004).

[6] See R.G. v. Koller, 415 F.Supp.2d 1129 (D. Haw. 2006).

[7] Henkle v. Gregory, 50 F. Supp.2d 1067 (D. Nev. 2001) (allowing claims under Title IX for discrimination and harassment by other students and under First Amendment based on demands by school officials that student keep his sexual orientation to himself).

EQUITY PROJECT PARTNERS

Legal Services for Children (LSC)

was founded in 1975 as one of the first non-profit law firms in the country to provide free legal representation and social work services to children and youth. LSC's mission is to ensure that all children and youth in San Francisco Bay Area have an opportunity to be raised in a safe environment with equal access to a meaningful education and the services and supports they need to become healthy and productive young adults. LSC represents children and youth in cases that include legal guardianship, dependency, school discipline, immigration, emancipation, and restraining order proceedings.

The National Center for Lesbian Rights (NCLR)

is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. NCLR litigates precedent-setting cases at the trial and appellate court levels; advocates for equitable public policies affecting the LGBT community; provides free legal assistance to LGBT people and their legal advocates; and conducts community education on LGBT legal issues

National Juvenile Defender Center (NJDC)

was created to respond to the critical need to build the capacity of the juvenile defense bar and to improve access to counsel and quality of representation for children in the justice system. To ensure excellence in juvenile defense and promote justice for all children, NJDC provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers while offering a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

VISION

The Equity Project envisions a just and rehabilitative delinquency system that treats every young person with dignity, respect and fairness, regardless of sexual orientation or gender identity

MISSION

The Equity Project ensures that lesbian, gay, bisexual, and transgender youth in delinquency courts remain safe and receive fair and equitable treatment. Through collaboration, research, leadership development, training, technical assistance, and policy advocacy, the Equity Project provides delinquency court professionals with the knowledge to integrate developmentally appropriate and culturally competent approaches into training, policy, and practice.

EQUITY PROJECT PARTNERS

Legal Services for Children
www.lsc-sf.org

1254 Market St. 3rd Floor
San Francisco CA 94102
tel 415 863 3762
fax 415 863 7708

National Center for Lesbian Rights
www.nclrights.org

870 Market St. Suite 370
San Francisco CA 94102
tel 415 392 6257
fax 415 392 8442

National Juvenile Defender Center
www.njdc.info

1350 Connecticut Ave NW Suite 304
Washington DC 20036
tel 202 452 0010
fax 202 452 1205

THE EQUITY PROJECT

PJDC
PACIFIC JUVENILE DEFENDER CENTER

Adolescent Development

NCTSN The National Child Traumatic Stress Network

Complex Trauma in Children and Adolescents

White Paper from the
National Child Traumatic Stress Network
Complex Trauma Task Force

This project was funded by the Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services

Complex Trauma in Children and Adolescents

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National Child Traumatic Stress Network
Complex Trauma Task Force

Editors: Alexandra Cook, Ph.D., Margaret Blaustein, Ph.D., Joseph Spinazzola, Ph.D., and Bessel van der Kolk, M.D.

Contributors: Margaret Blaustein, Ph.D.,[1, 2] Alexandra Cook, Ph.D., [1, 2] Marylene Cloitre, Ph.D.,[3] Ruth DeRosa, Ph.D., [4] Julian Ford, Ph.D.,[5] Michele Henderson, LICSW, [1, 2] Rebecca Hubbard, LMFT, [6] Kristine Jentoft, LICSW, [1] Cheryl Lanktree, Ph.D., [7] Jill Levitt, Ph. D, [3] Joan Liautaud, Psy.D.,[8] Erna Olafson, Ph.D., Psy.D., [9] Richard Kagan, Ph.D., [10] Karen Mallah, Ph.D., [11] Dan Medeiros, M.D., [12] David Pelcovitz, Ph.D., [4] Paul Pagones, M.Ed.[8] Frank Putnam, M.D., [9] Raul Silva, M.D., [3] Sabina Singh, M.D., [12] Stefanie Smith, Ph.D., [1] Joseph Spinazzola, Ph.D., [1, 2] Bessel van der Kolk, M.D. [1, 2]

Affiliations: 1Trauma Center, Massachusetts Mental Health Institute; 2National Center on Family Homelessness; 3New York University/Child Study Center Institute for Urban Trauma; 4North Shore University Hospital Adolescent Trauma Treatment Development Center, 5Yale/University of Connecticut Center for Children Exposed to Violence; 6Directions for Mental Health, Inc., 7Miller Children's Abuse and Violence Intervention Center; 8Heartland Health Outreach International FACES; 9Child Abuse Trauma Treatment Replication Center, Cincinnati Children's Hospital; 10Parsons Child Trauma Study Center; 11Family Trauma Treatment Program, Mental Health Corp of Denver; 12Mount Sinai Adolescent Health Center.

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National Child Traumatic Stress Network
www.NCTSNet.org
2003

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Correspondence to Dr. Spinazzola, The Trauma Center, 14 Fordham Rd., Allston, MA, 02134.
E-mail: spinazzola@traumacenter.org

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Vignette

Michael is a 14-year-old Caucasian boy who was placed with his maternal grandparents after he and his two younger siblings were removed from the home of their biological parents. Although multiple reports had been made to Child Protective Services, there had been insufficient evidence to remove the children because neither Michael nor his siblings had been willing to speak with authorities. At the age of 11, however, Michael showed his school guidance counselor some bruises, stating that his father had hurt him and that he didn't want to go home anymore. He and his two siblings were removed that day. Following their removal from the home, the children described: frequent fights in which their parents screamed and threw things; unpredictable violence by their father, including his hitting them with a miniature baseball bat; being isolated and denied food and water for over a day at a time; and ongoing substance use by both parents. The youngest sibling reported that his father had touched his private parts. Although both older siblings denied any memory of sexual abuse, Michael was found to have a sexually transmitted disease on physical exam. All three children indicated that Michael had been particularly targeted in the home, with each parent aligning with one of the other siblings. Michael was frequently restricted to his room, and both of his parents made statements blaming him for the family's problems. Michael reported that he purposefully made himself a target to protect his younger siblings from being hurt. Based on the children's statements, their father was charged and criminally prosecuted for assault and battery against his two older children.

After their removal from the home, the three siblings were separated. After court proceedings terminated parental rights, the youngest sibling was placed in a pre-adoptive foster home, and the two oldest were placed in different relatives' homes. Michael initially presented as withdrawn and quiet after removal and placement with his maternal grandmother. He spent long periods alone in his room and created an inner world that he scrupulously hid from his grandmother. Although he was polite and cooperative with adults, he had difficulty with peer relationships and was unable to sustain involvement in activities. Despite testing which indicated that he had an above average IQ with no evidence of learning disability, Michael consistently received failing grades in his classes, due in large part to a refusal to complete homework assignments. Michael also suffered from repeated migraine headaches, and numerous tests had ruled out a physical etiology. At night, Michael surrounded himself with stuffed animals, stating that they made him feel safer.

Michael's behavior became increasingly dysregulated after his middle sibling was placed in the home with him; he was strongly reactive to indications that she was receiving more attention than him and became easily angered by her statements. He stated in therapy that being around his sister was like "all this old stuff coming back again." His presentation shifted from constricted to volatile, with frequent angry outbursts, verbal and physical aggression toward family members, and multiple indications of arousal (e.g., difficulty sleeping, impaired concentration, edginess and irritability). His grandmother, who had her own history of childhood trauma, became increasingly depressed and overwhelmed by his emotional outbursts and had difficulty providing consistent caretaking to either sibling. Child Protective Services became re-involved and considered more intensive level of care for each sibling.

What Is Complex Trauma?

The term complex trauma describes the dual problem of children's exposure to traumatic events and the impact of this exposure on immediate and long-term outcomes. Complex traumatic exposure refers to children's experiences of multiple traumatic events that occur within the caregiving system – the social environment that is supposed to be the source of safety and stability in a child's life. Typically, complex trauma exposure refers to the simultaneous or sequential occurrences of child maltreatment—including emotional abuse and neglect, sexual abuse, physical abuse, and witnessing domestic violence—that are chronic and begin in early childhood. Moreover, the initial traumatic experiences (e.g., parental neglect and emotional abuse) and the resulting emotional dysregulation, loss of a safe base, loss of direction, and inability to detect or respond to danger cues, often lead to subsequent trauma exposure (e.g., physical and sexual abuse, or community violence).

Complex trauma outcomes refer to the range of clinical symptomatology that appears after such exposures. Exposure to traumatic stress in early life is associated with enduring sequelae that not only incorporate, but also extend beyond, Posttraumatic Stress Disorder (PTSD). These sequelae span multiple domains of impairment and include: (a) self-regulatory, attachment, anxiety, and affective disorders in infancy and childhood; (b) addictions, aggression, social helplessness and eating disorders; (c) dissociative, somataform, cardiovascular, metabolic, and immunological disorders; (d) sexual disorders in adolescence and adulthood; and (e) revictimization (Dube, Anda, Felitti, Chapman, et al., 2001; Dube, Anda, Felitti, Croft et al., 2001; Felitti et al., 1998; Gordon, 2002; Herman, Perry, & van der Kolk, 1989; Lyons-Ruth & Jacobovitz, 1999; Simpson & Miller, 2002; van der Kolk, Roth, Pelcovitz, Mandel, & Spinazzola, in press; Yehuda, Spertus, & Golier, 2001).

The Cost of Child Complex Trauma

Exposure to complex trauma in children carries an enormous cost to society, both in lives impacted and dollars spent. Although in many ways the costs are inestimable, the repercussions of childhood trauma may be measured in medical costs, mental health utilization, societal cost, and the psychological toll on its victims.

Incidence of childhood abuse and neglect may be estimated from the records of public Child Protection Service agencies and from national epidemiological research. Although both methods are thought to underestimate actual trauma incidence, the rising incidence of childhood maltreatment is indisputable even when relying upon the most conservative estimates gleaned from official records. In 2001, according to the National Child Abuse and Neglect Data System developed by the Children's Bureau of the U.S. Department of Human Services, 903,000 cases of child maltreatment were substantiated, including neglect, medical neglect, physical abuse, sexual abuse, and psychological maltreatment.

Epidemiological research has yielded evidence of considerably higher incidence of children's exposure to complex trauma. The Third National Incidence Study of Child Abuse and Neglect (NIS-3; 1996), a congressionally mandated study, examined incidence of abuse and neglect using a nationally representative sample of

5,600 professionals spanning 842 agencies in 42 counties (Sedlak & Broadhurst, 1996). Using the Harm Standard, which includes only children who have already experienced harm from abuse or neglect, an estimated 1,553,800 children were abused or neglected in 1993. This figure includes 217,700 sexually abused children, 338,900 physically neglected children, 212,800 emotionally neglected children, and 381,700 physically abused children. Using the Endangerment Standard, defined as children who experience abuse or neglect that puts them at risk of harm, the estimated incidence of child abuse or neglect in 1993 nearly doubled (2,815,600 children). These rates reflect sharp increases from the previous NIS-2 study in 1986; the total number of abused or neglected children based upon both the Harm and Endangerment Standards quadrupled between 1986 and 1993.

Using the Harm Standard incidence numbers from NIS-3, the total annual cost of child abuse and neglect has been estimated at 94 billion dollars (Fromm, 2001). Direct costs associated with child abuse and neglect (24.4 billion dollars) included hospitalization, chronic health problems, mental health, child welfare, law enforcement, and judicial system costs. Indirect costs (69.7 billion dollars) included special education, juvenile delinquency, adult mental health and health care, lost productivity to society, and adult criminality. The daily cost of childhood abuse and neglect is estimated to be $258 million (Pelletier, 2001).

Diagnostic Issues for Complex Trauma

The current psychiatric diagnostic classification system does not have an adequate category to capture the full range of difficulties that traumatized children experience. Although the narrowly defined PTSD diagnosis is often used, it rarely captures the extent of the developmental impact of multiple and chronic trauma exposure. Other diagnoses common in abused and neglected children include Depression, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), Conduct Disorder, Generalized Anxiety Disorder, Separation Anxiety Disorder, and Reactive Attachment Disorder. Each of these diagnoses captures an aspect of the traumatized child's experience, but frequently does not represent the whole picture. As a result, treatment often focuses on the particular behavior identified, rather than on the core deficits that underlie the presentation of complexly traumatized children.

An Organizing Framework of Complex Trauma Outcomes in Children

The present paper highlights seven primary domains of impairment observed in children exposed to complex trauma. These phenomenologically based domains have been identified based on the extant child clinical and research literatures, the adult research on "Disorders of Extreme Stress Not Otherwise Specified" (Pelcovitz et al, 1997; van der Kolk, Pelcovitz, Roth, Mandel, McFarlane, & Herman, 1996; van der Kolk, Roth, et al., in press), and the combined expertise of the NCTSN Complex Trauma Taskforce. These domains of impairment include: (I) Attachment; (II) Biology; (III) Affect regulation; (IV) Dissociation; (V) Behavioral regulation; (VI) Cognition; and (VII) Self-concept. Impairment is considered to occur within a developmental context and in turn to impact further development. Table 1 provides a list of each domain along with examples of associated symptoms. Valid diagnostic classification of complex trauma sequelae in children awaits formal epidemiological research. However, we believe that this phenomenologically based framework for the impact of complex trauma exposure possesses sufficient clinical utility to

serve as a vitally needed starting place for research, treatment development, and policy initiatives bearing on children's adaptation to complex trauma exposure.

Table 1:
Domains of Impairment in Children Exposed to Complex Trauma

I. Attachment
- Uncertainty about the reliability and predictability of the world
- Problems with boundaries
- Distrust and suspiciousness
- Social isolation
- Interpersonal difficulties
- Difficulty attuning to other people's emotional states
- Difficulty with perspective taking
- Difficulty enlisting other people as allies

II. Biology
- Sensorimotor developmental problems
- Hypersensitivity to physical contact
- Analgesia
- Problems with coordination, balance, body tone
- Difficulties localizing skin contact
- Somatization
- Increased medical problems across a wide span, e.g., pelvic pain, asthma, skin problems, autoimmune disorders, pseudoseizures

III. Affect Regulation
- Difficulty with emotional self-regulation
- Difficulty describing feelings and internal experience
- Problems knowing and describing internal states
- Difficulty communicating wishes and desires

IV. Dissociation
- Distinct alterations in states of consciousness
- Amnesia
- Depersonalization and derealization
- Two or more distinct states of consciousness, with impaired memory for state-based events

V. Behavioral Control
- Poor modulation of impulses
- Self-destructive behavior
- Aggression against others
- Pathological self-soothing behaviors
- Sleep disturbances
- Eating disorders
- Substance abuse
- Excessive compliance
- Oppositional behavior
- Difficulty understanding and complying with rules
- Communication of traumatic past by reenactment in day-to-day behavior or play (sexual, aggressive, etc.)

VI. Cognition
- Difficulties in attention regulation and executive functioning
- Lack of sustained curiosity
- Problems with processing novel information
- Problems focusing on and completing tasks
- Problems with object constancy
- Difficulty planning and anticipating
- Problems understanding own contribution to what happens to them
- Learning difficulties
- Problems with language development
- Problems with orientation in time and space
- Acoustic and visual perceptual problems
- Impaired comprehension of complex visual-spatial patterns

VII. Self-Concept
- Lack of a continuous, predictable sense of self
- Poor sense of separateness
- Disturbances of body image
- Low self-esteem
- Shame and guilt

Impact of Complex Trauma on Development

Complex trauma outcomes are most likely to develop and persist if an infant or child is exposed to danger that is unpredictable and uncontrollable because the child's body must allocate resources that are normally dedicated to growth and development instead to survival (Ford, in press; van der Kolk, in press). The greatest source of danger, unpredictability, and uncontrollability for an infant or young child is the absence of a caregiver who reliably and responsively protects and nurtures the child (Cicchetti and Lynch, 1995). The caregiver's ability to help regulate bodily and behavioral responses provides experiences in "co-regulation" that contribute to the acquisition of self-regulatory capacities (Schore, 2002; Siegel, 1999). Lack of sustaining regulation with a primary caregiver puts the child at risk for inadequate development of the capacity to regulate physical and emotional states.

Hence, when examining traumatized children, the status of the attachment relationship is often a critical element. In the current conceptualizations of traumatic stress in children, little effort has been spent on distinguishing between the impact of specific traumatic events and that of disruptions in the attachment relationship. In order to understand the behavior of these children and to formulate an adequate treatment plan, the impact of disruptions in the early caregiving relationship must be integrated into developmental models of trauma exposure and outcome.

Attachment

The early caregiving relationship provides a relational context in which children develop their earliest models of self, other, and self in relation to others. This attachment relationship also provides the scaffolding for the growth of many developmental competencies, including the capacity for self-regulation, the safety with which to explore the environment, early knowledge of agency (i.e., the capacity to exert an influence on the world), and early capacities for receptive and expressive communication. The child-caregiver relationship can be the *source* of the trauma, and/or it can be greatly impacted by another type of traumatic exposure; therefore, many of these critical developmental competencies are disrupted.

A *secure* attachment pattern, present in approximately 55-65% of the normative population, is thought to be the result of receptive, sensitive caregiving. The caregiver responds in a contingent way to infant cues, providing the infant with both stimulation and nurturing. Infants are able to internalize regulation strategies offered to them by their caregivers, and learn to communicate and interpret nonverbal signals. Responsive caregiving in the face of traumatic stress provides the young child with a supportive environment in which to recover from and metabolize overwhelming experience.

Insecure attachment patterns have been consistently documented in over 80% of maltreated children. These failures to create a secure dyadic relationship may leave an environment of vulnerability which may allow for the occurrence of complex trauma exposure. In the aftermath of exposure, insecure or anxious attachments may be further compounded if children perceive a caregiver as too distressed to deal with their experience (e.g., due to the caregiver's own level of stress, dissociation, avoidance, intoxication or own unresolved trauma history).

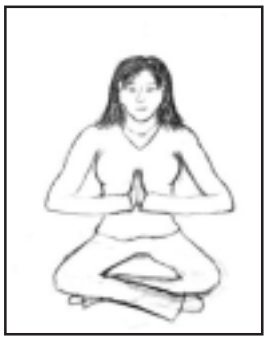
Children with insecure attachment patterns may be classified as *avoidant*, *ambivalent,* or *disorganized*. The *avoidant* attachment style has

been associated with predictably rejecting caregiving. Children whose parents repeatedly dismiss or reject them may learn to disregard or distrust their emotions, relationships, and even their own bodies. Moreover, they may avoid, dismiss, or feel profoundly ambivalent about attachment relationships, not only with caregivers, but also with other adults and with peers (Ainsworth, 1978).

When children experience parents alternating between validation and invalidation in a predictable manner, they may develop *ambivalent* attachment patterns (Ainsworth, Blehar, & Waters, 1978) and learn to anticipate the adults' change from detachment and neglect to excessive intrusiveness in predictable patterns. These children often cope by disconnecting themselves from others at the first signs that parents, teachers, or other important adults are acting in either a rejecting or overly engaging manner.

When co-regulation is not provided or results in aversive consequences early in life, the child is at risk for a complex and severe type of disruption of all of the core biopsychosocial competencies that has been described as *disorganized attachment* (Cassidy & Mohr, 2001; Cicchetti & Toth, 1995; Lyons-Ruth & Jacobovitz, 1999; Maunder & Hunter, 2001). Disorganized attachment in young children involves erratic behavior in relation to caregivers (e.g., alternately clingy, dismissive, and aggressive). In older children, adolescents, and adults, disorganized attachment appears to reflect primitive survival-based relational working models that are rigid, extreme, and thematically focused (Lyons-Ruth & Jacobovitz, 1999). These working models focus on either helplessness (e.g., abandonment, betrayal, failure, dejection—"Any expression of anger is deadly," "I'm damaged and deserve to be rejected") or coercive control (e.g., blame, rejection, intrusiveness, hostility—"I have to force people to do what I want," "No one can be trusted to help—they'll just use you"). Parents of children with these behaviors have been described as often failing to protect their children and feeling helpless in their roles as mothers (George & Solomon, 1996).

Children living with unpredictable violence and repeated abandonment often fail to develop appropriate language and verbal processing abilities. They then cope with threatening events and feelings of helplessness by restricting their processing of what is happening around them. Thus, these children are repeatedly unable to organize a coherent response to challenging events in their lives and instead act with disorganization (Siegel, 1999).



Disorganized attachment has been hypothesized to interfere with the development of neural connections in critical brain areas (e.g., the left and right hemispheres of the orbital prefrontal cortex and their connective pathways; Schore, 2001). This attachment style may result in impairment in affect regulation, stress management, empathy and prosocial concern for others, and the use of language to solve relational problems. Over time, disorganized attachments lead to symptoms of PTSD, as well as borderline and antisocial personality disorders (Herman, Perry, & van der Kolk, 1989; Main, 1995).

In a recent review, Maunder and Hunter (2001) concluded that disrupted attachment in animals and humans often is not transient but can lead to a lifelong risk of physical disease and psychosocial dysfunction. This risk occurs along three pathways that reflect impairments in the core biopsychosocial competencies which parallel the key features of disorganized attachment: (1) increased susceptibility to stress (e.g., difficulty focusing attention and modulating arousal; i.e., detection, activation, conservation, orientation); (2) an inability to regulate emotions without external assistance (e.g., feeling and acting overwhelmed by intense or numbed emotions; i.e., activation, conservation, exploration; consolidation), and (3) altered help-seeking (e.g., excessive help-seeking and dependency or social isolation and disengagement; i.e., deficiencies in affiliation and in exploration). Moreover, it is not only separation, but also the disruption of the development of a secure attachment bond, that appear to produce lasting biological dysregulation.

Biology

Neurobiological development follows genetically "hard-wired" programs that are modified by external stimuli. Extreme (low or high) levels of stimulation (i.e., stress) are thought to trigger adaptive adjustments that depend on the brain structures and pathways that were formed in the course of development (Perry & Pollard, 1998). Thus, the brain "sculpts" itself in response to external experiences at the same time as it is developing via genetically-based maturation.

During the first few months after birth, only the brainstem and midbrain (i.e., locus coeruleus and cerebellum) are sufficiently developed to sustain and alter basic bodily functions and alertness. These primitive structures regulate the "autonomic nervous system" (ANS), mobilizing arousal through the sympathetic branch of the ANS and modulating arousal through the parasympathetic branch. Deprivation of responsive caregiving due to persistent maltreatment, neglect, or caregiver dysfunction (e.g., maternal depression) can lead to lifelong reactivity to stress. Following a history of early deprivation, even *mild* stress later in life can elicit severe reactivity and dysfunction (Gunnar & Donzella, 2002).

In toddlerhood and early childhood, the brain actively develops areas responsible for: (1) filtering sensory input to identify useful information (thalamus; somatosensory cortices), (2) learning to detect (amygdala) and respond defensively (insula) to potential threats, (3) recognizing information or environmental stimuli that comprise meaningful contexts (hippocampal area), and (4) coordinating rapid goal-directed responses (ventral tegmentum; striatum). During this time there is a gradual shift from right hemisphere dominance (feeling and sensing) to primary reliance on the left hemisphere (language, abstract reasoning and long range planning) (De Bellis, Keshavan, & Shifflett, 2002; Kagan, 2003). A young child gradually learns to orient to both the external and internal environment (rather than responding reflexively to whatever stimulus presents itself), and to detect and react.

Trauma interferes with the integration of left and right hemisphere brain functioning, which explains traumatized children's "irrational" ways of behaving under stress. In non-abused children, their semantic (i.e., verbal and left brain based) schemas of themselves and the world are generally in harmony with their emotional response to their surroundings (right brain based). In contrast, abused and neglected children often display vast discrepancies between how they make sense of themselves and how they respond to their surroundings. Under stress, their analytical capacities (left brain based) disintegrate, and their emotional

(right brain based) schemas of the world take over, causing them to react with uncontrolled helplessness and rage (Crittenden, 1998; Kagan, 2003; Teicher, Andersen & Polcari, 2002).

In early childhood, biologically compromised children are at risk for disorders in reality orientation (e.g., autism), learning (e.g., dyslexia), or cognitive and behavioral self-management (e.g., ADHD). A toddler or preschool-age child who (a) is exposed to traumatic stressors, or (b) did not develop basic capacities for self-regulation earlier in life, and who does not have a sustaining relationship with caregiver(s), is at risk for failing to develop brain capacities necessary to form interdependent relationships (e.g., separation anxiety or ODD) and for failing to modulate emotions in response to stress (e.g., major depression, phobias) (Kaufman, 2000).

In middle childhood and adolescence, the most rapidly developing brain areas are those responsible for three core features of "executive functioning" necessary for autonomous functioning and engagement in relationships. These features are: (1) conscious self-awareness and genuine involvement with other persons (anterior cingulate), (2) ability to assess the valence and meaning of complex emotional experiences (orbital prefrontal cortex), and (3) ability to determine a course of action based on learning from past experiences and creation of an inner frame of reference informed by accurate understanding of other persons' different perspectives (dorsolateral prefrontal cortex). In adolescence, there is a burst of brain development in these areas and the limbic system (e.g., hippocampus) due to "myelination," the growth of protective sheaths surrounding nerve cells. This process can consolidate new learning in the form of decision strategies and fundamental beliefs that become a system of "working memory that is highly stable and readily accessed" (Benes, Turtle, & Kahn, 1994). Traumatic stressors or prior deficits in self-regulatory abilities that manifest during adolescence, in the absence of sustaining relationships (which in adolescence often involve peers as well as adults), may lead to disruptions in self-regulation (e.g., eating disorders), interpersonal mutuality (e.g., conduct disorders), reality orientation (e.g., thought disorder), or a combination of these critical competencies (e.g., borderline personality disorder; chronic addiction).

Biology of Resilience

Many studies show that stressors early or later in life that are predictable, escapable or controllable, or in which responsive caregiver contact is available, and safe opportunities for exploration are reinstated, tend to *enhance biological integrity.* In biological terms, these experiences increase hippocampal and prefrontal cortex neuronal functioning; *behaviorally*, they enhance curiosity, social status, working memory, anxiety management, and the ability to nurture (Champagne & Meaney, 2001; Gunnar & Donzella, 2002; Schore, 2001). Moreover, the restoration of secure caregiving after early life stressors has a protective effect, reducing long-term biological and behavioral impairment, even if: (a) only visual, not tactile, or symbolic contact with the caregiver is possible, (b) the sociophysical environment is severely impoverished, or (c) the caregiver is not the biological parent (Gunnar & Donzella, 2002).

Affect Regulation

Previous sections have described the deleterious impact that early childhood trauma may have on core regulatory systems. Impairment of neurobiological systems involved in emotion regulation leaves many traumatized children at risk for multiple manifestations of

dysregulated affect. Deficits in the capacity to regulate emotional experience may be broadly classified in three categories, including (a) deficits in the capacity to *identify* internal emotional experience, (b) difficulties with the safe *expression* of emotions, and (c) impaired capacity to *modulate* emotional experience.

Identification of internal emotional experience requires the ability to differentiate among states of arousal, interpret these states, and apply appropriate labels (e.g., "happy," "frightened"). At birth, the infant has little capacity to discriminate among arousal states; predictable and differential response of caregivers to specific needs provides a framework through which the developing child begins to differentiate emotional experience and response. Similarly, children learn to interpret the nonverbal cues of others through consistent pairing of others' affective expressions with behavior. When children are provided with inconsistent models of affect and behavior (e.g., smiling expression paired with rejecting behavior) or with inconsistent response to affective display (e.g., child distress met inconsistently with anger, rejection, nurturance, neutrality), no framework is provided through which to interpret experience. Deficits in the ability of maltreated children to discriminate among and label affective states in both self and other has been demonstrated as early as 30 months old (Beeghly & Cicchetti, 1996).

Following the identification of emotional state, a child must be able to *express* emotions safely, and then *modulate* or *regulate* internal experience. Complexly traumatized children show impairment in both of these skills. Distortions of emotional expression in traumatized children have been observed to range across a full spectrum, from overly constricted or rigid to excessively labile and explosive (e.g., Gaensbauer, Mrzaek & Harmon, 1981). Capacity to express emotions and capacity to modulate internal experience are linked, and children with complex trauma histories show both behavioral and emotional expressions of impaired capacity to self-regulate and self-soothe. Children who are unable to consistently regulate internal experience may turn to alternative strategies, including dissociative coping (e.g., chronic numbing of emotional experience), avoidance of affectively laden situations, including positive experiences, and/or use of behavioral strategies (e.g., substance use). Those children who are unable to find consistent strategies to assist them in modulation of emotion may present as emotionally labile, demonstrating extreme responses to minor stressors, with rapid escalation and difficulty self-soothing.

Over time, traumatized children are vulnerable to the development and maintenance of disorders associated with chronic dysregulation of affective experience, including disorders of mood. The prevalence of Major Depression among individuals who have experienced early childhood trauma is an example of the lifelong impact complex trauma may exert over regulatory capacities.

The existence of a strong relationship between early childhood trauma and subsequent depression is now well established (Putnam, 2003). Recent twin studies, considered one the highest forms of clinical scientific evidence because they can control for genetic and family factors, have conclusively documented that early childhood trauma, especially sexual abuse, dramatically increases risk for major depression, as well as many other negative outcomes. Twin studies indicate that, for women, a history of childhood sexual abuse increases the odds ratio for major depression 3- to 5-fold (Dinwiddie, Heath, et al., 2000; Nelson, Heath, et al., 2002). Numerous factors influence the strength of this relationship, including age of onset, duration, relationship to the perpetrator, number of

perpetrators, use of coercion or force, maternal support, and the type(s) of sexual abuse (Putnam, 2003). Children who experienced sexual intercourse abuses had an odds ratio of 8.1 for depression and 11.8 for a suicide attempt (Fergusson, Horwood, & Lynskey, 1996; Fergusson, Lynskey, & Horwood, 1996).

Childhood trauma appears not only to increase risk for Major Depression, but also to alter the course of illness in ways that contribute to a poorer prognosis. A history of childhood trauma seems to predispose toward earlier onset of affective problems, which in turn is associated with more depressive episodes and poorer outcome (Putnam, 2003). Depressed women with histories of child abuse have longer durations of illness and are less likely to respond positively to standard treatment (Zlotnick, Ryan, Miller, & Keitner, et al., 1995). Treatment of depression is complicated by lack of proper diagnosis, inability to adhere to a treatment regimen, or lack of insurance coverage or financial resources to pay for treatment. Many of these barriers are raised by the negative life trajectories commonly associated with histories of childhood trauma, such as lower education, mental illness, substance abuse, poor physical health, and unemployment. Thus, the population at highest risk for depression is also the population least likely to receive adequate treatment.

Dissociation

Dissociation is one of the key features of complex trauma in children. In essence, dissociation is the "failure to integrate or associate information and experience in a normally expectable fashion" (Putnam, 1997, p.7). Thus, cognition can be experienced without affect, affect can be experienced without cognition, somatic sensations occur in a void of awareness, or behavioral repetitions take place without conscious awareness (Chu, 1991). Dissociation runs along a continuum from normal kinds of experiences such as getting lost in thought while driving, to peritraumatic dissociation during traumatic exposures, to dissociative disorders. Although dissociation begins as a protective defense mechanism in the face of overwhelming trauma, under circumstances of chronic traumatic exposure it can develop into a problematic disorder that then becomes the focus of treatment. Moreover, there is growing research on the negative impact of peritraumatic dissociation on the development of PTSD (Weiss, Marmar, Metzler, & Ronfeldt, 1995).

Dissociation has been linked to several biological markers through the correlation of the Dissociative Experiences Scale (Bernstein & Putnam, 1986) to decreased left hippocampal

volume in women (Stein, Koverola, Hanna, Torchia, & McClarty, 1997) and to cerebrospinal fluid levels of neurotransmitters and their metabolites (Demitrack, Putnam, & Rubinaw, 1993). Moreover, dissociation is postulated to be connected with the stress response system (i.e., the Hypothalamic-Pituitary Adrenal Axis) (Putnam, 1997).

According to Putnam (1997), the three primary functions of dissociation are the automatization of behavior in the face of psychologically overwhelming circumstances, the compartmentalization of painful memories and feelings, and the detachment from one's self when confronting extreme trauma. When trauma is chronic, a child will rely more and more heavily upon dissociation to manage the experience, such that dissociation then leads to difficulties with behavioral management, affect regulation, and self-concept.

Behavioral Regulation

Chronic childhood trauma is associated with both under- and over-controlled behavior patterns. Over-control is a strategy that may counteract the feelings of helplessness and lack of power that are often a daily struggle for chronically traumatized children. Abused children demonstrate rigidly controlled behavior patterns, such as compulsive compliance with adult requests, as early as the second year of life (e.g., Crittenden & DiLalla, 1988). Many traumatized children are very resistant to changes in routine and display rigid behavioral patterns, including inflexible bathroom rituals and eating problems with rigid control of food intake.

Under-controlled or impulsive behaviors may be due in part to deficits in executive functions: the cognitive capacities responsible for planning, organizing, delaying response, and exerting control over behavior. Executive function deficits have been well documented in traumatized children (see Cognition, below). One consequence of impaired executive functioning is an increase in impulsive responses, such as aggression. Early trauma is significantly associated with the development of impulse control disorders such as ODD (e.g., Ford et al., 2000).

An alternative way of understanding the behavioral patterns of chronically traumatized children is that they represent children's defensive adaptations to overwhelming stress. Children may re-enact behavioral aspects of their trauma (e.g., aggression, self-injurious behaviors, sexualized behaviors, controlling relationship dynamics) as automatic behavioral reactions to reminders or as attempts to gain mastery or control over their experiences. Children may also use such strategies to cope with their deficits in regulating internal experience. For instance, in the absence of more advanced coping strategies, traumatized youth may use substances in order to avoid experiencing intolerable levels of emotional arousal. Similarly, in the absence of knowledge of how to negotiate interpersonal relationships, sexually abused children may engage in sexual behaviors in order to achieve acceptance and intimacy. Ultimately, a history of childhood traumatic experiences raises the risk for adverse outcomes, including substance use and abuse, teen pregnancy and paternity, suicidality and other self-injurious behaviors, criminal activity, and re-victimization (Anda, 2002).

Cognition

During infancy and early childhood, children form an early working model of the world and develop the basic cognitive building blocks of later life. During this time period, children develop an early sense of self, a model of self-in-relation-to-other, an understanding of basic cause-and-effect, and a sense of agency.

Prospective studies have shown that children of abusive and neglectful parents have impaired cognitive functioning by late infancy, compared with control children (Egeland, Sroufe, & Erickson, 1983). The sensory and emotional deprivation associated with neglect appears to be particularly detrimental to development, with neglected infants and toddlers demonstrating delays in expressive and receptive language development, as well as deficits in overall IQ (Allen & Oliver, 1982; Culp, Watkins, Lawrence, Letts et al., 1991; Vondra, Barnett, & Cicchetti, 1990). Over time, these decrements in cognitive ability continue to be observed, such that abused and neglected children show lower IQ's and are disproportionately represented within the developmentally delayed spectrum of intellectual functioning (Sandgrund, Gaines, & Green, 1974).

During school age, academic functioning represents a significant domain of developmental competence. Academic performance is significantly influenced by children's ability to regulate internal experience and to interact competently with peers. By preschool, maltreated children demonstrate deficits in both of these arenas, exhibiting lower frustration tolerance, more anger and non-compliance, and more dependency on others for support than non-maltreated matched comparisons (Egeland et al., 1983; Vondra et al., 1990). In elementary school, maltreated children are less persistent on and more likely to avoid challenging tasks, and are overly reliant on teachers' guidance and feedback (Shonk & Cicchetti, 2001). By middle school and high school, maltreated children are more likely to be rated as working and learning below average, and they exhibit higher incidence of disciplinary referrals and suspensions (Eckenrode, Laird, & Doris, 1993).

By early childhood, maltreated children demonstrate less flexibility and creativity in problem-solving tasks than same-age peers (Egeland et al., 1983). In later childhood, children and adolescents with a diagnosis of PTSD secondary to abuse or witnessing violence demonstrate deficits in attention, abstract reasoning, and executive function skills (Beers & de Bellis, 2002). Maltreated children have been found to exhibit increasingly impaired executive function performance from early childhood to middle school age; in contrast, non-abused, psychiatrically-impaired children show a gradual increase in executive function skills that lags behind but, over time, approximates the growth curve of normative matched controls (Mezzacappa, Kindlon, & Earls, 2001).

By early elementary school, maltreated children are more frequently referred for special education services (Shonk & Cicchetti, 2001). A history of maltreatment is associated with lower grades and poorer scores on standardized tests and other indices of academic achievement. Maltreated children are found to have significantly higher rates of grade retention and dropout; they have three times the dropout rate of the general school population. These findings have been demonstrated across a variety of trauma exposures (e.g., physical abuse, sexual abuse, neglect, exposure to domestic violence) and cannot be accounted for by the effects of other psychosocial stressors such as poverty (Cahill, Kaminer, & Johnson, 1999; Kurtz, Gaudin, Wodarski, & Howing, 1993; Leiter & Johnsen, 1994; Shonk & Cicchetti, 2001; Trickett, McBride-Chang, & Putnam, 1994).

Self-Concept

The early caregiving relationship has a profound effect on the development of a coherent sense of self. Over time, a child consolidates and internalizes a secure, stable, and integrated sense of identity (Bowlby, 1988). Responsive, sensitive caretaking and positive early life experiences allow children to develop a model of

self as generally worthy and competent. In contrast, repetitive experiences of harm and/or rejection by significant others, and the associated failure to develop age-appropriate competencies, are likely to lead to a sense of self as ineffective, helpless, deficient and unlovable. Alterations in children's self-representations may impact their capacity to cope with traumatic experience (Liem & Boudewyn, 1999). Children who perceive themselves as powerless or incompetent and who expect others to reject and despise them are more likely to blame themselves for negative experiences and have problems eliciting and responding to social support.

Traumatized children manifest alterations in their sense of self by early childhood. By 18 months, traumatized toddlers are more likely to respond to self-recognition with neutral or negative affect than non-traumatized youngsters (Schneider-Rosen & Cicchetti, 1991). In preschool, traumatized children are more resistant to talking about internal states, particularly those perceived as negative (Cicchetti & Beeghly, 1987). Traumatized children have problems estimating their own competence: early exaggerations of competence in preschool shift to significantly lowered estimates of self-competence by late elementary school (Vondra, Barnett, & Cicchetti, 1989). By adulthood, they suffer from a high degree of self-blame (Liem & Boudewyn, 1999).

Dissociative coping further complicates the development of a coherent sense of self. Habitual use of dissociation leads to "significant disturbances in the continuity of an individual's memory and integration of self" (Putnam, 1993, p.40). Over time, a reliance on dissociative coping may lead to serious disruptions in identity development and integration due to the loss of autobiographical memory, as well as to the lack of continuity in the traumatized individual's experience. Chronic dissociation is associated with the development of dissociative disorders (e.g., Dissociative Disorder NOS and Dissociative Identity Disorder) in which the formation of dissociative identities becomes the source of maladaptive coping (van der Kolk, van der Hart, & Marmar, 1996).

Adaptation to Complex Trauma in Familial Context

The family plays a crucial role in determining how the child adapts to experiencing trauma. Factors that influence the child's response include the extent to which the family environment itself was responsible for the victimization, parental response to the traumatic event or disclosure, and the extent to which parents themselves are influenced by their own childhood histories of loss and/or trauma, as well as other parental psychopathology.

In the aftermath of trauma, parental support is a key mediating factor in determining how children adapt to victimization. Familial support and parental emotional functioning are strong factors that mitigate against the development of PTSD symptoms, as well as enhance a child's capacity to resolve the symptoms (Cohen, Mannarino, Berliner, and Deblinger, 2000). Research in the sexual abuse literature consistently supports Finkelhor and Kendall-Tackett's (1997) assertion that "the response of the child's social support system, and particularly the child's mother, is the most important factor in determining outcome, more important than objective elements of the victimization itself." There are three main issues in parents' responses to their children's trauma: 1) believing and validating their child's experience, 2) tolerating the child's affect, and 3) managing their own emotional response.

The connection between a parent and child is broken when a parent denies the child's experiences. In such cases, the child is forced to act "as if" the trauma did not occur. In this context, a child learns he/she cannot trust the primary caretaker and cannot utilize language and communication to overcome adversity. Moreover, because the trauma is denied, the child remains unprotected from recurrence. Without safety, the child cannot begin to re-integrate the traumatic experiences and find new ways of coping. Instead, parental invalidation generates helplessness and hopelessness in a child.

Parents are often understandably distressed when their children have experienced traumatic events. In these instances, personal distress can limit parents' ability to provide adequate care to their children (Winston et al., 2002). However, Finkelhor & Kendall-Tackett (1997) note that it is not parental distress *per se* that is necessarily detrimental to the child, but more specifically, when the parent's distress overrides or diverts attention away from the needs of the child that children are negatively affected. Children may respond to their parent's distress by avoiding or suppressing the feelings or behaviors that elicited the parent's distress, by avoiding their parent altogether, or by becoming "parentified" and attempting to reduce the distress of their parent (Deblinger & Heflin, 1996). As a result, the child may have difficulty identifying communicating and communicating emotions (Wiehe, 1997), both of which are crucial in dealing with stressful or traumatic situations.

Traumatized children often rekindle painful feelings in biological parents or in substitute parents trying to provide a child with a new home. Parents who have had impaired relationships with attachment figures in their own lives are especially vulnerable to problems in raising their own children. Parents' ability to access information about their own childhood and to tell their own story coherently may be the strongest indicators of parental capacity and effective parenting (Main & Goldwyn, 1994).

Parents with their own unresolved traumatic experiences may avoid experiencing their own emotions, which may make it difficult for them to "read" and respond appropriately to the child's emotional state. In addition, parents with their own unresolved trauma histories may have difficulty providing safe environments for their children because of their difficulty identifying dangerous circumstances. Moreover, children's attachment-seeking behavior can trigger their parents' own painful memories. Parents and guardians may see a child's behavioral responses to trauma as a personal threat or provocation, rather than as a reenactment of what happened to the child and a behavioral representation of what the child cannot express verbally. The hurt child's simultaneous need for *and* fear of closeness can trigger a parent's *own* memories of loss, rejection, or abuse.

Ongoing psychopathology and substance use by parents also complicate their capacity to assist in their children's recovery from trauma. Chronic mental illness or ongoing substance abuse prevents parents from being consistently available or responsive to their children, thus leaving the child at risk for future victimization. Violence or abuse in the home gives rise to a special set of characteristic adaptations. When the trauma is the result of predictable caretaker violence, children may become compulsively compliant, constantly monitoring parental cues and trying to modify their behavior in an attempt to prevent parental violence. Unpredictable parental aggression may lead to wide fluctuations in children's behavior and affect, as they are unable to figure out when or under what circumstances the parent may strike out (Crittenden, 1998).

Intrafamilial victimization generally leaves children at higher risk for victimization outside of the home. Children who are unable to get their needs met at home may seek support outside the home, and are therefore at higher risk for exploitation. Furthermore, chronic exposure to threat can interfere with children's natural internal warning systems, and may numb them to danger cues. Ultimately, a child who has been exposed to multiple sources or types of trauma, whether within or outside of the family, is more likely to be negatively affected (Garbarino, Kostelny & Grady, 1993; Margolin, 2000).

Adaptation to Complex Trauma in Ethnocultural Context

While human beings share a common biological heritage, each person belongs to not one, but many ethnocultural groups and has a unique family and cultural heritage and genetic makeup—all of which interact to shape development and the experience of trauma. One must exercise caution applying categorical delineations of ethnocultural variables (e.g., refugee, urban residence, ethnic group, primary language, socioeconomic status, nationality) because doing so runs the risk of obscuring significant differences within these larger groups (Loo et al., 2001; Marsella, Friedman, Gerrity, & Scurfield, 1996). In studying adaptation to complex trauma in ethnocultural context, one must start with the broad categories and then delve deeper into the subcategories that reflect group, community, family, and individual differences.

Although the specific forms may vary, the role of culture is not limited to trauma-affected groups who experience the disruption of their connections to their primary culture, community, and homes (e.g., refugees or immigrants). Youth and families who are not forced to leave their homes still may have critical ethnocultural ties strained or broken by disaster, war, political repression, poverty, racism, and community violence (Garbarino & Kostelny, 1996; Rabalais, Ruggiero, & Scotti, 2002).

Assessment of trauma history and PTSD outcomes should always occur in a cultural context that includes the background, community, and modes of communication that both the assessor as well as the family bring to their interaction (Manson, 1996). Exposure to different types of trauma is variable across diverse ethnocultural backgrounds (i.e., exposure to war/genocide, family violence, community violence, child maltreatment). In addition, people of different cultural, national, linguistic, spiritual, and ethnic backgrounds define key trauma-related constructs in many different ways and with different expressions (e.g., flashbacks may be "visions," hyperarousal may be "attacque de nerves," dissociation may be spirit possession; Loo et al., 2001; Manson, 1996). The threshold for defining a PTSD reaction as "distressing" or as a problem warranting intervention differs not only across national and cultural groups, but also within sub-groups (e.g., geographic regions of a country with different sub-cultures; different religious communities within the same geographic area). As a result, psychometric assessment with standardized measures may confront children and families with questions that are considered unacceptable (e.g., including peyote under use of illicit drugs), irrelevant (e.g., distinguishing blood family from close friends, in a group that considers all community members as family), incomplete (e.g., limiting health care to Western medical or therapeutic services, to the exclusion of traditional forms of healing and healers), or simply incomprehensible (Manson, 1996).

With children, cultural factors may influence the substance or expression of developmental differences in ability to comprehend and communicate concepts such as social intentionality and causality, the distinction between self and others, and the ability to symbolize and to access working or long term memory (T. Miller, 1998; Salmon & Bryant, 2002). For example, in some cultures children are socialized to view intentionality and causality as attributes of collective groups rather than of individuals in isolation. If such children are sexually molested, they may not disclose the abuse because it might threaten their acceptance as a valued member of their families and communities. This acceptance may be perceived as more crucial to recovery than having the ability to say "no" or knowing how to counteract self-blaming thoughts or self-soothe if feeling overwhelmed. Culturally sensitive approaches to trauma assessment have been developed for adults (e.g., Loo et al., 2001) and children (Ford et al., 2000). However, their appropriateness and psychometric reliability, validity, and utility in different ethnocultural groups, contexts, and communities have not been systematically evaluated.

Different cultures have different concepts of family, in terms of who is a member, the roles and responsibilities of each member, and how involved family members are with different children. This becomes important when considering how to treat the child, especially in determining whether individual or family therapy is the best approach. The chosen trauma treatment may be individualized to the family's needs, but yet may not fit with the family's cultural understanding of a child's role in the family system. Furthermore, there are often different levels of acculturation within the same family. For example, children who are born in the United States but whose parents moved here as adults often have developed a mixed sense of ethnic identity that is bicultural, frequently leading to family conflict around cultural difference and varying levels of ethnic identity.

Interventions for prevention or treatment of children or adolescents' posttraumatic impairment typically have been developed within the context of the Western medical model (Parson, 1997). However, evidence-based models such as cognitive-behavior therapy (Cohen et al., 2000), Eye Movement Desensitization and Reprocessing (EMDR) (Chemtob, Tolin, & van der Kolk, 2000; Greenwald, 1998), or parent-child dyadic psychotherapy (Lieberman, van Horn, Grandison, & Pekarsky, 1997) are eminently adaptable to address not only developmental, but also ethnocultural, differences. For instance, it is possible to incorporate features designed to strengthen culture-specific resilience factors derived from empirical studies of children in different cultures who have been exposed to different types of complex trauma (e.g., mental

flexibility among Palestinian children, coping resources of South African children, social support among African American children).

Naturalistic healing resources are also potentially vital to children's recovery from complex trauma (Manson, 1996). There are many indigenous cultural mechanisms for addressing the disruptions of affect regulation, body allostasis, and sense of meaning or connection that result from complex trauma. The Navajo, for example, have developed Enemy Way or Beauty Way ceremonies as approaches to spiritual purification and social reintegration for warriors (Manson, 1996). The integration of these methods and rituals in prevention or treatment services for children who are survivors of complex trauma is warranted, but will require careful ethnographic study and collaboration between professionals in the traumatic stress field and varied cultural communities. Finally, prevention and treatment interventions also must consider the impact of racism and political/ethnic/class oppression as traumatic stressors (Loo et al., 2001).

Coping and Protective Factors

While exposure to complex trauma has a potentially devastating impact on the developing child, there is also the possibility that children in these situations can nevertheless function effectively and competently across a variety of domains (Kendall-Tackett, Williams, & Finkelhor, 1993; Masten & Coatsworth, 1998). Resilience is no longer regarded as a static attribute or a single, global construct but rather is viewed as multi-determined and evolving domains of competency, consisting of interacting forces within an individual, the family, and their social environment (Masten & Coatsworth, 1998; Waller, 2001). A child may function well in certain domains (e.g., academic) while exhibiting distress in others (e.g., behavior) (Luthar, Cicchetti & Becker, 2000). Areas of competence can also shift as children are faced with new stressors and developmental challenges. Understanding the continuum of responses to trauma and the coping and protective factors underlying resilience is vital to secondary and tertiary prevention efforts with children exposed to complex trauma (Egeland, Carlson & Stroufe, 1993).

Competence and resilience have been linked with several protective factors consisting of individual, family, and environmental variables (Masten & Coatsworth, 1998). Resilience develops from very ordinary adaptational processes and is not limited to remarkable individuals (Masten, 2001). Several factors have been found to be the most critical for promoting resilience, including: (a) positive attachment and connections to emotionally supportive and competent adults within a child's family or community, (b) development of cognitive and self-regulation abilities, (c) positive beliefs about oneself, and (d) motivation to act effectively in one's environment (Luthar, et al., 2000; Masten, 2001; Werner & Smith, 1992; Wyman, Sandler, Wolchik, & Nelson, 2000). Additional individual factors associated with resilience include an easygoing disposition, positive temperament, and sociable demeanor; internal locus of control and external attributions for blame; effective coping strategies; degree of mastery and autonomy; special talents; creativity; and spirituality (Werner & Smith, 1992). Additional familial and environmental factors that have been found to foster resilience include parenting with warmth, structure, and high expectations of the child; socioeconomic resources; ties to extended family; involvement with prosocial

community organizations; and effective schools (Masten & Coatsworth, 1998).

The greatest threats to resilience appear to follow the breakdown of protective systems: damage to brain development and associated cognitive and self-regulatory capacities; compromised caregiver-child relationships; and loss of motivation to interact with one's environment, learn and develop new skills. In situations of severe adversity, poor parenting and cognitive skills increase the risk of maladaptive child behavior patterns, while normative intellectual skills and parenting protect the child and foster growth of competence (Masten, 2001). Ultimately, supportive connections and cognitive resources help buffer children against the worst effects of trauma and serve as "inoculations against adversity" (Schimmer, 1999).

Other research has illuminated the importance of coping strategies on long-term mental health outcomes in response to complex trauma exposure in childhood (Vaillant, 1986; Vaillant, Bond, & Vaillant, 1986). Coping strategies represent the expression of psychological defense mechanisms that develop in childhood as protective responses that accentuate, limit, or block perceptions of inner and outer reality as a means of managing trauma and deprivation. The more severe the exposure to complex trauma in childhood, the stronger the use of certain coping strategies—such as sublimation, humor, altruism and suppression—has been associated with successful management of life problems and promotion of positive mental health in adulthood. In contrast, reliance on primitive defense mechanisms including dissociation, projection, passive aggression and hypochondriasis is linked to greater functioning deficits and more severe psychopathology over time.

Approaches to Comprehensive Assessment of Complex Trauma in Children

Typically, regardless of the initial trauma event that prompts referral for treatment services, the accepted standard of care involves conducting a comprehensive assessment, which uses observations, clinical interviews with child/adolescent and primary caretakers, collateral information (as appropriate— schools, child protection, previous therapist, forensic interviewer, pediatrician, etc.). Clinical interviews should follow a consistent format using a specific comprehensive form completed by the clinician. The assessment should also include the use of standardized assessment instruments that include self-report measures as well as measures completed by caretakers and/or teachers based on types of trauma, developmental/chronological factors, and availability of informants. Such a comprehensive assessment conducted over several sessions will establish treatment goals based on the phase-oriented model of trauma treatment.

Since trauma evaluations often involve the criminal and/or probate court systems, it is imperative that the evaluations be conducted in a forensically sound, as well as clinically rigorous manner. Specifically, questions must be asked in a non-leading manner and be accompanied by thorough documentation of all relevant disclosures. Even when referrals begin as a clinical assessment, any disclosures that occur are often the backbone of legal efforts to keep a child safe.

Areas to Assess in Clinical Interviews

A comprehensive evaluation assesses both complex traumatic *exposures* and complex traumatic *outcomes* or adaptations, and is accompanied by thorough psychological evaluation of symptoms and history. The evaluation should begin with the reason for referral, the presenting concerns, and the history of those presenting problems. Important historical information includes: developmental history, family history, trauma history for child and family, attachment relationship(s) for child/adolescent and primary caregiver(s), child protective services involvement and placement history, illnesses, losses, separation/abandonment by parent, deaths, parental/family mental illness, substance abuse, legal history, coping skills, strengths of child/adolescent and family, and any other stressors (e.g. community violence, economic issues, racial discrimination). Clinicians need to evaluate for all types of traumatic experiences since there is considerable evidence supporting multiple traumatic exposures. In addition to specific information regarding the nature of the traumatic experience(s), it is also important to gather information regarding circumstances of disclosure, responses of family members and agency professionals, safety concerns/issues, and the child/adolescent's ability to express feelings about the traumatic experiences.

In addition to assessing traumatic exposures, the clinicians must evaluate adaptations to complex trauma in the seven domains described earlier: biology, attachment, affect regulation, dissociation, behavioral management, cognition, and self-perception. These domains should be assessed in terms of their current presentation, as well as their developmental trajectories.

Standardized Measures

Assessment measures are administered as part of the initial evaluation; at 6-month, or ideally, 3-month intervals to track treatment progress and inform clinical decision-making in an individualized and empirically based manner; as well as at termination so as to determine treatment outcome and guarantee the appropriateness of termination. Follow-up is also recommended, when possible, to determine endurance of positive treatment outcomes. Standard psychological and neuropsychological testing can be useful in further understanding a child's adaptation to complex trauma, as well as in defining the specifics of learning difficulties, thought disorder, and other possible organic contributors. It is important to assess multiple areas of functioning and to gather information from multiple informants (i.e. parent, teacher, and child) across different settings (i.e. school and home). In a typical trauma evaluation, some combination of the following measures would be included:

Child/Adolescent Measures

Trauma Symptom Checklist for Children (TSCC, Briere), UCLA Trauma Reminders Inventory, Children's PTSD-Reaction Index (Pynoos), Adolescent-Dissociative Experiences Scale (A-DES, Putnam), Youth Self-Report (YSR, Achenbach), Children's Depression Inventory (CDI, Kovacs)

Parent/Caretaker Measures

Child Behavior Checklist (CBCL, Achenbach), Child Dissociative Checklist (CDC, Putnam), Child Sexual Behavior Inventory (CSBI, Friedrich), Traumatic Events Screening Inventory (TESI, Ford)

Teacher Measures

Teacher Report Form (TRF, Achenbach): Specific information regarding these measures and their relative merits as well as more detailed related to assessment approaches can be obtained from a number of sources (Friedrich, 2002; Ohan, Meyers, & Collett, 2002; Pearce & Pezzot-Pearce, 1997; Briere & Spinazzola, in press).

Approaches to Treatment of Complex Trauma in Children

Phase-Based Approaches

Intervention Needs

Interventions for traumatized children and adolescents must be developed and tested which directly address the specific complex trauma domains. Treatments for traumatized youth thus far have been conceptualized as having four central goals: (1) *safety* in one's environment, including home, school, and community, (2) *skills development* in emotion regulation and interpersonal functioning, (3) *meaning-making* about past traumatic events they have experienced so that youth can consider more positive, adaptive views about themselves in the present, and experience hope about their future, and (4) *enhancing resiliency and integration into social network.*

Almost all traumatized youth face the task of living in a continually traumatizing environment or finding a place in a new environment. Thus, the initial tasks of treatment are focused on creating a system of care and safety in which a child and the family can begin to heal. Often, this means clinicians working with child protective services and the court system to develop a safer living environment. It is also critical to engage the family and the school, as well as other primary support figures, in order to create a network that will develop safety within the living environment.

It is then possible for psychosocial treatments to provide recovery from the damages of abuse and rehabilitation of skills lost or never formed. Development of these basic skills, e.g. identifying feelings and forming a relationship with another person, occurs in the therapeutic context partnered with significant caretaker involvement, so that the newly learned skills are reinforced at home. The final challenge is the transmission and maintenance of these skills in the day-to-day world. This final effort can take root in treatment but will need partnering with the family and with community agencies.

Why Use Phase-Based Intervention?

There is consensus that treatment development should take a phase-based, or sequential approach. Research with traumatized adults indicates that treatments in which all aspects of work occur simultaneously tend to create "information overload" such that learning never fully occurs. This is likely to be especially true of children whose ability to attend to and process information is less well developed than adults. The sequential order of the treatment is such that the lessons learned in one phase serve as a building block for those to come next. The process is not linear, however, so that it is often necessary to revisit earlier phases of treatment in order to remain on the overall trajectory.

Before any treatment can truly begin, the safety of the child and family must be addressed. It would be impossible for any child, or adult, to

take in new information when he or she is fighting for survival. The focus of treatment at this early juncture largely involves building a network for the child and family. Thus, clinicians work closely with child protective services, the school system, and other providers for the family to develop safety and a treatment plan that addresses the needs of the child, as well as the family. Within the treatment relationship, the focus is on building trust and a positive working relationship.

The emotion regulation skills of the second stage help clients review their traumatic experiences. Once children possess improved methods for coping and an increased capacity for emotion regulation, they are better able to communicate and process traumatic memories. This process leads to a decrease in psychological distress concerning their history and to reduced reactivity to the inevitable traumatic reminders (schools, streets, sounds) in their home environment. The development of emotion regulation along with social skills also allows youth to see themselves as different from the people they were at the time of the traumatic events. The contrast between who they were during these events and who they are becoming, with the help of the skills work, provides them with a more confident view of themselves and the notion that change is possible.

The goal of the last phase of treatment is to instill principles of resiliency in youth so that they can continue to develop in positive, healthy, and functional ways and avoid future victimization and/or aggressive behaviors. Phase 4 interventions involve the creation or reinforcement of assets that build resiliency (DeRosa et al., 2003). These activities can include involving the youth in creative projects or youth programs, identifying expectations and responsibilities, working with families and communities to maximize safety and encourage youth to achieve and develop their unique talents. The traumatic experience can then move from being the central aspect of their lives to being a part of their history.

Complex Trauma Treatment Programs for Children and Adolescents

While most treatment of traumatized children and their families takes place within community mental health settings, hospitals, schools, and home-based family stabilization teams, there are a number of trauma-specific treatment programs in development for children and adolescents. Several of these are modeled upon earlier work conducted with adults (Cloitre et al, 2002; Ford, in press; Turner, DeRosa, Roth & Davidson, 1996), although these interventions are clearly modified in order to be developmentally appropriate. There are several treatment models designed for children of different ages and their families (Cloitre et al., 2002; Cohen & Mannarino, 1998; DeRosa, et al., 2003; Hembree-Kigin & McNeil, 1995; Kagan, in press; Lieberman, et al., 1997; Lyons Ruth & Jacobvitz, 1999; Rivard et al., 2003).

The treatment of choice for infants and toddlers uses a parent-child dyadic model (Hembree-Kigin & McNeil, 1995; Lieberman et al., 1997; Lyons Ruth & Jacobvitz, 1999). Because attachment is critical to overall healthy development, as well as to recovery from trauma, parental attunement is the primary goal of treatment. Without it, there can be no healthy attachment in preschool age children. Thus, the child has the best chances for healing and recovery when intervention is early and focuses on the parent-child relationship.

For latency age children who have been sexually abused, Cohen & Mannarino (1998) have designed a treatment program in which children participate in a short-term trauma-specific intervention, while parents simultaneously

attend separate therapy sessions in order to learn about the children's treatment and to learn ways to help their children cope. This intervention has been associated with a reduction in depressive symptomatology and an increase in social competence. Similarly, Kagan (in press) has developed Real Life Heroes, a program for traumatized children that utilizes creative arts, life story work, and the metaphor of heroes to help children and their parents to increase skills for overcoming trauma and to build or rebuild attachments.

There are several group models in development for adolescent girls with histories of sexual or physical abuse (Cloitre, Koenen, Cohen & Han, 2002) and witnessing domestic violence (DeRosa et al., 2003). Cloitre and colleagues are developing a 16-session treatment for adolescent girls who have been physically or sexually abused. This treatment is organized into three of the phases described earlier: skills training in emotion management and interpersonal effectiveness, trauma narrative story telling, and resiliency-building. Similarly, the broad treatment goals of DeRosa and colleagues' model include: "Managing the Moment", strategies to help girls manage and regulate their affect and impulses more effectively "here and now" when experiencing acute distress; "Building Coping Strategies", strategies to enhance ability to cope with the impact of the trauma including identifications of triggers, anger management and problem solving strategies; and "Enhancing Resiliency", strategies designed to help participants identify current adaptations to the trauma that are proving successful. Preliminary data thus far suggest this phase-based approach is much more successful than either supportive treatment or skills only treatment in improving PTSD symptoms, emotion regulation, depression, dissociation, anger and social competence (Cloitre, 2002).

Each of the treatments just reviewed has been manualized in order to carefully document the details and mechanisms of the interventions, and to ensure fidelity across treatment providers. With the creation of manuals documenting effective treatments for children and adolescents experiencing complex trauma outcomes, we can begin to affect standards of care and influence best practices guidelines. The clear benefit of manualized treatments is that they can be disseminated and used to train clinicians across various settings. However, treatment manuals also have limitations. Treatments for traumatized youth are not "one-size-fits-all." As manuals are brought to community clinics, they must be adapted in order to be culturally relevant and to be flexible enough to meet the needs of individual children and their families. Manuals must also be tailored to address developmental differences in children and adolescents. Most importantly, clinical decision-making about complex trauma intervention with children should always begin with comprehensive assessment of the impacted child's needs, strengths and trauma outcomes in order to provide more individualized, empirically based treatment.

Going into the Community

The mental health field has been moving toward greater accessibility for families, which has led to more community-based programs (e.g. schools, child protective services, shelters, family courts). Focusing on one of these types of community intervention, school-based interventions can provide critical access for students in need of mental health services, and can address multiple financial, psychological and logistical barriers to treatment. Trauma-informed programs are currently being implemented and tested in schools and residential settings and are also confronting the "real world" challenge of working with the large and underserved population of children and

adolescents who live and remain in chronically stressful and unstable environments, such as homes or communities where violence commonly occurs (DeRosa, et al., 2003; Cook, Henderson, and Jentoft, 2003).

The traumatized children and adolescents seen in schools and the community are often those easily identified as "at risk" due to chronic deficits in their ability to regulate attention, affect and behavior. These deficits often lead to specialized and/or alternative school and home placements in which the staff, teachers, and counselors frequently become primary caretaker(s) and attachment figures. Therefore, when working with traumatized children in the community; providers must consider both the child and the context as the targets of intervention. Cook, Henderson, and Jentoft, (2003) propose a "milieu" model of working with traumatized children in the community. This conceptual model (ARC) emphasizes the child and the adults in their environment and focuses on three key areas: (1) building secure "a"ttachments between child and caregiver(s); (2) enhancing self –"r"egulatory capacities; and (3) increasing "c"ompetencies across multiple domains.

In order to strengthen the attachment between child and caretaker(s), it is essential that four basic principles be implemented. The first is to create a structured and predictable environment through the establishment of rituals and routines. This includes behavior management and limit setting. The second is enhancement of the adult's ability to "tune in" to the child's affect in order to respond to the affect rather than react to the behavioral manifestation. The third principle is that the caretaker is helped to model effective management of intense affect by supporting the child in both labeling and coping with emotional distress. It should be noted that in order to respond to rather than react to a child requires that the adult model adaptive coping in regard to his or her own emotional response to difficult circumstances. The fourth principle revolves around praise, reinforcement and the opportunities to focus on a child doing something positive so as to help the child to identify with competencies rather than deficits. These principles are likely to promote increased security in attachment relationships, which will then become the basis for the development of all other competencies including regulation of attention, affect, and behavior. It should be noted that these principles could be applied in a variety of contexts including clinic based, school based, home based and community based settings.

Enhancement of self-regulatory capacities and increases in competency across domains are common goals among trauma-specific school-based approaches (DeRosa et al., 2003; Cook et al., 2003). The goal is to increase cognitive, emotional, physical, and spiritual mastery (James, 1989). Examples of techniques used to promote cognitive mastery include direct teaching, story telling, and bibliotherapy. Emotional mastery is achieved through art, play, and body-oriented strategies. Children who are traumatized or neglected often exhibit inhibited play or the inability to play while others may reenact their experiences. Thus, play is essential to facilitate healing and to learn skills that are later necessary in different developmental phases (James, 1994).

Physical mastery comes through involvement in physical activities. Activities such as yoga, music, movement, sports (in school/program settings, and drama can be modified to be included in individual and group work. In addition, such activities can and should be included in treatment planning as *adjunctive auxiliary treatment methods*. These activities support children in a number of ways including: (1) Finding a new vehicle of expression that decreases arousal and increases soothing; (2)

Gaining trust in their environment; (3) Decreasing isolation; and, (4) Developing accessible tools (visual, tactile, auditory, kinesthetic) for dealing with distress (Macy, R., Macy, D., Gross, S., Brighton, P., & Rozelle, D., 1999-2003). Body oriented treatments and activities can teach children to change their physiological response to threatening stimuli, which will ultimately lead to improvement in their functioning. These techniques provide effective therapy for children who experience extreme physical vulnerability and who have distorted body concepts (James, 1989). Finally, adjunctive therapies provide a natural forum for mentoring, affiliation, integration, and socialization all of which are essential to enhancing resiliency.

Trauma-specific milieu treatment appears to have been successful in increasing ability to regulate affect. This has been demonstrated by fewer suspensions and aggressive outbursts, increasing ability to regulate attention as indicated by increased time spent on academic tasks, increasing affiliation and group cohesion as reflected by fewer peer conflicts, and increasing compliance with rules and expectations, which may also suggest improvement in adult-child attachment relationships (Cook et al., 2003).

The principles of the school-based model described are designed to be applicable in other types of community settings, including residential programs, shelter systems, and child protection agencies. In order to effect significant systemic change for traumatized children, it is imperative to work closely with these community systems, so that a phase-oriented model that focuses on safety first, skill building, meaning making, and enhancing resiliency can be implemented on a broad scale.

Psychopharmacological Interventions

Psychopharmacological interventions for traumatized children and adolescents are primarily considered to be adjunctive to psychosocial treatment modalities. They aid in the management of symptoms that might interfere with the attention and learning demands of psychosocial treatments, or that can threaten to disrupt a placement. However, medication should only be used in conjunction with trauma-specific treatment and not in place of it. Six open label studies are available in the medical literature and at least one double-blind study with a positive outcome has been published on the treatment of PTSD in children. Drawbacks to these studies include modest samples sizes. Recent studies on the use of the Selective-Serotonin-Reuptake-Inhibitor agents (SSRI'S) have shown promise. In general, early intervention with medication should be reserved for the more extreme cases, existing comorbidities, or as an adjunct to other forms of treatment. Further research in this area is needed to assess the efficacy and safety of medications for use and the conditions under which they may be helpful adjuncts or even preferred to psychosocial interventions (See Silva, Cloitre, Davis et al., 2003).

Child Complex Trauma Treatment Summary

Preliminary data from youth-oriented phase-based treatments for complex trauma suggest that they provide symptom relief, as well as improvement in social competence and emotion management, and that they are consistently superior to nonspecific supportive therapies. These programs, however, are in the earliest phase of development. Several more years of work are necessary to test the treatments' core aspects and adapt them for culturally and geographically diverse populations. In addition, it is critical that the field and the NCTSN continue to develop and explore new multi-

modal, empirically based interventions that address the range of complex trauma adaptations, while simultaneously providing clinicians with access to the requisite training and resources to implement, modify, and evaluate the effectiveness of available treatments across diverse child complex trauma populations. Finally, there is consensus that interventions should build strengths as well as reduce symptoms. In this way, treatment for children and adolescents also serves as a prevention program for poor outcomes in adulthood.

Recommendations and Future Directions

Recommendations for Clinicians Working with Child Complex Trauma Populations

1. Increase public and professional awareness of chronic complex trauma in children and adolescents.

2. Develop comprehensive continuum of care based on phase-oriented model of treatment for complex trauma.

3. Increase collaboration among community agencies and organizations serving traumatized children and their caregivers.

4. Recognize and address the following goals of multi-modal treatment intervention with complexly traumatized children:

a. increase external safety
b. develop internal safety and competence
c. alter developmental trajectory in positive, health-promoting direction
d. foster healthy primary attachment relationship, as well as cultivating other social supports

5. Develop, implement, disseminate and support prevention programs and services that reduce children's exposure to violence in the home, school and community.

Recommendations for Researchers Studying Child Complex Trauma Populations

1. Implement multi-site epidemiological characterization studies of complex child trauma exposure and outcomes.

2. Conduct evidence-based development and testing of phase-oriented treatments for complex trauma in children and adolescents.

3. Review and evaluate promising programs and innovative intervention models that span service sectors (e.g., Head Start; juvenile justice; mental health) and attempt to reach complexly traumatized children through multiple contexts (e.g., parent-child, peer-based, faith-based communities) and across multiple domains (e.g., clinical services; auxiliary services, academic and vocational development).

4. Establish and cultivate ongoing partnerships between academic settings and community clinics to develop and test community-based, culturally relevant, age-appropriate interventions for traumatized children and adolescents.

5. Increase focus on understanding characteristics of resilient youth, and the impact of treatments and strengths-based initiatives that focus on building competence, positive self-regard and resiliency in traumatized children and adolescents.

Recommendations for Policy Makers Acting on Behalf of Child Complex Trauma Populations

1. Advocate for recognition of complex child trauma as a public health problem effecting millions of children in the United States each year.

2. Engage in policy efforts aimed at closing the gap between needs of children and families impacted by complex trauma and available resources.

3. Increase awareness that effective interventions for children exposed to complex trauma can be implemented; however, these interventions need to be integrated across the systems in which impacted children are located.

4. Work to influence the creation and design of state, federal and foundation service, training and research grants dedicated to increasing understanding, intervention and access to resources for children and families impacted by complex child trauma.

5. Lobby for the inclusion of exemplary intervention and prevention programs for complex child trauma in local, state and federal budgets, with a prioritization for integrated programs across federal, state and local agencies including the Departments of Defense, Justice, Education, and Health and Human Services; the Center for Disease Control; and the Substance Abuse and Mental Health Services Administration.

6. Advocate for the incorporation of an empirically based parity diagnosis of the impact of complex child trauma in the DSM-V in order to improve clinician understanding of complex trauma outcomes in children and adolescents, anchor treatment guidelines, and increase third party compensation mental health services required by this population.

Complex Trauma Survey: National Child Traumatic Stress Network

The NCTSN conducted a survey on complex trauma exposure, outcomes and treatment approaches for impacted children and their families receiving intervention and/or comprehensive assessment services in 2002. Aggregate data was provided on a sample of 1,699 children across 25 network sites (Spinazzola et. al., 2003). This sample constitutes approximately 15% of the total population of children directly served by the network during a typical quarter.

Findings revealed that the vast majority of children served by the network (78%) have been exposed to multiple and/or prolonged trauma, with a modal number of 3 trauma exposure types. Findings further revealed that initial exposure typically occurs early, with an average age of onset of 5 years old. Moreover, 98% of clinicians surveyed reported average trauma onset prior to age 11, and 93% reported average onset by age 8.

Interpersonal victimization uniformly emerged as the most prevalent form of trauma exposure experienced by children in the network, with the locus of impact typically in the home (see Figure 1). Specifically, each of the following types of trauma exposure was reported for approximately one-half of the children surveyed: *psychological maltreatment* (CEA; i.e., verbal abuse, emotional abuse or emotional neglect); *traumatic loss*; dependence on an *impaired caregiver* (i.e., parental mental illness or substance abuse); and *domestic violence*. These experiences were closely followed by *sexual maltreatment/assault* (CSA), and *neglect* (i.e., physical, medical, or educational neglect), both observed in at least one-in-three children. Smaller but notable percentages of children had histories of exposure to *physical maltreatment/assault* (CPA) or *terrorism* within the United States. Forms of trauma exposure not involving interpersonal victimization were significantly less common: fewer than one-in-ten children included in the survey had been exposed to serious accidents, medical illness or disaster.

The survey further revealed that a large percentage of trauma exposed children exhibit several forms of posttraumatic sequelae not captured by standard PTSD, depressive or anxiety disorder diagnoses (see Figure 2). Notably, 50% or more of the children surveyed were reported to exhibit significant disturbances in the following domains: *affect regulation*; *attention and concentration*; *negative self-image*; *impulse control*; and *aggression or risk taking*. In addition, approximately one-third of the sample exhibited significant problems with *somatization*, *attachment*, *conduct disorder or ODD*; *sexual interest, activity or avoidance*; and *dissociation*.

Complex Trauma Survey: National Child Traumatic Stress Network Continued

Despite the wide array of interventions reported to be available for child exposed to complex trauma, no clear clinical consensus emerged regarding the relative effectiveness of available modalities. Notably, 5 the top 7 intervention modalities identified by clinicians to be most effective with complex trauma in children—*play therapy, expressive therapies, multisystemic therapy, group therapy,* and *self-management/coaching*—were also ranked among the 7 least effective interventions with this population. Only *weekly individual therapy* and *family therapy* were unequivocally perceived to be effective modalities with this population, with *pharmacotherapy* and *home-based therapies* consistently rated as ineffective. Nevertheless, the majority of clinicians surveyed spontaneously identified the active involvement of caregivers in children's treatment as a crucial element of the treatment's effectiveness. A number of clinicians also noted the utility of combined approaches to intervention, as well as the need to tailor intervention services to children's specific needs based on contextual factors, which include developmental stage, sociocultural context, and the availability of environmental resources. Finally, several clinicians pointed to the importance of coordinating services across service sectors (e.g., schools, mental health, social services) to ensure effective intervention for children exposed to complex trauma.

Figure 1: Trauma Exposure Prevalence in the National Child Traumatic Stress Network (N = 1,699)

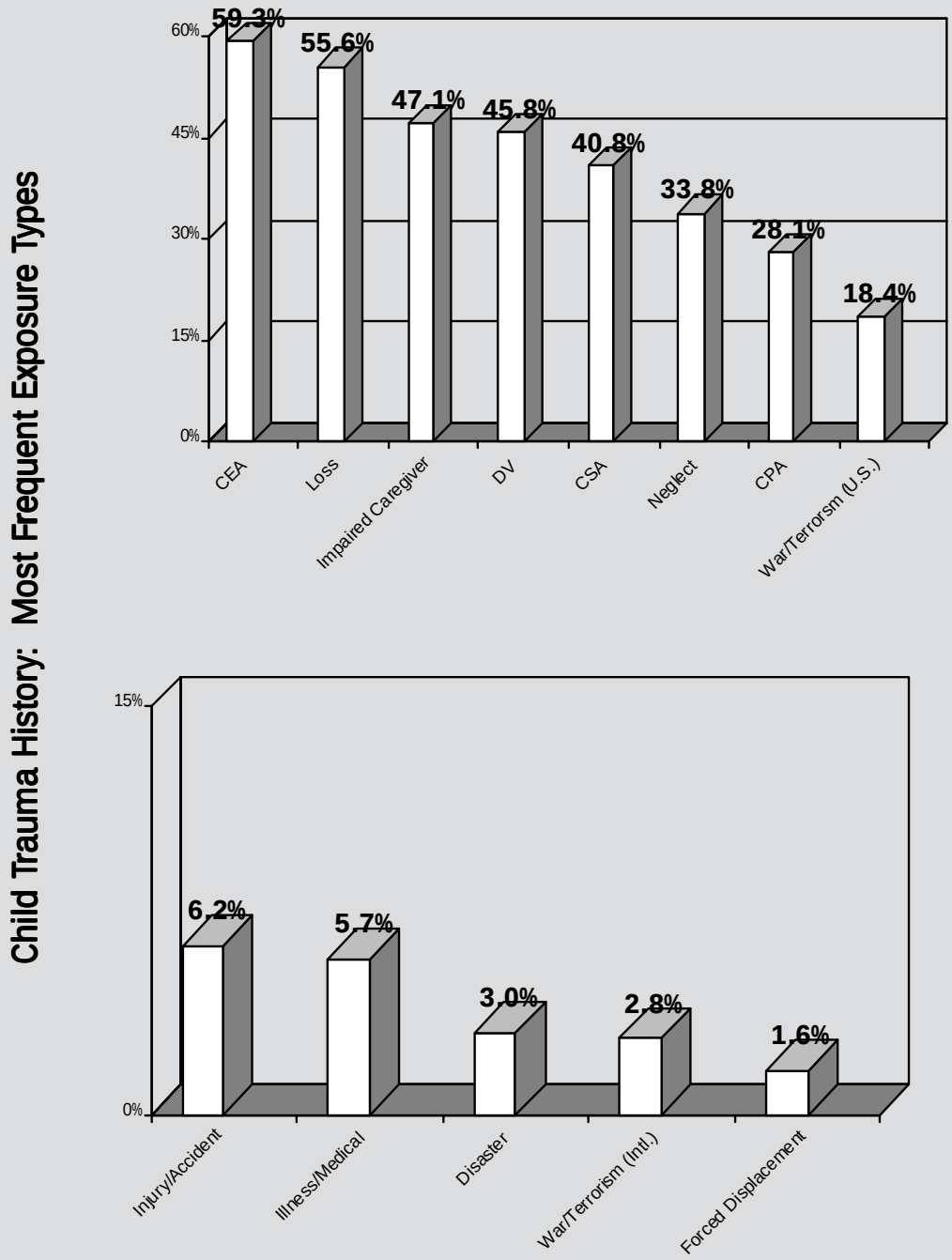
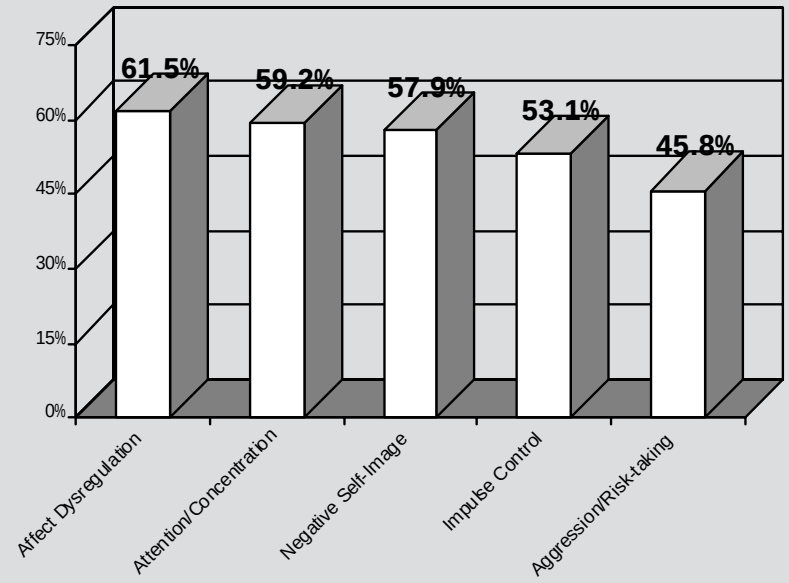
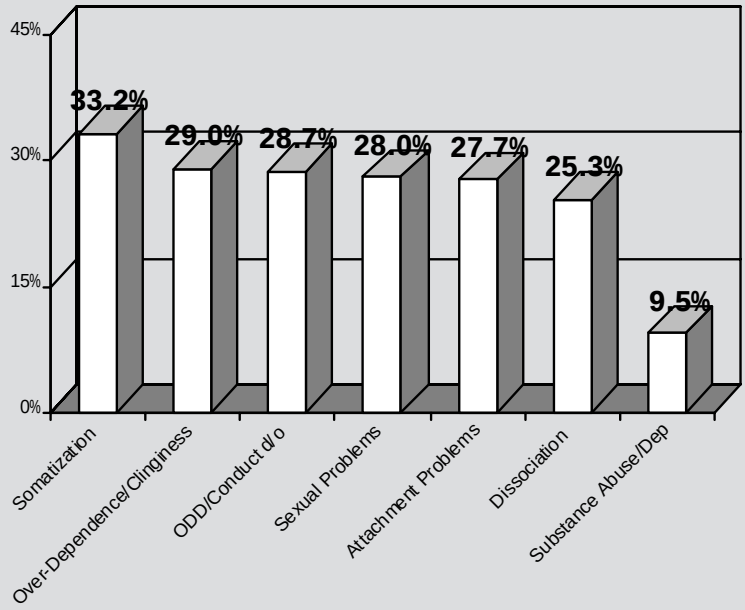


Figure 2: Complex Trauma Adaptation in the National Child Traumatic Stress Network (N = 1,699)





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PACIFIC JUVENILE DEFENDER CENTER

Competence and *Gladys R.*

THE INS AND OUTS OF COMPETENCY IN JUVENILE DELINQUENCY CASES

Recognizing Youth in Practice: Juvenile Delinquency Defense Beyond the Bench 24, San Diego, California (December 18, 2017)

THE BASIC LAW OF COMPETENCY

A. What is the standard of competency?

The standard is set forth in *Dusky* v. *United States* (1960) 362 U.S. 402. In *Dusky,* the United States Supreme Court held that the defendant must have a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." *Dusky* was grounded in the concept that due process of law is violated when proceedings continue against someone that cannot understand or participate in the judicial process. Inability to meet either prong of the test indicates incompetence to stand trial.

Similarly, Welfare and Institutions Code section 709 provides that, "A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her."

Things to Consider

The key with juveniles is present ability. Many experts will say with training, or with someone helping him/her the youth could eventually understand and will eventually be competent. The standard is not whether someday the youth will be competent; it is whether the youth is competent now. (*In re Ricky S.* (2008) 166 Cal.App.4th 232.)

B. What triggers incompetency?

Mental illness, cognitive issues (developmentally disabled) and developmental immaturity can all trigger incompetency. This is articulated in *Timothy J.* v. *Superior Court* (2007) 150 Cal.App.4th 847, and Welfare and Institutions Code section 709.

Welfare and Institutions Code section 709, subdivision (b) requires the court to appoint an expert to determine "whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so whether the condition or conditions impair the minor's competency."

Since competency is grounded in due process of law, look for other items that could trigger a competency analysis. For instance, if someone is hearing impaired and cannot communicate in sign language, they cannot understand the proceedings nor can they assist in their defense.

C. Who declares the doubt?

The juvenile court declares the doubt. (Cal. Rule of Court, Rule 5.645 (d).) The court has a *sua sponte* duty to suspend the proceedings and conduct a competency hearing on its own motion whenever there is *substantial evidence* of incompetency. (*People* v. *Ary* (2004) 118 Cal.App.4th 1016.)

In *Ary,* counsel was litigating the voluntariness of a confession and the evidence during the motion detailed the significant cognitive deficits of the defendant. The court of appeal reversed the denial of the suppression motion stating that there was substantial evidence introduced during the hearing to raise a reasonable doubt as to competency, and as such, the court on its own motion should have declared a doubt and suspended proceedings for a competency hearing.

D. What does defense counsel need to establish before a doubt is declared?

Substantial evidence is "reasonable in nature, credible and of solid value; it must actually be 'substantial proof' of the essentials which the law requires in a particular case." (*Estate of Teed* (1952) 112 Cal.App.2d 636, 644; *McRae* v. *Department of Corrections and Rehabilitation* (2006) 142 Cal.App.4th 377.) There are no firm rules about what constitutes substantial evidence – in case law, substantial evidence has been found based on psychological reports, testimony of witnesses, and verbal accounts of relevant disabilities or inability to meet one or more prongs of *Dusky*/709 (see, e.g., *Tyrone B*. v. *Superior Court* (2008) 164 Cal.App.4th 227, 231).

E. Does defense counsel need to provide an expert's report to the court so the court will express a doubt?

There is no rule requiring counsel to turn over the expert report at the time counsel is informing the court of concerns regarding the competency of the youth. However, sometimes the report is the "substantial evidence" needed to get the court to declare the doubt.

F. Once doubt is declared what happens? Can doubt be withdrawn? Can the district attorney and defense counsel stipulate to incompetency?

Once a doubt is declared the proceedings are suspended. Counsel cannot "withdraw" the doubt, because competency proceedings are initiated by the court. (See *People* v. *Pokovich* (2006) 39 Cal.4th 1240, 1245) In *In re John Z.* (2014) 223 Cal.App.4th 1046, defense counsel moved to withdraw her doubt and the juvenile court erroneously allowed

her to do so. Counsel then had the youth admit to reduced charges. The court of appeal reversed because the juvenile court had no jurisdiction to allow defense counsel to withdraw her doubt as to John's competency.

Similarly, because a competency determination is a process initiated by the court, defense counsel and the district attorney cannot stipulate whether the youth is competent or incompetent. The district attorney can submit on the report, and the court can consider the report as evidence, but ultimately the court has to make a judicial determination as to whether the youth is competent or incompetent.

Things to Consider

In some counties, either through local protocols or by practice, cases involving youth who are potentially incompetent are informally resolved (for example, dismissing the case if the family seeks regional center eligibility or other services), or the case may be handled through Welfare and Institutions Code section 654.2 informal supervision. This may provide a way to reduce confinement time and get the youth more quickly to rehabilitative or supportive services. When this is a possibility, the resolution should occur prior to a formal competency hearing, because once there is a formal finding of incompetence, youth are, by definition, unable to consent to any conditions or orders the court may make.

G. Can competence be waived by the youth or defense counsel?

No. Whether a person is competent to stand trial is a jurisdictional question and cannot be waived by the defendant or counsel. Moreover, "it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have the court determine his capacity to stand trial." (*People* v. *Marks* (1988) 45 Cal.3d 1335, 1340.)

H. May an attorney seek incompetence against a youth's wishes?

Yes. When an attorney doubts the competence of the youth, the attorney may assume the youth cannot act in his or her own best interests, and the attorney may even act contrary to the express desires of the youth. (*People v. Bolden* (1979) 99 Cal.App.3d 375, 379-380.)

I. What is the standard of proof at competency hearings?

The youth is presumed competent and the party that seeks the finding of incompetence bears the burden of proof by a preponderance of the evidence. (*In re R.V.* (2015) 61 Cal.4th 181.) In that case, the California Supreme Court found that the juvenile court acted unreasonably in rejecting the expert's opinion that R.V. was incompetent due to the fact that there was no disagreement among qualified experts. "When, as here, the expert

concludes that the minor is incompetent but the juvenile court finds flaws in the expert's methodology and reasoning, the court should consider appointing a second expert to inform the court's view that the first expert's opinion in inadequate." (*R.V.* at p. 216.)

Similarly, in *Bryan E.* v. *Superior Court* (2014) 231 Cal.App.4th 385, the juvenile court had found the minor competent based upon a determination that there was not a "substantial showing" that the minor lacked the ability to comprehend court procedures. The appellate court noted that while substantial evidence is the standard to determine whether a competency hearing must be conducted, the standard for determining whether the youth is competent is "preponderance of the evidence." *The standard is whether a preponderance of the evidence demonstrates that the minor is unable to assist counsel with a reasonable degree of rational understanding or is unable to factually and rationally comprehend the court proceedings*. (*Bryan E.* at pp. 390-392.)

J. At what stage can competency litigated?

Competency may be litigated at any stage. When a transfer motion has been filed, some judges may feel that you should first litigate the transfer case and then address competency. On the contrary, competency should be litigated first. (*James H. v. Superior Court* (1978) 77 Cal.App.3d 169, 143; *Tyrone B.* v. *Superior Court* (2008) 164 Cal.App.4th 227, 231.)

K. Can competency be re-litigated?

Yes, competency is a fluid issue. A previous finding of competency does not bar you from re-litigating the issue later in the case. However, the court is not required to suspend proceedings to conduct a second competency hearing unless it is presented with "a substantial change of circumstances or new evidence" casting serious doubt on the earlier finding of competency. (*People* v. *Jones* (1991) 53 Cal.3d 1115, 1153.)

L. Must the youth comply with the exam by the expert appointed by the court?

Yes, to the extent of his or her abilities. In the case of competency, the evaluation by another expert after a doubt is declared is considered compelled. Failure to participate will not necessarily assist the youth in his/her case and actually can be used against him/her in the competency hearing.

The statutory scheme governing competency to stand trial does not give the defendant the right to refuse to submit to the competency examination. (*People* v. *Pokovich* (2006) 39 Cal.4th 1240, 1245), and there is no right to waive the hearing on the issue of competency. (*Centeno* v. *Superior Court* (2004) 117 Cal.App.4th 30, 43.)

M. Can statements the youth makes about the case or to the doctor be used against the youth in trial in the case-in-chief or for impeachment?

No. Because the evaluation by a forensic expert to evaluate competency for the court is judicially compelled, the doctrine of *Judicial Immunity* governs the case. This means that under no circumstance can the district attorney use statements the youth made to the expert against the youth if the case goes to adjudication. In fact, the district attorney cannot even use the statements for impeachment.

"[T]he Fifth Amendment's privilege against self-incrimination prohibits the prosecution from using at trial, for the purpose of impeachment, statements defendant has made during a court-ordered mental competency examination." (*People* v. *Pokovich* (2006) 39 Cal.4th 1240, 1253.)

On this point, because the competency evaluation by a court doctor is considered judicially compelled, the United States Supreme Court has held that *Miranda* warnings must to be issued at the beginning of each interview. (*Estelle v. Smith* (1981) 451 U.S. 454.) However, since California (along with other states) has adopted the judicial immunity rule, *Miranda* is not necessary since the statements cannot be used against the youth--even for impeachment.

N. Can the expert opine on the ultimate conclusion?

Yes. See Evidence Code section 805.

O. What must counsel disclose to the prosecution before having a defense expert testify?

You will need to disclose the report that the expert prepared for you. (See Cal. Rules of Court, rule 5.546 (d)(6).)

Things to Consider

The reports and records that the expert relies on in his opinion are subject to cross-examination and will be discoverable.

P. Can the prosecution demand notes the defense expert took while examining the youth?

Probably. See *Hines* v. *Superior Court* (1993) 20 Cal.App.4th 1818. Notes of the examiner are the original documentation of the exam, tests, etc., and original notes are the "best evidence of the test." "An expert should not be permitted to insulate such evidence from discovery by refining or retyping or otherwise reducing the original documentation to some other form." (*Hines* v. *Superior Court, supra,* at p. 1822.)

Things to Consider

Although *Hines* is completely predicated on Penal Code section 1054.3, the rationale for this issue would most likely apply to juvenile cases. Again, counsel may argue that it should not apply because California Rules of Court, rule 5.546 is the sole statute governing discovery.

Q. If the youth was out of custody at the time of the competency hearing, can the court remand the youth to juvenile hall or put him on home detention after a finding of incompetence?

Incompetency is not sufficient in and of itself to create a change in circumstances to justify detention. If there is a request for detention, the key question to ask is whether remediation can be provided without confinement? Where the youth did not require detention before the finding of incompetence, it is difficult to see how detention is now needed, particularly if it is to occur in juvenile hall. This is an issue that may require the filing of a habeas writ.

In *Patrick H.* v. *Superior Court* (1997) 54 Cal.App.4th 1346, the youth committed the crime while already being institutionalized at a state hospital. The court of appeal noted:

> "A finding of incompetence in a juvenile proceeding . . . does not next result in a confinement order or the equivalent. The finding of present incompetence of a juvenile at most results in a referral for evaluation for possible initiation of civil commitment proceedings…in juvenile cases the resultant commitment is independently based on civil commitment standards and will cease or endure based on those standards, no matter what disposition is made in the Section 602 proceedings…in effect a juvenile is not committed as incompetent to proceed with section 602 proceedings, but on a wholly independent basis after wholly independent procedures."

(*Patrick H.* v. *Superior Court, supra,* at p. 1356, referring to *In re Mary T.* (1985) 176 Cal.App.3d 38 and *James H.* v. *Superior Court* (1978) 77 Cal.App.3d 169.)

Later on in the opinion the court in *Patrick H.* reiterates, "A finding of incompetence in a juvenile proceeding should not result in a confinement order or its equivalent." (*Patrick H.* v. *Superior Court, supra,* 54 Cal.App.4th 1346 at p. 1359.)

Things to Consider

Welfare and Institutions Code section does empower the court to make detention decisions. However it does not remove the requirement that the detention criteria must be met before detaining a youth, and it does not stand for the proposition that youth can be detained indefinitely while we try to figure out what to do with the case.

Moreover, if the youth is detained in juvenile hall, the juvenile hall must provide services to restore competency. In the case of *In re Albert C.* (2017) 3 Cal.5th 483, 490, the California Supreme Court has found that the due process protections of *Jackson v. Indiana* (1972) 406 U.S. 715, and *In re Davis* (1973) 8 Cal.3d 798 apply in juvenile competence cases. Although it decided the case on other grounds, it expressly left open several questions, including whether juvenile hall detention for remediation is proper:

> "[W]e do not decide whether the nature of Albert's detention bore a sufficiently reasonable relation to the purpose of his detention. (*Jackson, supra,* 406 U.S. at p. 738.) Nor do we address whether Albert's placement in juvenile hall was reasonably related to the purpose of helping him attain competency. We also do not address whether the competency training Albert received was closely related to the purpose of his attaining competency."

(*In re Albert C.* at p. 495.)

R. Now that the youth has been found incompetent what can the court do?

Prior to the enactment of Welfare and Institutions Code section 709, the juvenile court was pretty limited in what it could do. California Rules of Court, rule 5.645(d), required that after finding the youth incompetent the court "must proceed under section 6550 and (a)-(c) of this rule." In essence, the court was required to refer the youth for a Lanterman-Petris-Short (LPS) evaluation. This made little sense since many youth who were incompetent would never meet LPS criteria.

Section 709 now provides additional guidelines. Where the court finds the youth incompetent, the court must suspend all proceedings "for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. **During this time the court may make orders that it deems appropriate for services that may assist the minor in attaining competency**. Further, the court may rule on motions that do not require the participation of the minor . . ." (Welf. & Inst. Code, § 709, emphasis added.)

The primary question counsel should be asking is whether or not the court is making an order for services that would assist the youth in attaining competency. (See separate handout on how to analyze whether remediation services are appropriate or likely to work for particular conditions or disabilities.) If the orders are not assisting the youth in attaining competency, counsel should explore whether a writ is necessary.

S. The youth is on juvenile probation for other petitions and he/she is found incompetent on a new open case. Can the court still suitably place, etc., based on the previous petitions he/she is already on probation for?

Since the juvenile delinquency system is rehabilitative and all the petitions are ostensibly under one case number, when the court declares the youth incompetent on the open case, logically, all the previous petitions should be suspended as well. This makes sense in that present incompetence in one petition means that the youth would have difficulty complying with orders in previous cases. It also casts doubt on the youth's competence in previous cases to the extent that the underlying reasons for incompetence are conditions that have persisted for a long time (e.g., intellectual disability, learning disabilities, immaturity). Therefore, counsel has strong grounds for arguing that the court is barred from "suitably placing" youth or going to disposition on the other previous petitions.

Things to Consider

Under Welfare and Institutions Code section 709, the court can make orders to effectuate the restoration of competency. The issue becomes murky when a court says it is using section 709, but really is suitably placing a minor because of his/her previous petition(s). For instance, if the youth is sent to a placement that is not geared for restoration of competency, and the court is placing the youth there because of his or her history. This order may need to be litigated, because the court is essentially using section 709 to make an end-run around the requirement that the proceedings be suspended and that the court's orders be directed at remediation services.

T. Does the finding of incompetency affect the cases he/she was already on probation for?

Again, it may. Because competency is fluid it can be raised at any time. The issue will be whether counsel should consider withdrawing previous admissions, and whether the youth was competent at the time he/she admitted previous petitions. Counsel should consider whether to move to withdraw the admissions to those petitions, or to seek a 782 dismissal.

U. The court has found the youth competent at a contested competency hearing and the matter is set for adjudication, and now the district attorney is offering a plea bargain. What issues does this present?

Counsel who continues to believe the youth is incompetent after a finding of competence by the court should file a writ challenging the finding of competence; have a contested jurisdictional hearing; or make it clear in the record that any admission is only being made to attain a final judgment for the purpose of appeal. (Juveniles are not required to file a certificate of probable cause to raise errors in appellate challenges (*In re Joseph B*. (1983) 34 Cal.3d 952), but without a clear statement that the admission was to facilitate

the appeal, appellate courts may still comment on the fact that the youth admitted the charges.)

The potential adverse consequences of having a young person who counsel believes to be incompetent admit the petition are very great. It may be a set up for the youth to fail in complying with the dispositional plan, and it may seriously complicate any future proceedings involving competence. Although it may be tempting to take a "good deal" either to save confinement time or avoid serious future consequences, counsel needs to proceed with extreme caution in this situation.

V. Can an incompetent youth demand a prima facie showing of the case that triggered juvenile court involvement?

Yes, see *In re Mary T.* (1985) 176 Cal.App.3d 38.

Things to Consider

Welfare and Institutions Code section 709 provides that the court can rule on matters that do not require the participation of the minor in the preparation, and set forth examples of matters that can be ruled on despite a finding of incompetency (motions to dismiss, on placement, detention, and demurrers). However, counsel should exercise caution and may want to postpone litigating these or other matters for a youth who is currently incompetent, especially when an important part of the motion calls for having the youth's assistance in understanding facts or background information.

W. Can the public attend a competency hearing in juvenile court?

Yes, as long as the criteria in Welfare and Institutions Code section 676 are met.

X. Does time spent at a mental health facility count as custody credits towards a Division of Juvenile Justice commitment?

Yes. See *In re Robert B*. (1995) 39 Cal.App.4th 1816.

FUNCTIONAL DOMAINS AND SPECIFIC FUNCTIONAL ABILITIES TYPICALLY CONSIDERED IN A JCST EVALUATION[1]

Recognizing Youth in Practice: Juvenile Delinquency Defense Beyond the Bench 24, San Diego, California (December 18, 2017)

Factual Understanding – The basic, concrete knowledge of the legal process.

- Understands he or she is accused of a crime
- Understands what the alleged crime is
- Understands the court will decide guilt/innocence
- Understands adjudication could result in punishment
- Understands the punishments that are possible
- Understands the various ways one may plead
- Understands the roles of various case participants
- Understands the basic process of a trial

Rational Appreciation – Accurate "beliefs" about what is factually understood about court.

- Able to manipulate information that is factually understood
- Able to contemplate the implications and significance of what is understood
- Able to rationally apply that knowledge in one's actual case-related situations

Assisting Counsel – Ability to participate with and meaningfully aid counsel in developing and presenting the defense.

- Able to understand and adequately respond to counsel's questions and provide relevant information for defense
- Able to provide a coherent account of the facts of the alleged crime
- Able to help identify potential sources of relevant evidence and witnesses

[1] From Ivan Kruh and Tom Grisso, *Developing Service Delivery Systems for Evaluations of Juveniles' Competence to Stand Trial: A Guide for States and Counties*, Delmar, NY: National Center for Mental Health and Juvenile Justice (2017), Appendix A, p. 77.

- Able to help identify reasons for confronting opposing witnesses
- Able to manage the stresses and demands of trial
- Able to follow and comprehend the testimony of other witnesses so to be able to alert counsel to any distortions of the facts
- Able to provide testimony with relevance, coherence, and independence of judgment

Legal Decision Making – Ability to consider, process, & weigh legal alternatives, and ability to reach and communicate legal choices.

- Able to rationally decide how to plead
- Able to rationally decide about going to trial
- Able to rationally decide about accepting plea offers
- Able to rationally decide about testifying
- Able to rationally decide about calling certain witnesses
- Able to rationally decide about pursuing certain defenses

QUESTIONS TO ASK ABOUT JUVENILE COMPETENCE REMEDIATION

Recognizing Youth in Practice: Juvenile Delinquency Defense Beyond the Bench 24, San Diego, California (December 18, 2017)

Juvenile competence to stand trial requires that a young person has (1) sufficient present ability to consult with counsel and to assist in preparing the defense with a reasonable degree of rational understanding, and (2) has a rational as well as factual understanding of the nature of the proceedings against him or her. (Welf. & Inst. Code, § 709, *Dusky v. United States* (1960) 362 U.S. 402.) Incompetence may result from any condition or conditions that render the young person unable to meet one or both prongs of the competence standard, including but not limited to mental illness, developmental disabilities or developmental immaturity. (Welf. & Inst. Code, § 709.)

There is little research on whether adult style restoration services (teaching court concepts and vocabulary) actually produce competence in juveniles. This handout provides language from one of the few articles that summarizes the research, or lack thereof, with respect to particular disabilities. The information in the handout may help counsel to actively question whether the client can be remediated on one or both prongs of the *Dusky* standard; whether remediation is likely to occur within a reasonable time frame; and whether the services being proposed can realistically contribute to competence remediation. It can help counsel to fine tune work with experts, argue incompetence based on the individual client's impairments, and move for dismissal of the case. The final section of the handout also provides language from research finding that most youth who are able to attain competence will do so within 3 to 4 months. This point should be emphasized in demanding prompt review hearings and in calling for dismissal.[1]

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[1] The California Supreme Court recently considered a case in which the youth was incarcerated in juvenile hall for 294 days without evidence of progress toward remediation. Although the case was decided on other grounds, the Court recognized juveniles' constitutional right to due process of law in competence proceedings (*In re Albert C.* (2017) 5 Cal.5th 483, 490.) The Court specifically noted that it was not deciding whether the "nature of Albert's detention bore a sufficiently reasonable relation to the purpose of his detention. (*Jackson* [*v. Indiana* (1972)] 406 U.S. [715,] 738)"; "whether Albert's placement in juvenile hall was reasonably related to the purpose of helping him attain competency"; or "whether the competency training Albert received was closely related to the purpose of his attaining competency." (*Albert C.* at p. 495.)

General Lack of Research on the Efficacy of Remediation for Juveniles

"…[L]ittle research has examined the effectiveness of interventions designed to enhance the legal capacities of youth. Therefore, it is unclear if it is even possible to enhance the legal capacities of many youth. (Grisso, 2005). Although some techniques for restoring competence among adults have been described (i.e., Anderson & Hewitt, 2002; Bertman et al., 2003; Brown, 1992; Davis, 1985; Noffsinger, 2001; Pendleton, 1980; Siegel & Elwork, 1990; Wall, Krupp, & Guilmette, 2003), these techniques may be inappropriate for adolescents because reasons for incompetence in adolescents and adults differ." (Jodi L. Viljoen and Thomas Grisso, "Prospects for Remediating Juvenile Adjudicative Competence," 13 *Psychology, Public Policy, and Law* 87-114 (2007) at 88, hereafter "Viljoen and Grisso.")

"At this point, research has not yet examined what types of approaches are most effective in enhancing legal capacities among youths…. Specifically, only two studies (D. K. Cooper, 1997; Viljoen et al., in press) have investigated efforts to enhance youths' legal capacities. Although these studies have provided some information, they were limited in scope because they examined only brief teaching modules that target youths' factual understanding rather than comprehensive interventions that target the broader set of capacities required of defendants." (Viljoen and Grisso, at 93.)

"Although little research has directly examined efforts to remediate adjudicative incompetence in youth, research in developmental psychology, clinical psychology, and education suggests that there may be significant challenges in improving youths' legal capacities." (Viljoen and Grisso, at 107.)

"The likelihood of success may vary depending on the types of legal impairments shown. Deficits in decisional skills may be particularly challenging to remediate (see Grisso, 2005) considering that they require complex skills, such as an ability to weigh the risks and long-term consequences of various options. Additionally, even factual understanding, which focuses only on basic knowledge of legal proceedings, has been found to be difficult to sufficiently improve (D. K. Cooper, 1997; Viljoen et al., in press)." (Viljoen and Grisso, at 107.)

Intellectual Challenges and Other Cognitive Deficits

"Mental retardation may be a particularly common cause of impaired legal capacities among adolescents found to be incompetent. For instance, McGaha et al. (2001) found that 58% of youth deemed incompetent in Florida were diagnosed with mental retardation, whereas only 6% of adults are typically found incompetent on this basis." (Viljoen and Grisso, at 91.)

"Incompetence that is caused by mental retardation is likely to be particularly challenging to remediate. Not surprisingly, mentally retarded youth who are found incompetent are

less likely than other incompetent youth to achieve competence (McGaha et al., 2001). Also, research with adults has noted that although psycholegal education programs have shown some success with adults with mild mental retardation, the impact has generally been quite modest (Anderson & Hewitt, 2002; Haines, 1983)." (Viljoen and Grisso, at 91.)

"Youths may be unable to understand their attorney and to communicate coherently with him or her because of mental retardation or other cognitive deficits. To some extent, it may be possible to improve the communication skills of such youth. One study reported 'small but significant' improvements in youths' communication abilities following a 12-week communication skills intervention for youth with moderate learning disabilities (Lamb, Bibby, & Wood, 1997, p. 275). Also, the use of augmentative communication aids (e.g., graphic symbols, communication boards) has been found to improve communication capacities of individuals with intellectual disabilities (Snyder, Freeman-Lorentz, & McLaughlin, 1994). However, it is unclear if these types of interventions could enhance a youth's communication capacities to the extent necessary to be considered competent." (Viljoen and Grisso, at 97-98.)

"When youth are found incompetent as a result of mental retardation or severe cognitive deficits, the goal is typically to create competence in youth who have never previously been competent. This task is likely to be particularly challenging. Mentally retarded youth who are found incompetent are less likely than other incompetent youth to be considered restorable (McGaha et al., 2001), and psycholegal education programs have reported only modest success with adults with mild mental retardation (Anderson & Hewitt, 2002)." (Viljoen and Grisso, at 107-108.)

Developmental Immaturity/Immaturity in Combination With Other Disabilities

"…[E]ven when adolescents do not have mental disorders or mental retardation, they may lack adequate legal capacities simply because their cognition and psychosocial capacities are still developing and have not reached their adult potential. Furthermore, when adolescents do have mental disorders or mental retardation, adolescents' normal developmental immaturity relative to adults may contribute to or compound these deficits in legal abilities. Incompetence due to normal developmental immaturity relative to adults has been referred to as developmental incompetence (Scott & Grisso, 2005) or incompetence due to 'age-appropriate immaturity' (Frost & Volenik, 2004, p. 333)." (Viljoen and Grisso, at 92.)

"Although factual understanding is typically considered the lowest legal ability in the sense of being easier to attain than other legal capacities (Bonnie, 1992), preliminary research has nevertheless indicated that it may be difficult to substantially improve youths' factual understanding with brief interventions. D. K. Cooper (1997) investigated whether viewing a 1-hour competency training videotape improved the legal capacities of

juvenile offenders aged 11 to 16 years. Cooper found that youth showed an improved understanding of the role of legal players, the layout of the courtroom, and how they could assist their attorneys after viewing the videotape. However, even with this training, the large majority of youth (89%) in that study still did not reach acceptable levels of legal capacities." (Viljoen and Grisso, at 94.)

"…[S]tudies suggest that youth may be able to show an immediate benefit from brief teaching, although brief teaching is unlikely to sufficiently alleviate limitation in factual understanding. Furthermore, given that these studies reassessed understanding immediately after teaching, it is unclear if adolescents adequately retain the information they are taught. The capacity for factual understanding seems to include the capacity to retain understanding of information across time so as to apply the information later, not merely understanding the information at the moment it is taught." (Viljoen and Grisso, at 94.)

"Rational understanding is generally considered a higher order ability than factual understanding because it requires that an individual have the capacity to apply information to his or her own case, rather than simply memorizing facts. It is often called appreciation, referring to the person's ability to appreciate the relevance of information to his or her own circumstances. To know something does not necessarily mean that one can apply it. For example, a youth might know that a defense attorney is 'someone who is on your side' but might believe that his or her own attorney is 'just like all other adults . . . against me' because of oppositionality, which has been referred to as a 'typical feature' of adolescence (American Psychiatric Association, 2000, p. 102)." (Viljoen and Grisso, at 95.)

"…[D]eficits in rational understanding may be due to psychosocial immaturity. Youths' beliefs about the legal process and its consequences may be related to the developmental phases that they are going through. For instance, a youth facing a plea decision might know that the odds of being found guilty are great yet might believe (because of feelings of invulnerability associated with the period of adolescent development) that 'it won't happen to me.' There is no clear, easy solution to remediating such deficits. Some youths might move through the relevant developmental phases fairly quickly, or there might be ways to alter their perceptions so as to move them beyond their developmental limitations. For others, it might not be a brief process, and they simply have to age out of that stage. Developmental psychology offers no clear answers, however, to questions about how to assess the likelihood that specific youth will or will not make these developmental transitions quickly." (Viljoen and Grisso, at 95-96.)

"…[D]eficits in rational understanding may be due to limited abstract reasoning abilities. Rational understanding requires abstract thinking, which is still developing during adolescence. Within Piagetian theory, formal operations, which are characterized by the capacity for abstract thinking, are thought to be acquired during early adolescence

(Flavell, Miller, & Miller, 2002), although more recent research suggests that such capacities continue to be refined throughout adolescence (e.g., Steinberg, 2005). Abstract thinking is relevant for legal competency because defendants must be able not only to know about alternative possible penalties, but also to imagine them happening in their own case and to estimate the probability of these outcomes for themselves (see Grisso, 2005)." (Viljoen and Grisso, at 96.)

"…[D]eficits in a youth's capacity to communicate with counsel, especially to communicate opinions, may be related to developmental immaturity. During adolescence, youth gradually become more capable of acting in an autonomous manner (Steinberg & Cauffman, 1996). Most adolescents are unlikely to have previously been in a relationship like the attorney– client relationship, in which their opinions are so critical and their decisions determine how an adult will act on their behalf. They may not understand that they not only have the authority to act on their own behalf but also that it is necessary to do so. Therefore, not surprisingly, many adolescent defendants, particularly young adolescents, show a strong tendency simply to comply with or acquiesce to their attorneys (Grisso et al., 2003; Viljoen, Klaver, & Roesch, 2005)."

"Conversely, a youth's developmental immaturity may sometimes manifest as confrontational and oppositional behavior. Youth, particularly young adolescents, are still developing the ability to understand others' perspectives (Selman, 1980; Steinberg & Cauffman, 1996). Thus, they may be overly dismissive toward their attorneys, such as by threatening to fire them over minor disagreements (Viljoen et al., 2005), or may disagree for merely oppositional reasons. Research offers little guidance for enhancing a normally developed youth's competence-related communication capacity, although communication and social skills programs used in interventions for youth with mental disorders may be a possible avenue to explore." (Viljoen and Grisso, at 98-99.)

"…[I]n a study by Grisso et al. (2003), adolescents aged 13 years and under performed in ways suggesting that they were less likely than adults to recognize the risks associated with legal decisions, were less likely to see these risks as serious or as likely to occur, and less often considered long-term consequences in their legal decision making. In addition, youth more often make choices that comply with authority figures, such as the police, when they are in custody (Grisso, 1981; Grisso & Pomicter, 1978)." (Viljoen and Grisso, at 99.)

"Low IQ and symptoms of psychopathology may potentially add to normal developmental limitations in decision-making capacities. For instance, youth with low IQ scores may be particularly compliant with authority figures in legal settings (Grisso et al., 2003; Viljoen & Roesch, 2005). In addition, youth with certain types of psychopathology, particularly externalizing disorders and substance abuse, may be more likely than other

adolescents to make risky decisions (Byrne et al., 2004; Kazdin, 2000; Teplin et al., 2005)." (Viljoen and Grisso, at 99.)

"Research has not yet investigated interventions to improve adolescent defendants' decision making and reasoning in adjudicative contexts. However, on the basis of developmental decision-making research and the literature on interventions for adolescent risk-taking behaviors (e.g., sexual risk taking, substance abuse), there may be a number of significant obstacles to efforts to enhance youths' reasoning and decision making (Reyna, Adam, Poirier, LeCray, & Brainerd, 2005; Steinberg, 2004)." (Viljoen and Grisso, at 99.)

"…[R]esearch has indicated that efforts to change adolescents' ability to appraise risks and understand the long-term consequences of decisions have met with varying degrees of success (Pedlow & Carey, 2004; see also Coyle et al., 2001; Jemmott, Jemmott, & Fong, 1998; Kipke, Boyer, & Hein, 1993; Rotherham- Borus, Gwadz, Fernandez, & Srinivasan, 1998; St. Lawrence, Jefferson, Alleyne, & Brasfield, 1995). Furthermore, young adolescents are less likely than adults to change their decision-making strategies in response to feedback about the outcomes of decisions (Byrnes, 2005) or in response to changes in the odds of various outcomes (Peterson-Badali & Abramovitch, 1993)." (Viljoen and Grisso, at 99-100.)

"Also, it can take a long time to invoke changes in decision-making skills, and these changes do not necessarily translate to other settings or sustain over time (D'Amico & Fromme, 2002; Howse, Best, & Stone, 2003; Reyna et al., 2005). Finally, to effectively reason through legal decisions, it is likely necessary for youth to have an adequate factual and rational understanding about adjudicative proceedings (Grisso, 2005), and as reviewed earlier, it may be difficult for some youth to even obtain these necessary prerequisite abilities." "Whether such deficits can be remediated in youth, therefore, is questionable." (Viljoen and Grisso, at 100.)

"When youths' adjudicative incompetence partially or completely stems from age-appropriate immaturity relative to adults, the goal of competence interventions is to accelerate the acquisition of normal developmental capacities. It is unclear whether this is even possible. Interventions for improving adolescents' decision making in various contexts have often met with limited success (Reyna et al., 2005; Steinberg, 2004), and especially little is known about how to improve immaturity-related deficits in rational understanding and communication with counsel." (Viljoen and Grisso, at 108.)

"Even when the youths' incompetence is not due solely to developmental immaturity, developmental factors may add to the difficulty of remediating incompetent youths. Young adolescents may be less likely to benefit from psychoeducational interventions as a result of cognitive and psychosocial immaturity. For instance, Viljoen et al. (in press) found that young adolescents were less likely than older adolescents to benefit from brief

teaching about basic legal concepts. Also, many adolescent offenders have cognitive deficits that may make it difficult to effectively teach them relevant legal knowledge and skills (e.g., Moffitt, 1993)." (Viljoen and Grisso at 108.)

Mental Disorders

"Preliminary evidence suggests that adolescent defendants with symptoms of Attention-Deficit/Hyperactivity Disorder may be more likely than other adolescent defendants to have problems, particularly in their ability to communicate with and assist counsel (Viljoen & Roesch, 2005). Also, symptoms of depression, anxiety, and trauma can be linked to impaired legal capacities in youths (see Grisso, 2005). For instance, an anxiety disorder may impair a youth's capacity to testify and communicate with his or her attorney, or depression may cause a youth to be inadequately motivated to engage in his or her defense. A history of trauma might cause a youth to have difficulties trusting his or her attorney, or anger related to depression in children might lead to an irrational refusal to consider an attorney's advice." (Viljoen and Grisso, at 90-91.)

"When youth are found incompetent on the basis of psychological disorders, it is possible that treating the underlying psychopathology may help remediate incompetence (see Kazdin & Weisz, 2003; Kendall, 2006; Weisz, Weiss, Han, Granger, & Morton, 1995, for descriptions of empirically supported interventions for child and adolescent psychopathology). In such cases, treatment does not need to entirely eliminate psychological symptoms per se but instead only the incompetence caused by the psychological symptoms (Grisso, 2005)." (Viljoen and Grisso, at 91.)

"Even when youth do not meet criteria for mental retardation, they may have other types of cognitive impairments (e.g., low IQ, learning disabilities, and/or neuropsychological deficits in verbal abilities, abstract reasoning, memory, attention, and executive abilities) that could contribute to impaired legal capacities (Grisso et al., 2003; Viljoen & Roesch, 2005)." (Viljoen and Grisso, at 91.)

"Youth with these types of cognitive limitations may be more difficult to remediate than youth with average or above-average cognitive capacities. For instance, preliminary research has indicated that youth with low IQ scores are less likely than other youth to benefit from brief teaching about basic legal concepts (Viljoen, Odgers, Grisso, & Tillbroook, in press). Although such youth may be able to memorize correct responses to competence-related questions, such rote memorization of responses is insufficient for a defendant to be considered competent without comprehension of the task (United States v. Duhon, 2000)." (Viljoen and Grisso, at 91.)

"…[S]ymptoms of a mental disorder may interfere with a youth's rational understanding. For instance, a youth with a prepsychotic disorder may have bizarre ideas that his or her attorney is actually part of a plot to harm him or her. Similarly, a youth with a history of

trauma and symptoms of posttraumatic stress disorder may have difficulty seeing an attorney as someone who is trustworthy because of past victimization experiences. When deficits in a youth's rational understanding result from a mental disorder, treating the disorder might alleviate these deficits, although research has yet to determine this." (Viljoen and Grisso, at 95.)

"Psychopathology may also contribute to deficits in a youth's ability to communicate with counsel and ability to behave appropriately in the courtroom. Symptoms of an early-onset thought disorder, such as hallucinations, may interfere with a youth's ability to attend to information that his or her attorney communicates. Youth with symptoms of Attention-Deficit/Hyperactivity Disorder may have difficulties reading social cues and generating appropriate responses to social situations (Matthys, Cuperus, & Van Engeland, 1999). Various other forms of psychopathology, such as conduct disorders, anxiety disorders, and autism spectrum disorders, have been found to be associated with communication difficulties in youth, language problems, and social skills deficits (Cohen, Davine, Horodezky, Lipsett, & Isaacson, 1993; Spence, 2003)." (Viljoen and Grisso, at 98.)

"Social skills programs have been used to treat general communication and social skills deficits in youth with psychopathology (Spence, 2003)…. However, some populations appear particularly challenging to treat. For instance, research has found that it is challenging to enhance the social competence of youth with Attention-Deficit/Hyperactivity Disorder (Antshel & Remer, 2003; Pfiffner, Calzada, & McBurnett, 2000)." (Viljoen and Grisso at 98.)

"…[M]uch remains unknown about how to effectively treat youth with mental disorders. For instance, the social skills deficits found in youth with psychopathology (potentially leading to difficulties in communicating with counsel) are often resistant to treatment (Pfiffner et al., 2000)." (Viljoen and Grisso, at 107.)

Research on the Length of the Remediation Process and the Probability of Remediation

"…[P]reliminary data from Virginia has shown that the majority of juveniles were either restored to competence or found to be incapable of attaining competence within 3 to 4 months." (Kimberly Larson and Thomas Grisso, *Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings:A Guide for Lawmakers*, National Youth Screening & Assessment Project (2011), at 76 and n. 139 [see text below].)

Footnote 139: "The state of Virginia has begun to examine their juvenile competence remediation services. In this study researchers examined 520 youth who had been referred for remediation services and divided the juveniles into three categories: (1) those with a mental health diagnosis (2) those with an intellectual disability, and (3) those with neither a mental health diagnosis or intellectual disability who were nonetheless found to

be in need of remediation services. As part of this study, researchers examined the juveniles to determine at what point they were likely to either be remediated or it was determined that the child could not be remediated. The results showed that, after services were provided for between 91 and 120 days, 52 percent of youth were remediated and 16 percent were determined to be unable to attain competence. After services had been provided between 121 and 150 days, the cumulative number of juveniles who had either been remediated or determined to be unrestorable was 78 percent. In that additional 30 days of service provision, an additional 7 percent of juveniles were remediated and 3 percent found unremediable. If services were provided up to 180 days, an additional 2 percent of youth were found to be unable to attain competence and an additional 5 percent were remediated Although these data must be interpreted with caution, due to the low base rate of juveniles who were not restorable, it does provide some indication of the rates at which remediation of juveniles can occur. See Janet I. Warren & Jeanette DuVal, Developing a Forensic Service Delivery System for Juveniles Adjudicated Incompetent to Stand Trial, 8 Int'l J. of Forensic Mental Health (2009) (outlining percentages of juveniles found incompetent due to mental illness, intellectual disability or both)."

An evaluation of 563 youth in the Virginia Juvenile Competency Program found that:

"…[M]ost youth can be restored will be restored within a three- to four-month period – if they are provided with the interventions that are age appropriate and offered by skilled juvenile competency restoration counselors." (Janet I. Warren, et al., "Developing a Forensic Service Delivery System for Juveniles Adjudicated Incompetent to Stand Trial." 8 International Journal of Forensic Mental Health, 245-262 (2009), at 259.)

CAPACITY ISSUES IN JUVENILE COURT— UNDERSTANDING *GLADYS R.*

Recognizing Youth in Practice: Juvenile Delinquency Defense Beyond the Bench 24, San Diego, California (December 18, 2017)

I. DID THE YOUTH HAVE THE CAPACITY TO COMMIT THE OFFENSE?

When the case involves a youth under the age of 14, it is important to evaluate whether the youth had the capacity to commit the crime. Pursuant to Penal Code section 26, the law presumes that youth under age 14 are not capable of committing a crime "in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." (Cal Pen. Code, § 26.)

This capacity issue is often referred to a "Gladys R." based on the case *Gladys R.* v. *Superior Court* (1970) 1 Cal.3d 855. "Only if the age, experience, knowledge, and conduct of the child demonstrate by clear proof that he has violated a criminal law should he be declared a ward of the court under section 602." (*Gladys R.*, at p. 867.)

The prosecution must prove "Gladys R." capacity by clear and convincing evidence. (*In re Manuel L.* (1994) 7 Cal.4th 229.) Therefore, although the prosecutor must prove the elements of the underlying offense "beyond a reasonable doubt," the youth's capacity to commit the offense only has to be proven by "clear and convincing evidence."

Defense counsel may demand that the *Gladys R.* determination be made prior to any determination of competence to stand trial. (*In re R.V.* (2015) 61 Cal.4th 181, 197-198.)

In addition, the prosecutor must prove the client's capacity as part of a *Dennis H.* detention rehearing. (*In re Mary T.* (1985) 176 Cal.App.3d 38.)

II. THE NATURE OF EVIDENCE FOR CAPACITY

A. Circumstantial Evidence.

In most cases the prosecution proves capacity by circumstantial evidence. For instance if the youth enters a department store with an empty bag and is looking around while putting items in the bag and trying to conceal his or her conduct, this could be used as circumstantial evidence that the youth knew the wrongfulness of the conduct.

Courts may consider the circumstances of the offense as well as the method of commission and concealment as factors in determining whether the youth knew the "wrongfulness of his conduct." (See *In re James B.* (2003) 109 Cal.App.4th 862, 872.)

The court may also consider whether the youth's parent or guardian has previously discussed the wrongfulness of the particular conduct with the youth. (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.)

B. Direct Evidence.

Many law enforcement agencies employ a *Gladys R.* questionnaire to assist in gathering direct evidence that the youth knew the wrongfulness of his or her conduct.

Counsel should be aware that the *Gladys R*. questionnaire triggers *Miranda* protections. (*In re Richard T.* (1985) 175 Cal.App.3d 248.) Moreover, counsel must review the *Gladys R.* questionnaire carefully both in the questions asked and the answers given. The questions should not be about knowing the difference between the truth and a lie, but should be geared toward understanding the wrongfulness of the alleged conduct. Some *Gladys R.* questionnaires are poorly written and do not address wrongfulness. A well-written questionnaire may include questions regarding the youth's knowledge of the wrongfulness of the conduct and who taught the youth about the wrongfulness.

In the absence of circumstantial evidence, this questionnaire could be the sole basis on which the prosecutor seeks to prove capacity. Because many youth do not answer the questions correctly or are confused, counsel for the youth should evaluate whether there are grounds for challenging any admissions based on *Miranda* or voluntariness grounds. . Moreover, in many cases, counsel should seek the appointment of an expert to assess whether the youth client had the capacity to commit the alleged offenses.

C. Prior Conduct.

Courts have upheld that admissions to prior petitions for the same offense, or for a similar, but not identical offense, may be used to prove *Gladys R.* (*In re Harold M.* (1978) 78 Cal.App.3d 380, 385; *In re Martin L.* (1986) 187 Cal.App.3d 534; *In re Nirran W*. (1989) 207 Cal.App.3d 1157.)

III. *GLADYS R.* AND CAPACITY TO COMMIT SEX OFFENSES

Courts have routinely held that youth under the age of 14 have the capacity to commit sex offenses. (See *In re Paul C.* (1990) 221 Cal.App.3d 43, 52-53; *In re Billy Y., Jr.* (1990) 220 Cal.App.3d 127, 131, disapproved on other grounds in *In re Manuel L*. (1994) 7 Cal.4th 229, 232.) However, many youth under the age of 14 may lack such capacity for a variety of reasons, so this is a critically important issue for investigation. For instance, in the case of a very young client, if he or she has not yet reached puberty, this fact may undercut the capacity/intent argument for "lewd and lascivious conduct." There may also be parenting issues that interfere with capacity; for example, while many parents tell their children that no one can touch their private parts, some fail to tell them not to touch the private parts of others. There may also be situations in which the youth was molested,

and is simply mimicking that behavior without knowing that it is wrong. These areas need to be fully explored and often require the appointment of experts to assert a competent *Gladys R.* defense.

IV. *GLADYS R.* IN RELATION TO CRIMES WITH INTENT ELEMENTS

Valid capacity issues may also be asserted where the alleged offense requires a level of intent that the youth under the age of 14 is incapable of harboring. Thus, in *In re Michael B.* (1983) 149 Cal.App.3d 1073, the nine year-old youth knew that it was wrong to point a gun at an older playmate, but the intent required for involuntary manslaughter is negligence representing a disregard of human life or an indifference to consequences. The appellate court upheld findings that the youth did not fully understand the consequences of taking a life or the permanence of death. It also considered that the younger boy had simply been trying to get the older youth to leave because his parent would be home soon, and he did not fully understand the safety mechanisms on the gun. On these facts, the *Gladys R.* burden was not met.

V. *GLADYS R.* IN OTHER CONTEXTS

A. Self-Defense and Affirmative Defenses.

Gladys R. may be helpful in asserting certain affirmative defenses, where the youth misunderstood the boundary of appropriate behavior, due to immaturity. For instance, many parents teach their children not to hit others, but they may also tell their children that they can hit back if they were hit first. No parent teaches "you can only use the force necessary to repel the attack." For clients under 14, a capacity argument may be relevant to excuse or mitigate an incomplete self-defense case.

In cases where self-defense is an issue, counsel must explore what the youth was taught (if anything) about limits of defending oneself. For a very good discussion of how capacity interacts with self-defense please review *In re V.H.* (B211274), an unpublished 2009 Court of Appeal decision.

B. Aider and Abettor, Conspiracy, Accessory After the Fact.

These areas are ripe for litigation using capacity arguments based on *Gladys R*. For instance, some youth know it is wrong to steal—however they may not know it is wrong to aid and abet someone who is stealing. The concrete thinking of youth does not allow for abstract thinking and the weighing of conduct and consequences. So in cases where aiding and abetting, conspiracy, and accessory after the fact charges are at issue, there may be valid *Gladys R.* arguments.

PJDC
PACIFIC JUVENILE DEFENDER CENTER

Confessions

JUVENILE CONFESSION ISSUES

By Rourke F. Stacy rstacy@pubdef.lacounty.gov
Richard Broucher rbroucher@fdap.org

Components of this Presentation

- Review of Adolescent Development
- Review of Basic *Miranda* Principles & How Adolescent Development Impacts Youth In Interrogation Settings
- Pre-Hearing Preparation
- Nuts and bolts of litigating the suppression motion in court (under *Miranda* and involuntariness grounds.)

Of Critical Importance, At Least to Us

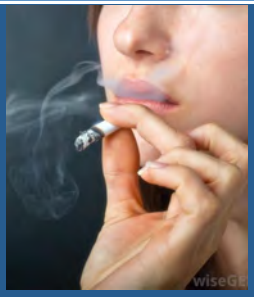
Overview of Adolescent Brain Development

Youth

- As used in this presentation youth = adolescents and young adults
- Studies show young adults are just as vulnerable as youth in interrogation settings due to the same adolescent development issues

Laws Designed to Protect Youth

- Movie ratings
- Explicit labels on music
- Marriage
- Contracts
- Alcohol purchases (21)
- Cigarettes (21)
- Voting



Other Protections

- Rental Cars (25)
- Tubal ligation (25)
- US Senator (30)
- US President (35)

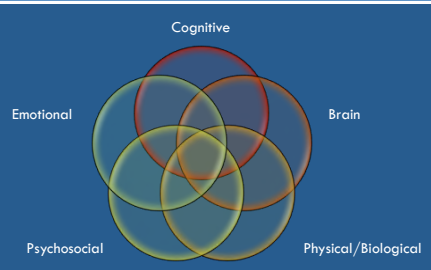
These Protections Created Based on Common Sense Observations of Youth

8

- Youth lack life experience
- Youth are impulsive, immature
- Youth lack ability to weigh long term consequences

Different Developmental Domains

9



Keep in Mind…

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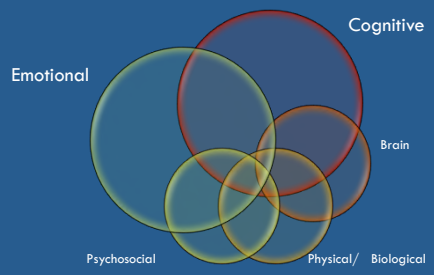
Age is not an indicator for the level of development in the various domains

A youth who is 17, may be biologically younger, and surely cognitively, emotionally and socially much younger—same with young adults.

Development is Dynamic!



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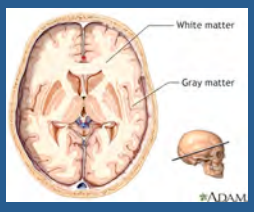
Brain Development in Adolescence-Young Adulthood

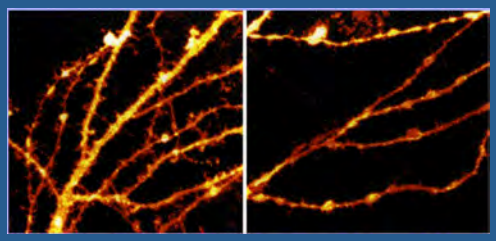
12



- Gray Matter (cell bodies, dendrites)
- White Matter (axons, myelin)

Synaptic Pruning

BEFORE AFTER



Dual Systems Model of Adolescent Brain Development

14

- Social-emotional system: responsible for processing emotions, social information, reward and punishment
  - During the period of adolescence-adulthood the following are often noted:
    - Increased sensation-seeking
    - Easier emotional arousal, i.e. very emotionally as opposed to rationally based in decision making, easily manipulated emotionally
    - Increased attentiveness to social information
- Cognitive control system: responsible for deliberative thinking – weighing costs and benefits, thinking ahead, regulating impulses
  - Develops gradually from preadolescence to mid-20s
  - Changes result in more impulse control, better emotion regulation, more foresight

Adolescence-Young Adulthood

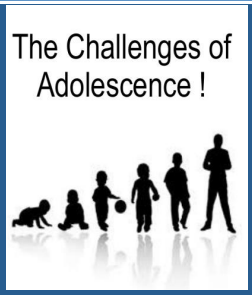
15

This trajectory brings challenges

- Socio-emotional system that is easily aroused and highly sensitive to social feedback
- Still-immature cognitive control system

As a result, youth are:

- Less able to control impulses
- Less able to resist pressure from peers (and police and authority figures)
- Less likely to think ahead
- More driven by the thrill of rewards



Cognitive Development

16

- Develop Abilities to:
  - Generate alternative possibilities
  - Think about abstract concepts
  - Think about things in multiple dimensions
  - See things in relative terms instead of absolute, black-or-white terms

Relevance of Cognitive Development on Adolescent Decision-Making in Legal Contexts

17

- Comprehension of legal rights (*Miranda* and other constitutional rights)
- Ability to participate in their defense (competence)
- Understanding colloquies (*Miranda* among others)
- Ability to waive their rights (*Miranda*, right to counsel, etc.)
- Attorney/client relationship (*Miranda*, among others—can youth perceive role of counsel in interrogation)
  - Communication (i.e., keep language simple, avoid legal jargon)

Psychosocial Immaturity

18

- Psychosocial: how an individual's internal psychological processes are influenced by and interact with people and the environment
- Psychosocial maturation proceeds more slowly than cognitive development
- Psychosocial characteristics can interfere with adolescent's ability to use cognitive abilities and influence adolescent's decision-making

Psychosocial Factors:

19

- Impulsivity
- Risk-taking
- Ability to resist peer pressure and adult authority
- Time orientation
- Sensation-seeking
- Delayed gratification

Relevance of Psychosocial Characteristics on How this Affects Decision-Making in Legal Contexts

20

- Culpability
- "Voluntariness" to consent to search, waive *Miranda* rights, confess to police
- Perception of custody
- Reasonable child standard v. reasonable adult standard

Adolescence and Decision-Making

21

Other Areas Impacting Development

22

- Disabilities
  - Learning disability
  - Severe emotional disturbance
  - Cognitive and developmental disabilities
  - Mental health disorders
  - Substance abuse
- Trauma and Victimization
  - Exposure to violence
  - Childhood abuse, maltreatment
  - Community violence and victimization

US Supreme Court's Affirmation of Developmental Concepts

23

- *Roper* v. *Simmons* (juvenile death penalty)
  - Youth are immature and reckless; more susceptible to peer pressure; developing and transient in nature
- *Graham* v. *Florida* (JLWOP for non-homicide cases)
  - Juveniles have lessened culpability and are less deserving of most severe punishment
- *JDB* v. *North Carolina* (*Miranda*)
  - Youth lack the experience, perspective and judgment to recognize and avoid detrimental choices
- *Miller* v. *Alabama* (JLWOP for homicide)
  - Penalty of JLWOP when imposed on teenager as compared to an adult is same "in name only"
- *Montgomery* v. *Louisiana* (retroactivity of *Miller*)

California's Affirmation of Developmental Concepts

24

California Cases:

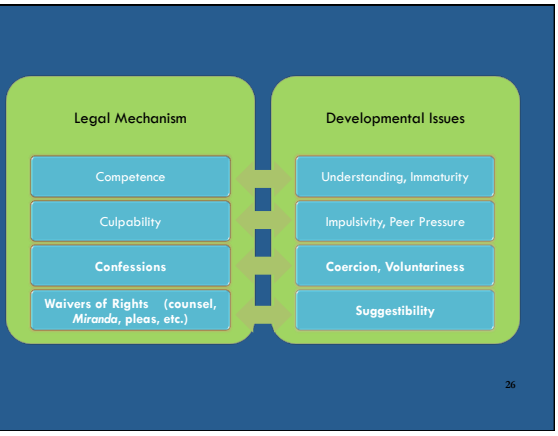
- *People* v. *Caballero* (2012) (110 year sentence for non-homicide unconstitutional – *Graham*/*Sullivan*)
- *People* v. *Gutierrez* (2014) (*Miller* factors for juvenile LWOP)
- *In re J.G.* (App. 2014) (request to sit on curb is detention)
- *In re Art T.* (App. 2015) (request for attorneys requires consideration of age)
- *In re Elias V.* (App. 2015) (adolescent development a factor in finding confession involuntary based on interrogation techniques)
- Welfare and Institutions Code 707 (fitness/waiver factors, clarified by SB 382)
- Public Safety and Rehabilitation Act (Prop 57, passed 11/2016)
- Before *Miller* we had SB-9 for juvenile LWOP Cases
- SB 260/261/AB 1308 (eff. 01/01/2018) Youthful Offender Parole Hearings as long as crime committed at age 25 and younger; SB 395 (eff. (eff. 01/01/2018) YOPH for juvenile LWOP; SB 395 (eff. (eff. 01/01/2018) mandates that in non-exigent circumstances youth 15 and under must have a consultation with counsel prior to interrogation by law enforcement (see *infra*)

HOWEVER, WE HAVE MUCH WORK TO DO WITH INTERROGATION PRACTICES AND APPLICATION OF ADOLESCENT DEVELOPMENT TO SUPPRESSING CONFESSIONS

How to Apply Adolescent Development in Practice

25

- Legal Mechanisms, like:
  - **Consent (4th Amend & *Miranda*)**
  - Pleas
  - **Waiver of *Miranda* rights**
  - Transfer
  - Competence
- Elements of offenses: (*Mens rea*)
- Degree of culpability:
  - Intentionally, knowingly, recklessly, negligently
- Probation conditions
- Disposition/sentencing



How to Make the Research Accessible to the Judge

27

Learn about Developmental Characteristics of Adolescents

Identify Adolescent Development Concepts that may Impact your Case

Learn the Science

Submit and Explain

Do Not Oversell the Science

28

We have to be careful not to use adolescent development in overgeneralized terms but to carefully apply it to each aspect of our *Miranda* and involuntariness claims for the best results

Basic *Miranda* Principles & Impact of Adolescent Development

Evaluating Your Case

Constitutional Claims

- Fourth Amendment
  - Fruit of the Poisonous Tree
- Fifth Amendment / Miranda
  - Fifth Amendment Right to Counsel
- Fifth Amendment/ Voluntariness
- Sixth Amendment
  - Right to Counsel (Will not cover this today)

FOPT

- Invalid detention, search, or seizure
- Adolescent development principles apply to these areas—youth view authority differently than adults
  - *JDB* v. *North Carolina* (2011) 564 U.S. 261
  - *In Re J.G.* (2014) 228 Cal.App.4th 402

Fifth Amendment: *Miranda*

Miranda has three requirements:

- Custody;
- Interrogation; and
- A state actor

For purposes of presentation, only custody and interrogation will be addressed!

CUSTODY

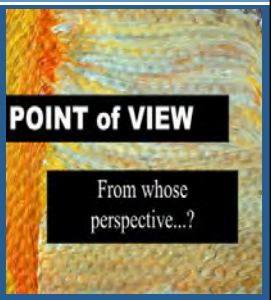
What Constitutes Custody

- Formal Arrest OR
- Restraint of freedom of movement as if arrested
- Reasonable "person" felt he/she could terminate questioning and leave

Thompson v. *Keohane* (1995) 516 U.S. 99, 112.

Custody Continued

- Whose point of view?
  - Objective test: Depends on the objective circumstances of the interrogation, not on the subjective views harbored by the police or the person being questioned. (*Stansbury* v. *California* (1994) 511 U.S. 318, 323.)



Custody Reviewed by TOC

- Location of interrogation
- Objective indicia of arrest are present
- Length of detention
- Demeanor of Officer

(*People* v. *Forster* (1994) 29 Cal.App.4th 1746, 1753.)

Is Age A Valid Factor In Determining Custody?

- Does reasonable person standard mean a reasonable 13 year old or 16 year old, 20 year old etc.?

YES!!!!

- See *JDB* v. *North Carolina* (2011) 564 US 261
  - It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave

POST JDB JUVENILE CASE

- *US v. IMM* (A Juvenile Male) (9th Cir. 2014) 747 F.3d 754
  - 9th Circuit applied JDB and found IMM in custody
  - Applied factors from (U.S. v. Kim (9th Cir., 2002) 292 F. 3d 969
    - Language used to summon the individual
    - Extent of which confronted with evidence of guilt
    - Physical surroundings of interrogation
    - Duration of Detention
    - Degree of Pressure Applied to Detain Individual

Summary of Custody

- Two inquiries are essential to determining custody:
  - What were the circumstances surrounding the interrogation;
  - Given those circumstances would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave.

The court then must apply an OBJECTIVE test to resolve the inquiry. (*Thompson v. Keohane* (1995) 516 U.S. 99, 112.)

Application of Adolescent Development Principles

- Requires a thorough assessment of the circumstances and the youthfulness of your client and what is reasonable for a youth to feel in those circumstances

Interrogation

Interrogation

- Interrogation is either express questioning, or its functional equivalent
- Designed to elicit incriminating response (*Rhode Island* v. *Innis* (1980) 446 U.S. 291, 301)
- Intent of police is relevant: Police actions not intended to elicit incriminating statements generally not considered "interrogation" (*People* v. *Grant* (1988) 45 Cal.3d 829, 842)

Is Intent of the Police Relevant?

- Police actions not intended to elicit incriminating statements generally not considered "interrogation."

(*People* v. *Grant* (1988) 45 Cal. 3d 829, 842.)

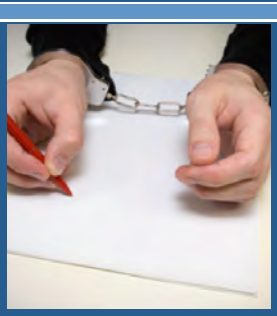
- However: Intent of police may bear on whether the police *should have known* that their words or actions were reasonably likely to evoke an incriminating response. (Innis fn. 7.)

Application of Adolescent Development to Interrogation

- You have to review the conduct or words of the police and determine whether a youth would have responded differently than an adult
- In other words, some actions and statements by police would not induce an adult to make incriminating statements, *but they would induce a youth.*

Fifth Amendment – *Miranda* Waiver

- Understanding the Context
  - *Miranda* (1966)
  - *Gault* (1967)
  - *Miranda* was written for adults; it was NEVER intended to be used by youth—moreover it was written by justices not psychologists!



What *Miranda* Entails . .

- Can your child:
  - Appreciate adversarial nature
  - Understand and comprehend words
  - Understand concepts
    - "right" is a concept that many do not understand
    - Irrevocable protection from self-incrimination
  - Understand Attorney-Client relationship
  - Capacities to reason about possible consequences of waiver

How Adolescent Development Affects Waiver

- Cognitive Aspect
  - Words, concepts, appreciating adversarial nature, trickery, deceit
- Emotional Aspect
  - Thinking from the amygdala not frontal lobes
  - More prone to react than reason—easily pressured
- Psycho-Social Aspect
  - Self-image, relation to peers, police
- Counterfactual Reasoning
  - Weighing long-term consequences, being able to extrapolate future possibilities

Validity of Waiver

Waiver must be:

1. Knowing and intelligent; and
2. Voluntary

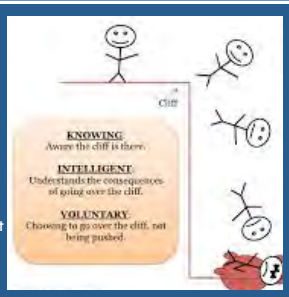
- The waiver must reflect that the suspect knowingly and intelligently relinquished a known right (*Edwards* v. *Arizona* (1981) 451 U.S. 477, 482)
- Waiver may be express or implied
- Waiver not voluntary if suspect is "threatened, tricked, or cajoled into a waiver" (*Miranda* at 476)

Knowing and Intelligent

Whether knowing and intelligent:

- Did the child grasp the basic fact that he was entitled to remain silent and have the assistance of an attorney?
- Did the child understand the *implications* of the decision to confess?

Your child's mere statement that he understood his rights should not be taken at face value



Basic Areas to Assess

- Knowing and Intelligent
  - Knowing = the more concrete factual aspects of the individual's comprehension. Did your child grasp the basic fact that he/she was entitled to remain silent and have the assistance of an attorney.
  - Intelligent = understanding the implications of the decision to confess. Did your child realize the adversarial nature of the proceedings or the implications of talking to the police?

Scrutinize the Text

"Q: I'm gonna read these to you before we talk, okay? You have the right to remain silent. Do you understand that right? Anything you say may be used against you in court. Do you understand this right? You have the right to talk to an attorney before you answer any questions and the right to have that attorney present with you during questioning. Do you understand this right?

"A: Mm hmm.

"Q: Okay. If you cannot afford an attorney and want an attorney to represent you, an attorney will be appointed before any questioning to represent you free of charge. Do you understand this right?

"A: Yes sir."

"I'm gonna read these to you *before we talk, okay*?"

(*In re T.F.* (2017) 16 Cal.App.5th 202 [finding child did not understood all of his *Miranda* rights and voluntarily, knowingly and intelligently waived them].)

The Problem With Implied Waiver

- Because we know that youth do not understand their *Miranda* rights like their adult counterparts, we need to object to implied waiver being valid for youth!
- Object to *People* v. *Hawthorne* (2009) 46 Cal.4th 67, 84-88)

Evaluating Waiver is Critical

- Study of several hundred *Miranda* waivers show that the comprehension range is second grade through three years post-graduate
  - You must know the grade/ comprehension level of warning and compare that to your child's functioning!!


MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU? HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

ENGLISH (FRONT)

Who Bears The Burden In Court?

- Prosecution has burden of establishing the validity of the waiver by a preponderance of the evidence (*People* v. *Dykes* (2009) 46 Cal. 4th 731, 751)
- Totality of circumstances analysis as to validity of the waiver

The Problem With Totality and Youth

- For 50 years courts have been importing adult *Miranda* jurisprudence to waivers by youth
  - Maine Supreme Court evaluated hundreds of *Miranda* cases and found the vulnerability and immaturity of youth are not taken into account in TOC analysis

Welfare and Institutions Code 625.6

Effective January 1, 2018

"(a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 15 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived."

Welfare and Institutions Code 625.6

"(b) The court shall, in adjudicating the admissibility of statements of a youth 15 years of age or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a)."

Welfare and Institutions Code 625.6

"(c) This section does not apply […] if both of the following criteria are met:

- (1) The officer who questioned the youth reasonably believed the information he or she sought was necessary to protect life or property from an imminent threat.
- (2) The officer's questions were limited to those questions that were reasonably necessary to obtain that information." (i.e., exigent circumstances per *New York v. Quarles* (1984) 467 U.S. 649.)

Welfare and Institutions Code 625.6

"(d) This section does not require a probation officer to comply with subdivision (a) in the normal performance of his or her duties under Section 625, 627.5, or 628."

- After taking child into temporary custody as alleged 601 or 602 (§625)
- When child is brought to the PO for temporary custody as alleged 601 or 602 (§627.5)
- Investigation of circumstances of the minor and facts surrounding temporary custody to determine release or further detention (§628)

Welfare and Institutions Code 625.6

- Does not change existing *Miranda* law
- Failure to comply does *not* require suppression.

(Under Proposition 8 the federal standard must be applied to *Miranda* issues. (*In re Lance W.* (1985) 37 Cal.3d 873, 896; see Cal. Const., art I, § 28, subd. (d).)

Welfare and Institutions Code 625.6

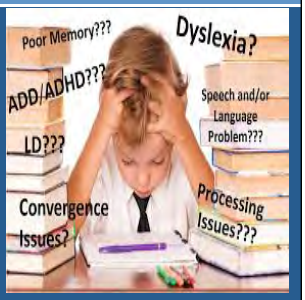
- How shall a court, in adjudicating the admissibility of statements, consider the effect of failure to comply with subdivision (a)?
  - Credibility of officer
  - Part of totality of circumstances analysis as to the validity of the waiver (i.e., whether it was knowing, intelligent, and voluntary).
  - ??

Fifth Amendment – Right to Counsel

- This is triggered by invocation (*Edwards* rule)
- Remember *Davis* rule has been held to apply to juveniles! (*People* v. *Nelson* (2012) 53 Cal.4th 367)
  - However, see *In re Art T.* (2015) 234 Cal.App.4th 335

Issues Affecting Invocation

- Many youth in the system have untreated mental health and/or learning disabilities
- 56-84% of institutionalized youth in juvenile system have severe language impairments
  - Affects invocation, ability to be unequivocal, ask questions, etc.



Fifth Amendment – Voluntariness (5th & 14th)

- A statement coerced by the police is *involuntary* and cannot be admitted for any purpose, including impeachment. (*Colorado v. Connelly* (1986) 479 U.S. 157)
- A coerced confession is not the product of "a rational intellect and a free will." (*Blackburn v. Alabama* (1960) 361 U.S. 199, 208)

Fifth Amendment: Voluntariness

- Coercive state action is required; a suspect's impaired mental state is not sufficient to show involuntariness. (*Colorado v. Connelly* at 167)

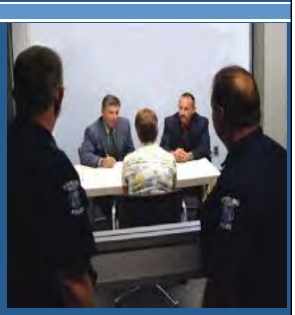
Voluntariness

Must evaluate both:

(1) The characteristics of the accused; and

(2) The nature and details of the interrogation

(*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 226; *In re Shawn D.* (1993) 20 Cal.App.4th 200, 208)



Determination of Voluntariness

- Whether a statement is voluntary is determined under the totality of the circumstances. (*People* v. *Neal* (2003) 31 Cal.4th 63, 79.)
- Remember circumstances that may have no import for an adult may have great import in the case of a juvenile:
  - For instance time of interrogation
  - Manner and tone of questioning
  - Trickery, deceit, promises

Voluntariness

- This is a different analysis than *Miranda*. You will have to attack both the circumstances of the interrogation and the characteristics of your child that made him/her vulnerable.
- NOTE: It is completely possible to have a voluntary and valid *Miranda* waiver and an involuntary confession.

Characteristics of the Accused

Issue: Did improper police tactics cause child to confess?

Some relevant factors include:

- Age, maturity
- Intelligence, mental capacity, education
- Experience with criminal justice system
- Mental illness
- Emotional state
- Use of drugs or alcohol
- Sophistication
- Language ability

Circumstances of the Interrogation

Relevant factors include:

- Location of the interrogation
- Length of interrogation and time of day conducted
- Sleep, food, access to bathroom
- Demeanor of police, threats, violence
- Promises of leniency (as distinguished from mere exhortations to tell the truth) if a motivating factor for minor in giving statement
- Calling minor a liar, "tough talk," "be a man"
- Deception and trickery that is reasonably likely to produce an untrue statement
- Unhonored requests to speak to parent or others

Schoolhouse Setting

- "[T]he mere fact of police questioning of a minor in the schoolhouse setting may have a coercive effect, because the child's 'presence at school is compulsory …'" (*In re Elias V.* (2015) 237 Cal.App. 4th 568, 581.)

Aspect of Interrogation to Address

- Law enforcement is trained to control the interrogation—the 20/80 rule means that interrogation is inherently designed to be coercive—therefore you need to address this when attacking involuntariness

Voluntariness

- As with adults, the prosecution must prove the voluntariness of a statement by a preponderance of the evidence. (*In re Aven S.* (1991) 1 Cal.App.4th 69, 75.)
- Despite the similar preponderance standard, the prosecution's burden to establish voluntariness is heightened in juvenile cases. (*People v. Lewis* (2001) 26 Cal.4th 334, 383 (citing *In re Anthony J.* (1980) 107 Cal.App.3d 962, 971.)

Voluntariness Continued

- It is not enough for courts to list the circumstances rather than actually considering them in their totality
- Courts must weigh, rather than list the relevant circumstances and weigh them not in the abstract but against the power of resistance of the person confessing. (*US v. Preston*) (9th Cir. 2014) 751 F.3d 1008, 1017

Know your remedy

- Miranda Violation/ Involuntary Waiver = confession can be used for impeachment
- Involuntary Confession = cannot be used for any purpose.

Totality of Circumstances

- Courts Assess Waiver and Involuntariness based on Totality of Circumstances
  - Because TOC is the evaluation method by the court it is imperative that you establish every moment that law enforcement had with your child to show the overall coercive environment
  - Many courts note characteristics of child without noting the importance and impact of these characteristics

What this means for you . . .

- It means that you have to be very organized, precise and able to articulate what factors made the waiver and/or confession invalid or involuntary
  - Focus on vulnerabilities of youth
  - Argue AD means adult *Miranda* jurisprudence should not be applied

Voluntariness Continued

- *United States v. Preston* (9th Cir. 2011) 751 F.3d 1008
  - Developmentally Disabled 18 year old
  - Court lays out the interplay between the disabilities of Preston and the police tactics used
  - Excellent analysis that can assist you in formulating arguments for your case.

Pre-Hearing Investigation Preparation

Where to Begin???

Interviewing the Child

- The interview is the most essential part of your preparation
  - Can help you determine which issues exist in your case and what records you will need
  - Read the *Miranda* advisements to your child; have child explain them to you; ask what key words mean

Obtaining Records

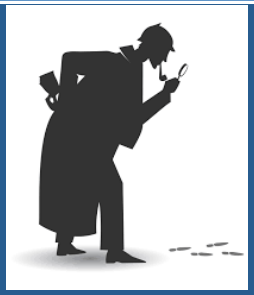
- Educational Records
- Mental Health Records
- Previous Police Reports where your child is victim or suspect
  - Was child interrogated?
  - If so, did invocation or waiver occur—did child go home?

Investigation

- SDT Practice Manuals for Law Enforcement Agencies
- POST Certification Training Materials
- See the interrogation room, court order for investigator to photograph/measure
- Do not let the officers set the stage at the hearing—you set the stage, you show the coerciveness

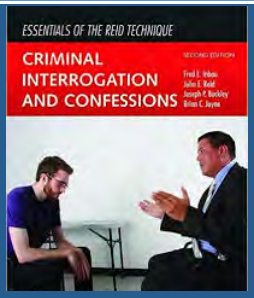
Other Investigation

- Violations of Police Practices
- *Pitchess* issues
- Investigate witnesses that can testify to vulnerabilities of your child: babysitters, teachers, coaches, neighbors, family members, etc.



Reid Technique

- Banned in the UK
- Not designed for use with children
- Designed to prey upon the psychological weaknesses of your child
- Nine Steps—YOU NEED TO KNOW THEM AND STUDY THEM
- Note the techniques used in Reid are not used with child victims—why?? Because they lead to false statements!
- (*In re Elias V.* (2015) 237 Cal.App. 4th 568)—great case—a must read!



Reid-Like Trainings

- POST distributed some interrogation courses "The Confrontation Interrogation Technique"
- Slightly different than Reid, but embraces same principles
- This is/was basis for LAPD instructional manual on "The Confrontation Interrogation Technique."
- In 2005 Post had "Interview Techniques and Interrogation Techniques." Reid is not mentioned, but techniques are the same.

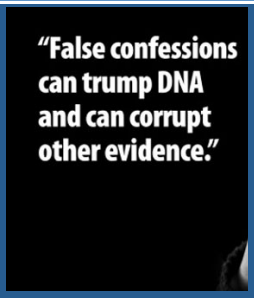
FALSE CONFESSIONS

False Confessions

- Often the by-product of coercive police techniques
- You need to trace the source of the information in your child's admission/confession
  - Was it supplied by police
  - Found in the media

False Confessions

- Juveniles are much more likely to falsely confess than an adult
- Adults 18-25 have significantly higher false confession rates than their older adult counterparts.
- Often the byproduct of coercive police techniques.



Signs of False Confession

- Look at confession vs. facts of the crime. Do they match? Where did the confessor get the facts from, the police during the interview? The media? Or are they facts that the confessor had knowledge of already (did the police provide the facts)?
- I "must have" or I "would have done." Statements in the conditional or subjunctive are possible indicators the confession is false.

False Confessions Cont' d

- Evaluate the Interview
  - How much coaching and suggestion went on?
  - Was this a compliant false confession? Meaning the child becomes hopeless and just agrees and gives a false confession?
  - Or was it a persuaded false confession?

Nuts and Bolts

Nomenclature

Nomenclature

Statement
Suspect's response to questions. Not indicative of guilt.

Admission
A statement that tends toward proving guilt

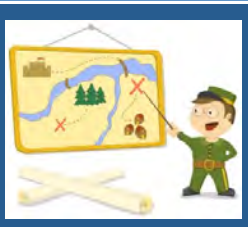
Confession
Fully Corroborated Statement during which the suspect accepts personal responsibility for committing a crime.

More terms . . .

Interview
- Non –Custodial, Information Gathering
- Officer Taking Notes
- 20/80 Rule

Interrogation
- Custody
- Officer Feels Strongly that child is guilty
- Officer Not Taking Notes
- 80/20 Rule
- Tactics to avoid contact with others

PLAN OF ATTACK



Plan of Attack

The number one problem is that attorneys are not specific enough and give generalized arguments.

You must be very clear in what you are addressing and what you want the court to focus on.

For instance . . .

- Are you saying that *Miranda* is triggered?
  - Are you attacking custody?
  - Interrogation?
  - Law enforcement actor/state action
- Waiver Issues
  - Express, Implied
  - Knowing and Intelligent or Voluntary

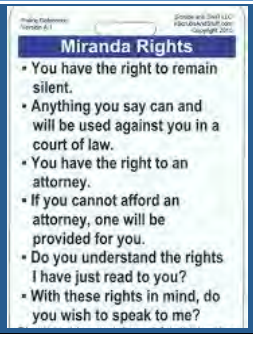
Are you attacking the advisements?

- *Miranda* Advisements need to be assessed
  - Proper Advisement
  - Timing of Advisement (*Siebert* issue)
  - Effective Advisement (Minimization of *Miranda*)
  - *Miranda Exceptions*
    - Yes there are exceptions—the "rescue doctrine," "public safety exception," and "booking exception."

Attacking Advisements

- D's statements are inadmissible unless police gave him all four advisements required by *Miranda* regardless of his understanding of his rights.

(*People* v. *Bradford* (2008) 169 Cal.App. 4th 843)

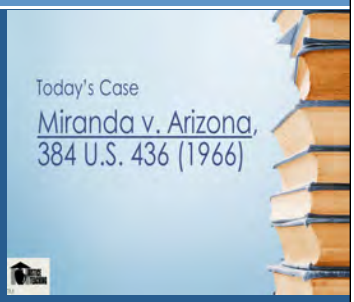


Attacking Advisements-Subtle Misinformation

- *Doody* v. *Ryan* (9th Cir. 2011) 649 F.3d 986
  - Doody was told that he had the right to counsel if he was involved in a crime, which implied he had the right to counsel only if he was guilty.

Attacking Advisements-Minimization

- *Doody* v. *Ryan* (9th Cir. 2011) 649 F.3d 986
  - Misstated purpose of warnings, minimized them as formalities, stated they were protection for the officers.



Minimization of *Miranda*

- Two ways
  - Intersperse rights with Chit-Chat
  - Downplay the importance "it is no big deal," "Just a formality."
  - Excellent Case in Handout= *Doody* v. *Ryan* discusses the minimization issue

Are you Attacking the Waiver

- Knowing, Intelligent AND Voluntary
  - Significant distinction between the two:
    - Voluntariness of Waiver, depends on ABSENCE of police overreaching—it depends on EXTERNAL FACTORS
    - Cognitive Component-depends on mental capacity
    - The components should not be conflated

(*Cox* v. *Del Papa* (9th Cir. 2008) 542 F.3d 669, 675.)

Miranda Waivers- Voluntary

Whether the waiver was voluntary:

- Was the defendant's waiver of *Miranda* rights the "product of a free and deliberate choice rather than intimidation, coercion, or deception?" (See *Colorado* v. *Spring* (1989) 479 U.S. 564, 573.)
- This is a separate question from whether the resulting *confession* was involuntary – whether the child's will was overborne at the time he confessed.
- You have to scrutinize waiver much more closely when reviewing statements by young adults and teenagers

Areas to Explore

- Remember waiver issues can overlap with involuntariness. Here are some key areas to explore
  - Phone Call Pursuant to Welf & Inst. Code 627 (child under 18)
  - Minimization of *Miranda*
  - Length of Interview
  - Promises of Leniency/Release/Trickery
    - Recent horrible case *Jones* (2017) 7 Cal.App.5th 787
  - Manner/Tone of Questions
  - Force/Threats of Violence

Phone Call

- Remember the key Reid Technique tactic is to isolate your child.
- Law enforcement never complies with Welfare and Institutions Code section 627 (b).
- Introduce the fact that call was not provided to show coerciveness of the interrogation environment

Length of Interview

- The longer the interrogation, the more likely this is an indicia of coercion
- The younger the child the more likely time is operating as a coercive factor
- Time has an impact on those with DD, Autism, ADHD, Mental Health issues, etc.
- Look for time interview started, was food provided, bathroom breaks, etc.

Promises of Leniency, Etc.

- Because juveniles and low functioning adults are much more susceptible to undue influence, promises and trickery—you have to really magnify if leniency, promises, etc. were used in the interrogation process.
  - But you have to tie how these promises related to your child's statements. Look at the timing of the statement in relation to the inducement. (*Jones* (2017) 7 Cal.App. 5th 787)

Manner, Tone of Questions

- Badgering with questions, insisting on guilt, raising voices, slamming things down, threats of adult court, threats of life sentence, etc. are all factors to evaluate.
  - *Doody* v. *Schriro*, *Doody* v. *Ryan*, *P* v. *Samuel Nelson* (COA Unpublished) all discuss this key aspect.

Force, Threat of Violence

- Actual violence is not needed, threat is sufficient.

Characteristics of Child to Evaluate

- Learning Disabilities
  - Can distort, block, scramble information at intake or when organizing information
  - Expression – errors involving scan, retrieval, and/or output can interfere with communication
  - Crucial to know
    - Reading comprehension of child vs. *Miranda* waiver
  - Must review school records closely or obtain testing

Expressive Language Disorders

Prior Cases/Police Contacts

- These are often used against us---presumption that prior contacts with police mean greater understanding of *Miranda* rights
  - Not true, especially for those with low cognitive abilities
  - Absent persuasive evidence that the child did understand the *Miranda* rights at the time of the previous waiver, prior court experience has limited probative value

Prior Contacts, Cont' d.

- Prior contacts may not include interrogation, or even a case being filed
- Having an attorney represent in court does not correlate to an attorney in the interrogation setting
- Youth in child welfare system may misidentify role of police and not understand adversarial process
- Children indoctrinated to respect authority. Higher functioning adults have benefits of life experience, that kids do not have

Request for a Parent

- Indicates:
  - Child did NOT understand *Miranda*
  - Trying to stop the interrogation or invoke
  - Show how circumstances of the interrogation prevented unequivocal request for counsel.
  - Also emotional trauma, medical problems, personality of the child, may play a role in why the child did not invoke
  - May have to call witnesses at hearing

Body Language/Response To Questions

- Look at body language
  - Putting down head
  - Appearing withdrawn
  - Not responding to questions

Are all indications that coercive interrogation environment is impacting your child.

Doody v. *Schriro*, *Doody* v. *Ryan*, *People* v. *Samuel Nelson* (Unpublished COA) all discuss this.

Emotional Make-Up/MH Issues

- Voluntariness for Due Process purposes cannot be based SOLELY on the emotional or psychological issues of your child. (*Colorado* v. *Connelly* (1986) 479 US 157)
- However "mental state is certainly relevant to police coercion." (*Connelly* at p. 167)

How this affects you . . .

- You need to show how the specific impairments of the child made it more difficult to resist the coercive techniques employed by law enforcement.
- Expert Testimony
- Other witnesses to child's vulnerabilities may need to be called

Youth

- No shortage of studies that show youth are physiologically different than their adult counterparts
- Finally the US Supreme Court has recognized that youth are different.
  - ***Roper, Graham, Miller, JDB***

What this means for you. . .

- Again, this means you have to show what specific aspects of youth are at play in the interrogation setting—and how this compromised your child.
- Attach articles, secondary resources to your written motions

When and how to litigate?

- Request bifurcated hearings.
- Note, *Miranda* motions, etc. are considered evidentiary in nature, therefore they can be re-litigated! Watch out!

What is effective?

- The most effective motions are
  - 1) Written
  - 2) Break down the aspects in question into distinct, concrete areas
  - 3) Have methodical, almost tedious questioning and setting up of the record.
  - 4) Broad brush strokes are not helpful—you need to have a roadmap and a plan well before the hearing
  - 5) Pin court down to specific findings.

What is Effective, Continued

- If you have multiple aspects to litigate each one of those will be separately addressed and argued.
- Do not mix the issues together!
  - For instance, invocation should not be mixed with waiver issues, etc.

Conclusion

- There are many law review articles and studies you can review on these issues, one place is the Pacific Juvenile Defender Center's Amicus Brief in the *Nelson* case

PJDC
PACIFIC JUVENILE DEFENDER CENTER

Transfer

OVERVIEW OF TRANSFER HEARINGS

PJDC
PACIFIC JUVENILE DEFENDER CENTER

Rourke F. Stacy, LA County Public Defender
rstacy@pubdef.lacounty.gov

What is a Transfer Hearing?

A "Transfer Hearing" is where the prosecution seeks to transfer a case to the adult court system, based on the prosecutor's belief that the youth is not amenable to continued juvenile court treatment

Nomenclature is everything, please do not resort to the previous term "fitness"—that language is no longer in WIC 707!

The Impact of Transfer Hearings

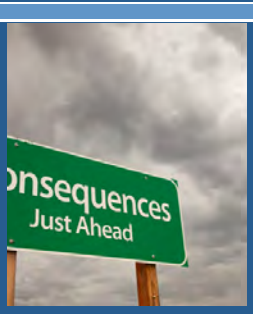
- The most severe punishment a juvenile court can inflict is to transfer a youth to adult court

(*Ramona R. v. Superior Court* (1985) 37 Cal.3d 802)

Transfer Hearings Have an Afterlife…

4

- Adjudication in juvenile court Trial/or Plea in Adult Court
- Disposition/Sentencing
- *Miller* Factors in Juvenile LWOP Case
- Could affect Youthful Offender Parole Hearing
- Death Penalty Cases



Friday, November 10, 17

Who is Eligible for Transfer?

- Any youth 14 and older who is alleged to have committed a WIC 707 (b) offense
- Any youth who is 16 or 17 and alleged to have committed ANY felony offense
- Misdemeanor offenses are not eligible for transfer

Competency

6

- For youth who may be incompetent, the court MUST address competency issues BEFORE the transfer hearing!

(*Tyrone B. v. Superior Court* (2008) 164 Cal.App.4th 227)

Friday, November 10, 17

Basics of Hearing

- Prosecutor files transfer motion
- Once transfer motion filed court cannot address underlying guilt, nor can the case resolve unless transfer motion is withdrawn. The court must address transfer before anything else, UNLESS competency is an issue.
- The court presumes guilt of underlying offenses when determining transfer. (*People* v. *Superior Court* (Rodrigo O.) (1994) 22 Cal.App.4th 1297.)
  - However, upon the request of defense counsel there can be a prima facie determination of the underlying charges. (See Cal. Rule of Court 5.766 (c).)

What does the Court Consider?

- The five transfer hearing criteria and clarification language!
- Evidence proffered by the prosecution
- Evidence proffered by the defense
- Transfer Hearing Report completed by the probation officer
  - This should not be completed until the defense has had sufficient time to gather records and investigate so Probation has everything about the youth at the time of the the report.

Waiver

9

- If the youth turns 18 prior to the commencement of the transfer he/she may waive the transfer hearing
- (See *Rucker* v. *Superior Court* (1977) 75 Cal.App.3d 197)

Friday, November 10, 17

The Law of Transfer

Brief overview and recent statutory developments

The Origin of Transfer

- Transfer to adult court originated in 1909—the issue was whether the young person should receive the benevolent "reformatory" services of the juvenile system or be relegate to the adult system

The Emergence of Amenability

- In 1937 WIC 734 was created to address transfer---through the years the only direction in the statute was "amenable to the care treatment and training program available in the juvenile court"

The Five Criteria Are Created

Origin of Law

- In 1975 the legislature again amended the transfer statute and now provided five criteria for the courts and clinicians to consider when evaluating transfer
- These criteria were unchanged from 1975-2016

The Criteria

- Degree of Sophistication
- Rehabilitation before jx expires
- Previous History
- Previous Attempts at Rehabilitation
- Sophistication and gravity of the offense

"Clarification Language"

- Recent strides in adolescent development—which were embraced by the US Supreme Court in *Roper, Graham*, and *Miller* were not being applied in juvenile transfer hearings.
- As a result the legislature added "clarification language" in an attempt to have the transfer statute reflect new scientific knowledge gained about youth who commit crimes
- The following slides show the clarification language for each criterion

Sophistication

- (A) (i) The degree of criminal sophistication exhibited by the minor.
- **(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication**

Rehabilitation Prior to Termination of Juvenile Court Jurisdiction

- (B) (i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction
- **(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature**

Previous Delinquent History

- (C) (i) The minor's previous delinquent history.
- **(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.**

Success of Previous Attempts to Rehabilitate

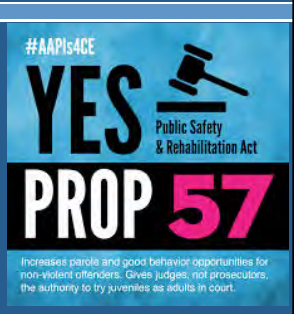
- (D) (i) Success of previous attempts by the juvenile court to rehabilitate the minor.
- **(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs**

Circumstances and Gravity of the Offense

- (E) (i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.
- **(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development**

The Impact of Proposition 57

- Proposition 57 DID NOT change the transfer criteria or the accompanying clarification language
- The next slides detail the significant changes Prop 57 made regarding how the transfer hearing is conducted



Is there a Presumption For or Against My Client To Be Transferred?

- Proposition 57 ELIMINATED the presumption that your client should be transferred to the adult court
- Now, there is only ONE type of transfer hearing now--and the statute eliminates any presumption —meaning there is no presumption for or against transfer

Prosecutor Bears the Burden

- Although the statute does not specify who bears the burden, since the presumptions have been eliminated, if the prosecution wants to transfer the youth, they bear the burden (See EC §§ 500, 550, California Rules of Court, Rule 5.770 (a).)

Now Courts Assess the Totality of the Circumstances When Deciding Transfer

- The court reviews all evidence presented regarding the five criteria and clarification language and then does a global/ totality assessment when determining transfer (See Cal. Rule of Court, rule 5.770 (b), Advisory Comment)
- The following slide shows the differences in statutory language

Looking at the Difference in Language

Prior to Proposition 57

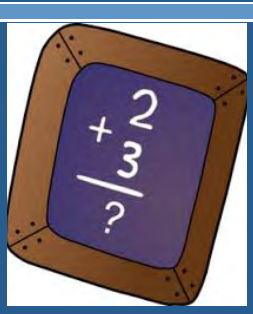
- Depending on what type of transfer hearing you had 707 directed judges to transfer youth to the adult court
  - Presumed Fit = Transfer to Adult court could occur "based on one or a combination of the five transfer criteria" OR
  - Presumed Unfit = Youth could not remain in juvenile court if the court could not find that "the minor is fit and proper under each and every one" of the five criteria

New Prop 57 Language

- "In making its decision the court shall consider the criteria specified…(WIC 707 (a)(2))
- "If the court orders transfer of jurisdiction, the court shall recite the basis for its decision in an order entered upon the minutes" (*Ibid.*)

In Sum . . .

- Statutory Changes in 2016 added clarification language to the transfer criteria
- Proposition 57:
  - Retained transfer criteria and clarification language
  - Eliminated presumption of transfer to adult court
  - Placed burden on prosecutor to prove transfer
  - Eliminated need for youth to win on each criterion to remain in juvenile court
  - Mandates that judges engage in a totality assessment when determining the issue of transfer



26 RECORD GATHERING

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Records
(Not an Exhaustive List, but a Good Start.)

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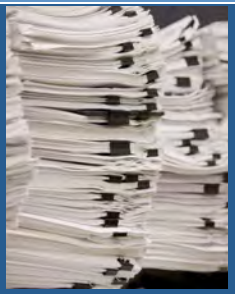
- Any and all Juvenile Delinquency Records
- Any and all Juvenile Dependency Records
- DCFS Records –even those that did not result in a dependency case
- Getting the File of the Dependency Attorney
- All school records, including cumulative, psycho-educational records (including IEP's etc.)
- Regional Center Records, including IPP's etc.
- Hospitalization records, therapy records
- *Any and all police reports for your juvenile client as either a perpetrator or victim*
- Records from placements client may have lived at prior to instant case
- Family court records, declaration detailing abuse, etc.



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READ THE RECORDS

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- Never provide an expert records without reading them thoroughly first!

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Do Not Delay

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- These records need to be obtained immediately

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30 INVESTIGATION

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Investigation

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- You are investigating two things
  - The underlying crime
  - "Youthfulness" of your client and how it was impacting his or her life at the time

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Investigation

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- For the instant offense, the standard investigation as to factual issues, but you will also need to investigate how "youthfulness" is a factor.
- *Investigate all prior police reports involving your client. You need to know everything about your client's life to be able to address transfer hearing criteria*
- Interviewing school teachers, neighbors, babysitters, coaches.
- Investigating quality of prior placements, treatment therapy…
- Drug use of client—if meth is an issue for your client—there are numerous studies on meth and the teenage brain
- Some investigators have been trained on transfer cases or developing mitigation for youth
- LEAVE NO STONE UNTURNED!

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Examples of Areas to Question

- Amenability is about:
  - Behavior
  - Attitude
  - Responsiveness to certain environments
  - Impact of previous environment
  - Age
  - Circumstances of the offense vs. "juvenileness of client."

So what does that mean when talking to certain potential witnesses?

School Issues to Investigate

34

- School Teachers
  - Nature of classroom environment?
  - Pupil student/ratio?
  - Observations of day-to-day behavior?
  - Client a follower or a leader?
  - Eager to please? Loner? Social?
  - How did client respond to authority?
  - Suspicions of child abuse?
  - Client arrive at school clean, groomed?
  - Client's attitude in class?
  - Struggles client had in class?
  - How mature did client seem compared to peers?
  - Client impulsive or deliberate? Overall impressions of client?

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Questions--Certain Types of Witnesses

- Victims of crime/witnesses of crime
  - Again focus on amenability---not just what did client do or not do—but what was client's demeanor? What was client's involvement? How did client respond if victim said or did something? Did client seem impulsive? If words spoken, what were client's exact words?
  - Did client seem to know the other individuals well? Did client act at someone else's direction? Client appear smooth (sophisticated) or nervous or clumsy? Did client appear intoxicated, under influence drugs upset?

Questions—Certain Types of Witnesses

- Group Homes
  - Staff/client ratio
  - Nature of incidents, (if investigating a write-up)
  - Method of investigation
  - Client's behavior
  - Client's responsiveness to programming
  - Client's maturity compared to peers
  - Client a leader/follower
  - Attitude
  - Homesickness
  - Easily led or a leader
  - Eager to please
  - How client interacts with other peers? Authority figures? Cooperative, uncooperative? Thoughts and impressions of client?

Why Sometimes an Investigator and NOT a Social Worker? (In-House Social Workers)

- Social workers are likely to testify at a transfer hearing
- Investigator is not likely to testify unless impeachment We need to make sure we do not "burn" our social workers so he/she cannot testify
- Investigators are trained to ask/observe in a particular way—social workers are trained to look at and interpret other things
- Your investigation may uncover things for a social worker to address in a separate interview

Investigation is Critical in Transfer Cases

- First Degree Robbery of Taxi Cab Driver
  - Revealed client did not know other boys in car
  - That client only "patted down" driver because boys told her they would hurt her and him
  - Driver credited client with saving his life
  - Driver noted that client did not want to pat him down and was crying
  - Driver noted client had no other choice
- Armed Robbery of Elderly Man
  - Client directed by adults
  - Adults screaming at him
  - Client shaking when holding the gun
  - Clearly didn't want to do it
  - Told to shoot and he didn't
  - Client looked scared and remorseful

Deficits of Client Which May Impact Case

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- Deficits of Client which may have impact on certain behaviors during the commission of the crime:
  - Auditory Delay
  - Autism (reading facial and emotional cues)
  - Low functioning—and if noted what that impacts
  - PTSD, how it impacts client
  - ED Designation at school
  - Reading/Comprehension level

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Look at how your investigation is centered…

- Guilt/Innocence vs. Amenability
  - Was the crime committed in such a cold, callous and vicious manner that it speaks against the possibility of the youth being rehabilitated?
  - Do the circumstances of the crime suggest that the youth is so antisocial and disturbed that any efforts to reform his character through the juvenile facilities would be fruitless?

Focus is Everything

41

- Different focus = different questions
  - Who held the gun? Describe the person holding the gun?

  v.
  - What was the demeanor? Who else was present? How did the youth appear? Was anyone directing the youth? Did the youth seem willing? Seem to be a follower or a leader? Seemed to know what he/she was doing or bumbling, nervous, afraid? Did this seem impulsive? Not thought through?

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Feedback from Investigators

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- Include them early and often
- Discuss with them the criteria and which ones may be problematic
- Disclose any deficits your client has—and explain them!
- Let the investigator know what type of school he/she is going to if conducting an interview (i.e. investigators appreciate a heads-up if going to an NPS, etc.)

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How Adolescent Development is Emphasized in Transfer Cases

Considerations When Employing the Five Transfer Criteria

- The five criteria as a whole are outdated
- Due to legislative constraints the clarification language had to be used with these criteria which preceded the huge strides in adolescent development
- **Three criteria address the youth—only two address the crime**

Three Areas to Incorporate Adolescent Development

45

Underlying Crime
Transfer Criteria 1 & 5

Potential to Grow and Mature
Transfer Criterion 2

History of Client
Transfer Criteria 3 & 4

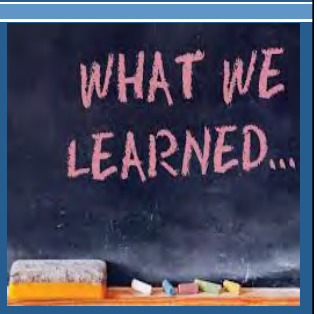
Addressing the Underlying Crime

46

- Sophistication & gravity criteria
- The issue is not whether sophistication is present or that a crime is grave—it is whether the degree of sophistication or gravity suggests the youth is not amenable to continued juvenile court treatment. Experts need to look at sophistication and gravity in conjunction with:
  - Maturity
  - Impetuosity
  - Failure to appreciate risks and consequences
  - Effect of peer pressure
  - Mental and emotional development

What we have learned . . .

- As research on adolescent development has evolved—we have learned that the facts of the crime, even for the most heinous crimes are not necessarily determinative of whether a youth can be rehabilitated in the juvenile system---this is important to note in evaluations



Potential to Grow & Mature (Criterion Two)

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- Plasticity
- Since juveniles are different from their adult counterparts—we have to take into account plasticity
- There is an outdated perception to treat older youth as if they are adults.

Plasticity

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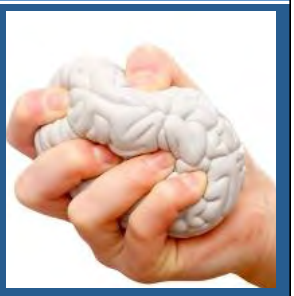
- With adults—amount of time served may make an impression and be a deterrent—however with youth, amount of confinement time is not the issue nor does it have the same deterrent effect
- Quality of services is far more important than actual amount of confinement time, due to the plasticity of teenage brain—so being aware of what juvenile services are available is essential for evaluating the second transfer criterion
- Articles/books by Laurence Steinberg are helpful guide in learning more about plasticity. One such book "Age of Opportunity" is very insightful on this topic



History of the Client

50

- Previous delinquency history AND previous attempts of juvenile court to rehabilitate
- Some look at client's history through dual systems model of adolescent development
- It also is important to note that some previously rendered services may not have comported with recent advances in trauma informed care---or services were potentially inappropriate for the needs of the youth at that time

The Role of Mental Health Professionals in Transfer Cases

Importance of Forensic Mental Health Assessments

Mental health evaluations are some of the most crucial evidence at transfer hearings!!!!

There is NO such thing as a transfer hearing expert.

Parties need to vet the expert properly to ensure the expert is best suited for your client and the issues.

Communication is Key

- Not all attorneys are good at communicating what they expect from an expert—especially with transfer!
- There are various ways that forensic mental health professionals can be used in transfer cases—make sure you have clearly defined what the expert is being appointed for in the case.

Some Potential Areas of Inquiry

54

- What are the strengths and weaknesses of the case?
- Which criterion is most troublesome for the case?
- What kind of expert assistance is being sought?
- Do you want the expert to opine on ultimate issue of transfer—i.e. assess all five criteria and give an opinion?
- Or is the appointment for a more limited purpose, i.e. to show how deficits of the client mean client cannot be sophisticated, or that previously rendered services were inadequate, or how PTSD impacts the gravity of the offense, etc.?

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Additional Considerations

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- If there is significant trauma to demonstrate how client's history of trauma impacted the alleged criminal act?
- Does the attorney want you to address plasticity and adolescent development in general?
- Does the attorney want you to apply adolescent development principles (more emotional, easily reactive, immature, etc.) to an affirmative defense, such as self-defense?
- If it is a sexual offense, does the attorney want you to discuss sex offenses with you and recidivism rates, etc.?
- Ultimately, the more communication upfront the better for both the expert and the attorney!

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The Next Steps!

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- Highlight records which will be helpful for the evaluation
- Clarify the areas of inquiry for your expert
- Determine if you want the expert to speak to you after the evaluation but before the expert writes a report
- Ask the expert what types of screening instruments/assessments he/she will be using---do not assume!
  - Especially if the expert is inclined to use personality testing, etc. Please have the experts disclose which tests he/she intends to administer so you can have complete sense of what the expert will be doing and prepare the client accordingly.

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How the Courts View Expert Testimony

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- Opinion of the expert as to amenability is to be given *great weight!*

(*Jimmy H. v. Superior Court* (1970) 3 Cal.3d 709)

In some cases not having a forensic mental health expert will make it difficult for the defense/ prosecution to prevail.

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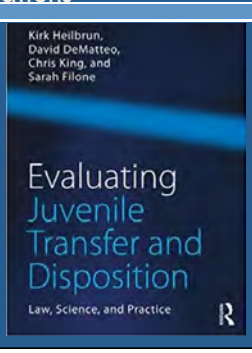
Experts and Mandated Reporting

- Confidential Experts working for the defense are within the attorney-client privilege—therefore the attorney-client privilege trumps mandated reporting requirements
- (*Elijah W. v. Superior Court* (2013) 216 Cal.App.4th 140)

Learning More About Transfer and Mental Health Evaluations

- A more comprehensive book came out addressing how forensic mental health professionals can evaluate youth who are facing transfer and may provide helpful guidance



In Conclusion . . .

- Recent changes in transfer law have provided judges an opportunity to assess youth who are facing transfer very differently than in years past
- Preparation, investigation, and use of mental health professionals are crucial in these cases.
- Sometimes attorneys may not be as clear as they should be in providing guidance—due to the complexity of these cases it is of great import that attorneys providing specific direction—as to the nature and extent of the evaluation!

PJDC
PACIFIC JUVENILE DEFENDER CENTER

Probation (Conditions, Fines and Fees, Electronic Search, Collateral Consequences)

MAKING FAMILIES PAY

THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA

MARCH 2017

BerkeleyLaw
UNIVERSITY OF CALIFORNIA
Policy Advocacy Clinic

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Hamza Jaka, Tim Kline, Ahmed Lavalais, and Alynia Phillips, law students at the U.C. Berkeley School of Law, and Abby Ridley-Kerr, a graduate student at the U.C. Berkeley Goldman School of Public Policy drafted this report under the supervision of the Clinic Teaching Fellow Stephanie Campos-Bui and Clinic Director Jeffrey Selbin.

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We dedicate this report to families with youth in the California juvenile system.

Cover photo used with the permission of Richard Ross
L, age 15, Central Juvenile Hall, Los Angeles, California
http://bokeh.jjie.org/l-age-central-juvenile-hall-los-angeles-california/

CONTENTS

EXECUTIVE SUMMARY

IN THE WAKE OF TRAGEDIES in cities like Ferguson, Missouri, national attention is focused on the regressive and racially discriminatory practice of charging fines and fees to people in the criminal justice system. People of color are overrepresented at every stage in the criminal justice system, even when controlling for alleged criminal behavior. Racially disproportionate treatment in the system leaves people of color with significantly more criminal justice debt, including burdensome administrative fees.

While regressive and discriminatory criminal justice fees have been described and critiqued in the adult system, the issue has received very little attention in the juvenile system. Nevertheless, families with youth in the juvenile system are charged similar fees, which significantly undermine the system's rehabilitative goals. The harmful practice of charging poor people for their interaction with the criminal justice system is not limited to places like Ferguson, Missouri. California, too, makes families pay for their children's involvement in the juvenile system.

This report presents findings about the practice of assessing and collecting administrative fees from families with youth in the California juvenile system. We use the term "administrative fees" to describe the charges imposed by local jurisdictions on families for their child's involvement in the juvenile system. State law permits counties to charge administrative fees for legal representation, detention, and probation, but only to families with the ability to pay. Most counties in California charge these administrative fees, imposing millions of dollars of debt on families with youth in the juvenile system.

Our research over the last three years reveals that juvenile administrative fees undermine the rehabilitative purpose of the juvenile system. Counties charge these fees to families already struggling to maintain economic and social stability. Fee debt becomes a civil judgment upon assessment. If families do not pay the fees, counties refer the debt to the state Franchise Tax Board, which garnishes parents' wages and intercepts their tax refunds. Under state law, these fees are meant to help protect the fiscal integrity of counties. They are not supposed to be retributive (to punish the family), rehabilitative (to help the youth) or restorative (to repay victims).

This report details our findings on juvenile fees in California, but we summarize them here:

HARMFUL: Juvenile administrative fees cause financial hardship to families, weaken family ties, and undermine family reunification. Because Black and Latino youth are overrepresented and overpunished relative to White youth in the juvenile system, families of color bear a disproportionate burden of the fees. Criminologists recently found that juvenile debt correlates with a greater likelihood of recidi-

vism, even after controlling for case characteristics and youth demographics. These negative outcomes from fees undermine the rehabilitative purpose of the juvenile system.

UNLAWFUL: Some counties charge juvenile administrative fees to families in violation of state law, including fees that are not authorized in the juvenile setting, fees that exceed statutory maximums, and fees for youth who are found not guilty. Some counties violate federal law by charging families to feed their children while seeking reimbursement for the same meals from national breakfast and lunch programs. Further, counties engage in fee practices that may violate the state Constitution by depriving families of due process of law through inadequate ability to pay determinations and by denying families equal protection of the law in charging certain fees.

COSTLY: Counties are authorized to charge families for juvenile administrative fees to pay for the care and supervision of their children. Yet counties net little revenue from the fees. Because of the high costs and low returns associated with trying to collect fees from low-income families, most of the fee revenue pays for collection activities, not for the care and supervision of youth. Further, the fee debt can cause families to spend less on positive social goods, such as education and preventative healthcare, which imposes long term costs on families, communities, and society by prolonging and exacerbating poverty.

Based on our findings, fixing the system is not an option. Charging administrative fees to families with youth in the juvenile system does not serve rehabilitative purposes. Other mechanisms in the system punish youth for their mistakes and address the needs of victims. Further, we did not find a single county in which fee practices were both fair and cost-effective. Counties either improperly charge low-income families and net little revenue, or they fairly assess families' inability to pay and net even less. Counties that have recently considered the overall harm, lawfulness, and costs of juvenile administrative fees have all ended the practice.

In light of our findings, we make the following recommendations to policymakers:

RECOMMENDATIONS

1. To end their harmful impact on youth and families, the state should repeal laws that permit the assessment and collection of juvenile administrative fees.
2. To redress unlawful practices, counties should reimburse families for all payments they made on improperly charged juvenile administrative fees.
3. To understand the consequences of costly practices like juvenile administrative fees, the state and counties should collect and maintain better data in the juvenile system.

INTRODUCTION

Orange County billed Maria Rivera $16,372 for her son's detention and lawyer.[7] Ms. Rivera sold her home to pay the county more than $9,500.[8] When the county pursued the balance of the debt, Ms. Rivera filed for bankruptcy.[9] Even after bankruptcy, Orange County continued to pursue the debt until a federal court ordered the county to stop.[10]

Contra Costa County billed Mariana Cuevas over $10,000 for her son's detention, even after all charges against him were dropped.[11] A housecleaner struggling to make ends meet, Ms. Cuevas made payments when she could.[12] Although the county eventually reduced the debt, Ms. Cuevas noted, "still they wanted to blame him for something he never did."[13]

Sally Stokes was billed more than $1,000 for her granddaughter's detention in Los Angeles County.[14] Living on Social Security benefits, Ms. Stokes could not afford to make payments.[15] The County spent nearly $13,000 to pursue the debt, or more than ten times the debt itself.[16] Ms. Stokes observed: "They were trying to take blood from a turnip."[17]

THESE ARE JUST A FEW EXAMPLES of the harmful, unlawful, and costly practice of charging administrative fees to families with youth in the juvenile system. State law authorizes these little-known fees, and county probation departments assess and collect them. The fees fall heavily on vulnerable families, especially low-income families of color, and they undermine the rehabilitative purpose of the juvenile system.

Each year, California counties place tens of thousands of youth in the juvenile system.[18] More than 70 percent of system-involved youth are boys, and almost three-quarters of all youth in the system are between the ages of 15 and 17 (the remaining youth are age 14 and younger).[19] More than seven in 10 youth in the California juvenile system are African American (53 percent) and Latino (19 percent); White youth make up just over 20 percent of the juvenile population.[20]

The stated purpose of California's juvenile system is to promote public safety by rehabilitating young people through training and treatment.[21] When a young person enters the system, counties provide legal representation.[22] Juvenile courts can order youth who are charged or found guilty of a crime to be detained, and they can require youth to comply with a range of probation conditions, including electronic monitoring and drug testing.[23] Such care and supervision are supposed to help the youth "be a law-abiding and productive member of his or her family and the community."[24]

State law also authorizes counties to charge parents and guardians administrative fees for their children's legal representation, detention, and supervision.[25] By statute, these fees are intended to protect counties' fiscal integrity.[26] To protect families against excessive fees, state law prohibits counties from imposing financial burdens on families without establishing their ability to pay.[27]

Because these charges are unrelated to punishment or restitution, we call them "juvenile administrative fees." Several counties in California have recently suspended or repealed the use of juvenile administrative fees (Alameda, Contra Costa, and Santa Clara), Los Angeles County suspended juvenile detention fee assessments, and San Francisco County has never charged such fees. However, most California counties still charge families juvenile administrative fees for some portion of their child's involvement in the juvenile system.

Based on three years of research—including a survey of California's Chief Probation Officers, Public Records Act requests, and interviews with families of youth in the juvenile system and local officials across the state—we present research findings about juvenile administrative fees in California. We provide a brief overview of juvenile administrative fees, including the legislative history, current state law, and county practices. We present our findings about how juvenile administrative fees are harmful to families, unlawfully assessed, and costly to society. We describe local efforts to end juvenile administrative fees in California and conclude with recommendations.

I. JUVENILE ADMINISTRATIVE FEES

CALIFORNIA STATUTES AUTHORIZE counties to charge families for their child's legal representation, detention, and probation conditions in the juvenile system.[28] Although state law authorizes juvenile administrative fees, counties decide which fees to impose and in what amounts.[29] The fees we describe here are purely administrative in nature—by law, the fees are meant solely "to protect the fiscal integrity of the county."[30] In this Section, we briefly describe the legislative history of juvenile administrative fees in California, current state law, and county fee practices.

A. LEGISLATIVE HISTORY

The California Legislature first authorized counties to charge families fees for detaining their children in 1961.[31] Although the original motivation is unclear, some have suggested that counties were concerned about parents misusing detention facilities to supervise youth when they misbehaved.[32] While we found no evidence of parents using the juvenile system in this way in California, by the end of the 1960s, the state authorized counties to charge families for providing a public defender to youth in the system and for probation supervision.[33]

In response to rising juvenile caseloads and county fiscal concerns, lawmakers approved additional fees beginning in the 1980s.[34] In 1987, the Legislature authorized fees for drug testing,[35] and in 1992, it authorized fees for legal representation by non-public defenders.[36] In 1996, the Legislature permitted counties to charge families for additional probation conditions, including for the home supervision and electronic monitoring of youth.[37] Most recently, in 2001, the Legislature increased the maximum amount counties could charge families for detaining their children from $15 to $30 per day.[38]

Although these laws all remain on the books, state and local lawmakers have recently begun to question the wisdom of charging juvenile administrative fees. In 2016, Alameda, Santa Clara, and Contra Costa Counties repealed or suspended juvenile fee assessment and collection.[39] Los Angeles County imposed a moratorium on juvenile detention fee assessments in 2009, and San Francisco County has never charged such fees.[40] In 2017, Senators Holly Mitchell and Ricardo Lara, along with nine co-authors, introduced Senate Bill 190 to repeal juvenile administrative fees statewide.[41]

B. CURRENT STATE LAW

California state law currently permits counties to charge juvenile administrative fees to families for their children's legal representation, detention, and probation conditions, including electronic

monitoring, supervision, and drug-testing.[42] County Boards of Supervisors determine which fees to charge and in what amounts, which are typically established by local ordinance, resolution, or practice. State law limits some fees, such as the detention fee, to the actual costs incurred up to a statutory maximum.[43]

State law prohibits counties from charging fees without determining a family's ability to pay.[44] By law, counties may designate financial evaluation officers (FEOs) to conduct such determinations.[45] At sentencing (referred to as "disposition" in the juvenile context), the juvenile court judge must order a parent or guardian who is liable for fees "to appear before the county FEO for a financial evaluation of ability to pay."[46] In evaluating ability to pay, the FEO and the court are required to consider the family's income, obligations, and dependents.[47]

If families do not meet with a FEO after having been given proper notice to do so, the FEO can assess full costs, regardless of a family's ability to pay.[48] Whether or not a family meets with an FEO, the FEO then petitions the juvenile court for an order "requiring the person to pay that sum to the County or the court in a manner that is reasonable and compatible with the person's financial ability to pay."[49] Families have the right to dispute the ability to pay determination in juvenile court, including the right to representation by appointed counsel at such a hearing.[50]

Once ordered by a judge, juvenile administrative fees become a civil judgment enforceable against the parent or guardian.[51] Unpaid fees are subject to collection like any other civil judgment, except that judgments for criminal justice debt are enforceable and can be reported by credit agencies indefinitely.[52] If families fail to repay their debt in full or make agreed-upon payments on time, the county can refer the debt to the state Franchise Tax Board, which can intercept tax refunds and garnish wages until the debt is paid off.[53]

C. COUNTY PRACTICES

Although state law authorizes counties to assess and collect juvenile administrative fees, they are not required to do so. To map juvenile fee practices across the state, we surveyed California's Chief Probation Officers in all 58 counties.[54] We verified survey responses through publicly available data and follow-up with counties. We also updated survey responses based on subsequent developments in several counties.[55] In total, we have at least some information about juvenile administrative fees in every county.

As we describe next, most California counties charge one or more juvenile administrative fees. The fee burden on families varies by county depending on the amounts they charge and the duration of detention and probation-related conditions they impose on youth. As noted above and described in more detail below, several counties have recently repealed or suspended juvenile fee assessment and collection.

1. More than 9 in 10 California counties charge juvenile administrative fees

Although fee types and amounts vary by jurisdiction, 54 of California's 58 counties currently charge families one or more juvenile administrative fees: 49 counties charge families for juvenile detention, 36 charge families for legal counsel, 28 charge families for electronic monitoring, 24 charge families for probation supervision, 16 charge families for drug testing and eight charge families for investigation reports (Figure 1).[56]

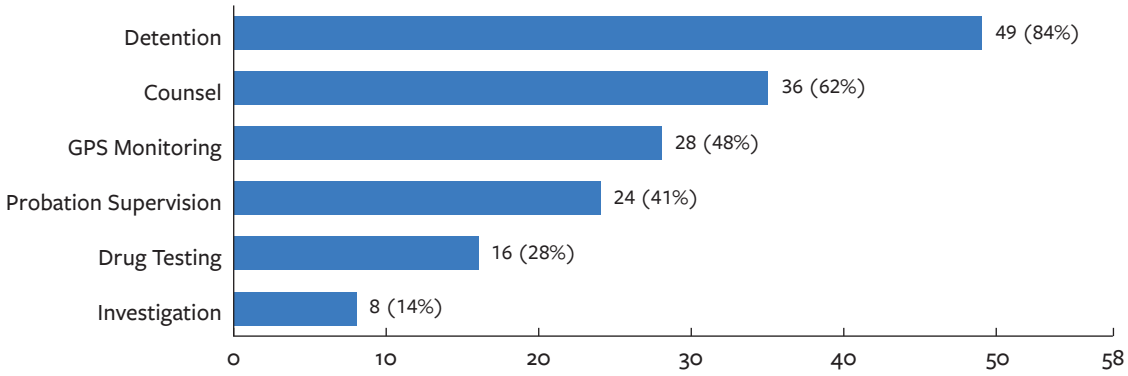

Figure 1: Number of California's 58 Counties that Charge Juvenile Administrative Fees

Two counties—Madera and Mariposa—report charging all six fees, and 11 counties only charge one fee (usually detention). The majority of jurisdictions (42 counties) charge two or more fees, with three being the most common number of fees (16 counties). *See Appendix A for a list of the fees that each county charges.*

2. Fee amounts and family burdens vary by county

Fee amounts and their burden on families vary by county. Counties charge different fees for different items. For example, juvenile hall fees range from $3.18 in Lake County to $40 per day in San Luis Obispo County.[57] Electronic monitoring fees can also vary widely, with assessments ranging from $3.50 per day in Mono County to $30 per day in Yolo County.[58]

Similarly, detention and probation conditions vary by case. Some youth are detained and placed on all possible probation conditions—such as electronic monitoring and drug testing—while others may only be detained.[59] Average probation conditions are especially difficult to estimate because most counties either do not systematically track such information or did not provide the data. The only reliable statewide data are length of stays in juvenile halls, which average about 25 days across California.[60]

To depict relative fee burdens in California's 15 most populous counties, we compare charges to a family with a young person represented by a public defender (assuming 2 hours of work) and sentenced to the statewide average period of detention in juvenile hall (25 days) and a common set of probation conditions, including electronic monitoring (50 days), probation supervision (17 months), and periodic drug testing (8 times) (Table 1).[61] *See Appendix B for a comparison of fee charges in California's 58 counties.*

Counties charge varying amounts for each fee type, resulting in very different burdens on families. The potential fee burden on families ranges from hundreds to thousands of dollars per case, and differs by a factor of more than 10 between the county with the lowest charges (San Bernardino) and the county with the highest charges (Sacramento). *See Appendix C for a comparison of the average length of stay in juvenile hall facilities and the related detention fees in California counties.*

County	TOTAL	Juvenile Hall	Public Defender	Electronic Monitoring	Probation Supervision	Drug Testing
Average terms		*25 days*	*Per case + 2 hours*	*50 days*	*17 months*	*8 times*
Sacramento	$5,640	$18.40/day	$318.00+	$24.00/day	$206.00/mo.	$20.00/test
San Diego	$2,150	$30.00/day	-	$28.00/day	-	-
Kern	$1,850	$29.00/day	-	$25.00 + $22.00/day	-	-
Ventura	$1,735	$33.00/day	$150.00–300.00 + $158.75/hour	$75.00 + $7.50/day	-	-
Orange	$1,372	$23.90/day	$245.00 + $220.00/hour	-	-	$11.30/test
San Mateo	$1,150	$30.00/day	$220.00+	$8.00/day	-	-
Fresno	$1,148	$19.00/day	$73.00+	$11.00/day	$50.00 once	
Riverside	$1,039	$30.00/day	$50 + $119.51/hour	-	-	-
San Joaquin	$972	$31.12/day	$125.00–175.00	-	-	-
San Bernardino	$563	$20.53/day	$50	-	-	-
Los Angeles	$50	Suspended	$50	-	-	-
Alameda	$0	Repealed	Repealed	Repealed	Repealed	Repealed
Santa Clara	$0	Repealed	Repealed	Repealed	-	-
Contra Costa	$0	Suspended	-	Suspended	-	-
San Francisco	$0	-	-	-	-	-

Table 1: Juvenile Administrative Fees for a Youth Serving Common Probation Conditions in California's Fifteen Largest Counties by Population

3. Some counties do not charge juvenile administrative fees

While most California counties charge juvenile administrative fees, as noted in Table 1, five counties do not charge the fees:[62]

- Alameda County repealed the assessment and collection of all fees in 2016.[63]
- Contra Costa County suspended the assessment and collection of all fees in 2016.[64]
- Los Angeles County suspended the assessment of all detention fees in 2009.[65]
- San Francisco County has never charged such fees.[66]
- Santa Clara County repealed the assessment and collection of all fees in January 2017.[67]

We describe the fee reforms in these counties in more detail in Section III below.

II. RESEARCH FINDINGS

AS DESCRIBED ABOVE, most California counties charge administrative fees to families with youth in the juvenile system. The fees are authorized by state law, set by county Boards of Supervisors, and administered by local probation and collection departments. Counties are required to evaluate families' ability to pay the fees, and the fees are supposed to help protect counties fiscal integrity.

Based on our research of juvenile administrative fee practices in California, we have found that the fees are *harmful* to youth and families, undermining the rehabilitative purpose of the juvenile system. In addition, fee practices are sometimes *unlawful*, as counties charge fees that violate state or federal law and/or fail to conduct an ability to pay process that meets legal requirements. Finally, the fee system is *costly*. Because most families cannot afford to pay the fees, counties collect a small percentage of what they charge, most of which pays for collection activity and not to support youth. The fees also generate additional collateral consequences for families, communities, and society.

In this Section, we present our findings about these aspects of juvenile administrative fees in California. We include examples from individual counties for illustrative purposes, but our research suggests that juvenile administrative fee practices are harmful, unlawful, and costly across California. In fact, we have yet to find a county with a fee regime that advances the rehabilitative goals of the juvenile system, is operated consistent with legal requirements, and recoups significant revenue to support youth.

A. JUVENILE ADMINISTRATIVE FEES HARM VULNERABLE FAMILIES

The goal of California's juvenile system is to promote public safety by rehabilitating young people through training and treatment.[68] Our findings suggest that juvenile administrative fees undermine the purpose of the system by harming vulnerable families. Because youth of color are disproportionately arrested, detained, and punished in the juvenile system, fee amounts are especially burdensome for families of color. In fact, recent evidence suggests that such fees may increase recidivism among youth.

1. Fees harm low-income youth and their families

Through a series of interviews with youth and their families conducted by the clinic and others, we repeatedly heard stories about ways in which juvenile administrative fees impose significant harms on the large number of families in the system who cannot afford to pay them.[69] These harms frustrate the rehabilitative purpose of California's juvenile system. The fees create hardship for families forced to

choose between paying for necessities and paying the county, they weaken ties between youth and their parents by adding more stress to family relationships, and they undermine family reunification.

a. Fees create financial hardship for families

Under state law, counties that assess juvenile administrative fees are required "to protect persons against whom the county seeks to impose liability from excessive charges."[70] Counties do not gather or maintain socio-economic data on youth and their families in the juvenile system, but evidence suggests that most of them are low-income.[71] We found that counties charge fees to families who are unable to pay—we discuss below how the ability to pay process is flawed in many counties. As a result, families struggle as they must choose between paying fees to the county and meeting their basic necessities such as food, rent, and utilities.[72]

For example, the Orange County Probation Department charged Maria Rivera more than $16,000 for her son's detention and legal costs.[73] An unemployed single mother, Ms. Rivera received only a Social Security check for her youngest son and child support from her son's non-custodial father.[74] The county never formally determined Ms. Rivera's ability to pay, so it charged her the maximum fees allowed under law.[75] Given her limited resources, Ms. Rivera made small payments when she could.[76]

When the debts and collection activity became overwhelming, Ms. Rivera sold her home in an effort to reimburse the county.[77] With the proceeds of the sale, she paid the county more than $9,500. Still in debt to the county for another $9,900—an amount the county could not explain, since she had already paid well over half of what she was charged—Ms. Rivera filed for bankruptcy.[78] Even after a bankruptcy court discharged the debt, the Orange County Probation Department pursued payment on the grounds that juvenile administrative fees were not dischargeable in bankruptcy (i.e., she still owed the money to the county).[79]

The U.S. Court of Appeals for the 9th Circuit eventually held that Ms. Rivera's juvenile fee debt was legally discharged in bankruptcy, ending the county's collection activity.[80] In the meantime, Ms. Rivera lost her home because of the juvenile fee debt. Ms. Rivera's story is not unique. As of November 2016, Orange County reported outstanding juvenile fee debt from 44 families who were either in bankruptcy proceedings or had recently exited bankruptcy.[81]

b. Fees weaken family ties

The California juvenile system is supposed to "preserve and strengthen the minor's family ties."[82] Our research has shown that charging juvenile administrative fees weakens family relationships. Many families already have challenging relationships due to their child's involvement in the juvenile system, and adding a financial burden can amplify feelings of anger or resentment.

Michael Gonzalez was incarcerated by Los Angeles County at a youth camp in Calabasas. He said that he worried about the fee bills every day:

> *My mom works two jobs to raise me and my sister. It caused a lot of tension and arguments. My rebellion is costing them; that doesn't seem fair to me. I want to go home, but this money is stressing everybody, and I know it will make it hard to go back with my family.*[83]

In Alameda County, a father described how fees stemming from his son's detention strained their relationship:

They (the fees) don't do anything besides make it more difficult for families to take care of each other. What will I do if they garnish my wages? Will that make me a better father? Will that make me a better person? No. It will make me more angry at my son.[84]

c. Fees undermine family reunification

California law further states that "reunification of the minor with his or her family shall be a primary objective of the juvenile system.[85] However, we found that juvenile administrative fees create negative incentives for youth and their families. Rather than supporting family reunification, parental liability for juvenile fees pulls families apart.

Loretta Wells, a 54-year-old Master Sergeant on leave from the U.S. Army, assumed guardianship of her three grandchildren after the death of her daughter two years ago. As she observed, "These children have been through a world of hurt and I'm not going to just leave them on their own."[86] Unfortunately, when her grandson got into fight with other boys, he was placed in juvenile hall in Alameda County, and she received a large fee bill.[87]

Unable to pay any additional bills on her income of $368 per month, Ms. Wells asked the financial evaluation officer what would happen if she was not her grandson's guardian.[88] The officer told her that if her grandson "didn't have a guardian and was purely a ward of the court, then the state would have to pay for all the fees."[89] To deal with the unbearable debt, Ms. Wells considered relinquishing custody of her grandson to the county. If that was her only option, "then that's how we're going to do it," she said.[90]

In another instance, Alameda County charged J.M.'s family hundreds of dollars for time that he spent in juvenile facilities.[91] J.M.'s mother paid off about half of the debt, but she struggled when her monthly income dropped below the poverty level.[92] Distressed by the financial impact of his actions on the family, J.M. considered running away from home and living on the streets—in effect, becoming homeless—in the hope that his mother would be relieved of the fee burden.[93]

As a member of the Los Angeles County Commission on Human Relations observed prior to the county moratorium on detention fees:

If the stated goals of Probation are to rebuild lives and provide for healthier and safer communities, how do the incredibly harsh billing practices, that contribute to so much family stress and conflict, match with those goals?[94]

2. Fees disproportionately harm families of color

Data suggest that juvenile administrative fees disproportionately harm families of color. Because of discrimination against them at every stage of the process, youth of color are significantly overrepresented in the juvenile system relative to White youth, even when controlling for underlying charges.[95] And because counties punish youth of color more frequently and harshly, their families are liable for higher fee burdens.

a. Youth of color are overrepresented and overpunished in the juvenile system

In California, Black and Latino youth are punished more often and more severely at every stage of the juvenile system.[96] Counties do not maintain data that permit a full assessment of the extent to which these racial disparities are related to the underlying seriousness of the crimes for which youth are

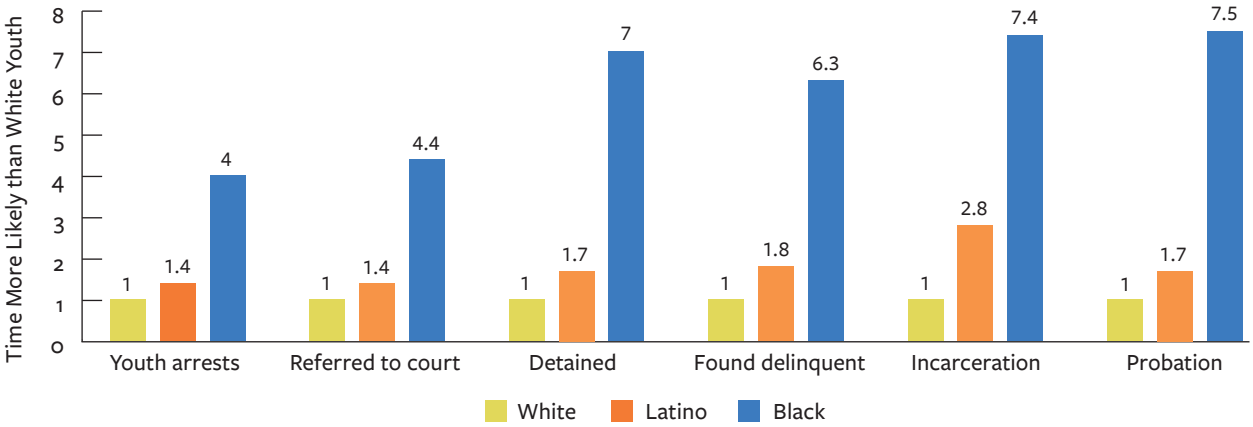

Figure 2: Racial Disparity in California's Juvenile System, 2014

punished. However, evidence on youth interaction with the juvenile system suggests that the differences are due in substantial part to racial bias.[97]

In fact, racial or ethnic disparities accumulate as youth move through the system (Figure 2).[98] According to the most recent data from the state, Black youth in California are four times more likely to be arrested than White youth but over seven times more likely to be detained, incarcerated, and put on probation.[99] Latino youth are almost twice as likely as White youth to be detained and put on probation, and they are almost three times as likely to be incarcerated.[100] *See Appendix D for details on detention rates and disparities for White, Latino, and Black youth.*

Beyond the disparate arrest, detention, and probation figures, youth of color are punished more harshly than White youth. For example, in Alameda County—the only county from which we received any data on probation conditions by race and ethnicity—Black youth serve longer probation terms than White youth. In a one-month snapshot from 2013, the average Black youth served 25 days in juvenile hall, 22 months on probation supervision, and 34 days on electronic monitoring.[101] The corresponding numbers for White youth were 11 days in juvenile hall, 10 months on probation supervision, and 21 days on electronic monitoring.[102] Although the county did not provide additional data about their cases, Black youth were being punished with average probation sanctions that were at least 50 percent longer than—and in some cases more than twice the length of—sanctions imposed on White youth.

b. Families of color are disproportionately liable for juvenile fees

Because youth of color are punished more frequently and harshly in the juvenile system, Black and Latino families are liable for higher administrative fees. Most juvenile administrative fees are assessed according to the duration of sanctions. Although Alameda County recently repealed all of its juvenile administrative fees, the following table summarizes the disparate fee liability by race and ethnicity for families of youth serving average probation conditions (Table 2).

As depicted in Table 2, the family of a Black youth serving average probation conditions was liable for more than double the juvenile administrative fees ($3,438) as the family of a White youth serving average probation conditions ($1,637). The family of a Latino youth serving average probation conditions was liable for more than one and a half times the fees ($2,563) as the family of a White youth serving av-

Race and Ethnicity	Total Fee Liability	Average Probation Conditions			
		Juvenile Hall (days)	Probation Supervision (months)	Electronic Monitoring (days)	Drug Testing (tests)
		$25.29/day	$90.00/mo.	$15.00/day	$28.68/test
Black	$3,438	25	22	34	11
Latino	$2,563	24	14	33	7
Asian	$2,269	7	12	56	6
White	$1,637	11	10	21	5
Other	$1,192	4	6	31	3

Table 2: Average Juvenile Probation Conditions and Fees by Race and Ethnicity in Alameda County, 2013

erage probation conditions ($1,637).[103] And the families of Asian youth serving average probation conditions were liable for greater fees ($2,269) than their White counterparts ($1,637), mostly due to much longer time spent on electronic monitoring.[104]

As the Alameda County Board of Supervisors noted in adopting a 2016 moratorium on the fees prior to repealing them fully later that year:

> *Youth of color are disproportionality [sic] impacted by the imposition of fees. According to Alameda County Probation Department data youth of color are overrepresented in the system and, on average, serve longer probation terms than their white counterparts. This means that youth of color, and their families, have a heavier financial burden. These fees are unfair and unrealistic given the adverse economic conditions faced by families with youth in the juvenile system.*[105]

3. Fees may increase recidivism

Recent research suggests that juvenile administrative fees may increase the likelihood of youth recidivism.[106] In the most rigorous study to date, criminologists measured financial penalties (fines, fees, and restitution) imposed on youth and their families in Allegheny County, Pennsylvania and found that such debt correlated with a greater likelihood of recidivism.[107] Though the data did not permit researchers to establish a causal relationship between fees and recidivism, the correlations between the two held even after controlling for case characteristics and youth demographics.[108]

Consistent with the Alameda County data reported above, the Pennsylvania study also found that families of color were almost twice as likely as White families to have fine, fee, and restitution debt upon their child's case closing: 29.1% of the families of youth of color still had debt upon case closing, compared to only 15.6% of the families of White youth.[109] Thus, families of color are harmed not only by the greater likelihood and amount of fee debt, but also by the likelihood that it will lead to recidivism.[110]

In California, graduate students at the U.C. Berkeley School of Public Policy conducted an economic analysis of the juvenile fee regime in Alameda County. The research team did not have access to case-specific recidivism data. However, based on existing literature on recidivism and poverty, they found that eliminating juvenile administrative fees could reduce the criminogenic (recidivism) effect of the fees.[111]

In fully repealing its ordinance to assess and collect fees in early 2017, the Santa Clara County Board of Supervisors noted:

> *[R]esearch has proven that financial penalties do not reduce recidivism among the juvenile population. Instead the imposition of fees, heightens racial disparities in the juvenile justice system as most affected are low-income youth of color.*[112]

B. COUNTIES UNLAWFULLY ASSESS AND COLLECT SOME JUVENILE FEES

Counties that choose to assess and collect juvenile administrative fees must do so in accordance with relevant state and federal law. In our research, we have identified a number of unlawful fee policies and practices. First, some counties charge fees that violate state law, including charging families of youth found not guilty. Second, by charging families for breakfast and lunch while seeking reimbursement at the "free meal" rate from school nutrition programs, counties appear to be violating federal law. Finally, by failing properly to assess families' ability to pay and by charging families for electronic monitoring and probation supervision, counties are engaged in fee practices that are likely unconstitutional.

1. Counties charge fees not permitted by state law

As described above, state law authorizes, but does not require, counties to charge juvenile administrative fees. Based on our research, some counties charge types of fees or fee amounts that exceed their statutory authority. Although we were not able to verify the fee type, amount, and process in all 58 counties, we provide examples below of counties that are charging fees for investigation reports not permitted by state law, detention fees that exceed the statutory maximum, and fees to the families of youth later found not guilty.

a. Counties charge unlawful investigation fees

California law does not authorize counties to charge families fees for their children's investigation reports. Although state statute allows counties to charge fees for the reasonable cost of a preplea or presentence investigation and report, this provision applies only to adults who are convicted of an offense.[113] There is no separate provision in the Welfare and Institutions Code that authorizes investigation report fees in juvenile court. In other words, counties are not authorized to charge families of youth in the juvenile system for investigation reports that are authorized in the adult system.[114]

In response to our survey of the Chief Probation Officers of California, 11 counties initially reported that they charged families of youth in the juvenile system an investigation report fee.[115] Upon further research, some of these counties only charge such fees to adults, not youth.[116] However, Alameda County charged $250 per case for probation investigation until 2016 when it repealed all juvenile administrative fees. According to their fee schedules, Mariposa and Solano Counties charges families $300 and $1,200 respectively per case for disposition and investigation reports.[117]

ANY COUNTY THAT CHARGES A FEE TO FAMILIES FOR A JUVENILE INVESTIGATION REPORT IS DOING SO IN VIOLATION OF STATE LAW.

b. Counties charge detention fees that exceed the statutory maximum

State law limits detention fees to actual costs "not to exceed a combined maximum cost of thirty dollars ($30) per day."[118] The fees are limited to the "reasonable costs of support of the minor" to cover "food and food preparation, clothing, personal supplies, and medical expenses."[119] The maximum allowable fees are adjusted every three years based on changes in the California Consumer Price Index.[120] The maximum daily detention fee was adjusted in January 2015 to $31.69 per day.[121]

Based on a review of fee schedules and records, at least two counties charge in excess of the statutory maximum of $31.69 per day. San Luis Obispo County charges $40.00 per day and Ventura County charges $33.00 per day.[122] We are unable to verify that all other counties are in compliance with the statutory maximum of $31.69 per day.

ANY COUNTY THAT CHARGES MORE THAN $31.69 PER DAY TO FAMILIES FOR JUVENILE DETENTION IS DOING SO IN VIOLATION OF STATE LAW.

c. Counties charge fees to families of youth found not guilty

State law allows counties to charge families fees for the reasonable costs of detention.[123] However, the statute limits the circumstances under which a county may charge detention fees to those in which "the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision. . . ."[124] Read with existing case law and prohibitions against charging families for the preventive detention of their children, counties may not charge fees to families of youth whose charges are dropped, whose cases are dismissed, or who are found not guilty.[125]

We found California counties that charge fees to families for time youth spent in detention even when they are later found not guilty. Prior to its 2009 moratorium on detention fees, Los Angeles County billed families after youth were acquitted of all charges.[126] Prior to its 2016 fee moratorium, the Contra Costa County Probation Department charged families for time youth spent in pretrial detention whose petitions were ultimately not sustained.[127] In Humboldt County, for example, fees are assessed "at the minor's detention or arraignment hearing," suggesting that parents of youth may be charged before petitions filed against their children have been adjudicated or sustained.[128]

ANY COUNTY THAT CHARGES FEES TO FAMILIES WITH YOUTH WHO ARE FOUND NOT GUILTY OF ANY CRIME IS DOING SO IN VIOLATION OF STATE LAW.

2. Counties charge fees that may violate federal law

California counties receive reimbursement from national nutrition programs to provide free or reduced price meals to youth in the juvenile system.[129] The U.S. Department of Agriculture and the California Department of Education administer the School Breakfast Program (SBP) and the National School Lunch Program (NSLP).[130] Youth who are residents of juvenile detention facilities are categorically eligible for free breakfast and lunch.[131] A free meal is "a meal for which neither the child nor any member of his family pays or is required to work" in the facility.[132]

We found that at least 17 counties in California accept federal funding for meals provided to youth in their juvenile detention facilities *and* charge parents and guardians daily detention fees, which include reimbursement for food and food preparation.[133] For example, in San Joaquin County, "all youth

under the care and custody of the Court and are eligible for full NSLP benefits."[134] Yet, San Joaquin County charges families a daily juvenile detention rate that includes food, food preparation, clothing, personal supplies, and medical services.[135] Since federal regulations require participating schools and facilities to serve free meals to all eligible youth, any costs associated with breakfast and lunch cannot be charged to parents and guardians.[136]

ANY COUNTY THAT CHARGES DETENTION FEES TO FAMILIES FOR MEALS PROVIDED TO YOUTH WHILE RECEIVING NATIONAL NUTRITION PROGRAM FUNDING IS DOING SO IN VIOLATION OF FEDERAL LAW.

3. Counties charge fees that violate the Constitution

The U.S. and California Constitutions prohibit the state and other public entities from depriving people of life, liberty, or property without due process of law or from denying any person equal protection of the law.[137] Counties deprive families with youth in the juvenile system of due process of law through a flawed ability to pay evaluation. Counties also deny families equal protection of the laws by singling them out to pay fees that are for the benefit of society as a whole.

a. A flawed ability to pay evaluation deprives families of due process

State law requires counties to conduct an ability to pay evaluation before charging families juvenile administrative fees.[138] The ability to pay process is supposed to protect low-income families from excessive fees.[139] Financial Evaluation Officers (FEOs) in each county are tasked with determining each family's ability to pay fees, taking into consideration "the family's income, the necessary obligations of the family, and the number of persons dependent upon this income."[140] At a minimum, due process of law requires notice and a meaningful opportunity to be heard by an impartial decision maker.[141]

We found little evidence that existing ability to pay determinations conducted by FEOs meet basic due process requirements.[142] From interviews with families and other stakeholders in the juvenile system, it is clear that many people do not receive sufficient notice about the fees or the opportunity to be heard by an FEO. In addition, of the 52 Chief Probation Officers who responded to our survey, only 28 reported that they have a standardized process for determining a family's ability to pay juvenile fees.[143] In other words, almost half of all responding counties (24 of 52)—comprising more than 40 percent of all California counties (24 of 58)—assess families' ability to pay on an ad hoc basis.

Many FEOs work for county collection agencies, not probation departments. Collection agencies do not share probation's rehabilitative purpose, which presents a conflict of interest when evaluating ability to pay. Alameda County acknowledged that it had no written standards or guidelines upon which its FEOs performed ability to pay evaluations as employees of the county collection agency.[144] Rather, all existing policies appeared to be communicated verbally to and among FEOs.[145] One Alameda County FEO reported making decisions based on her assessment of whether the parents were lying.[146] The FEO said it was possible to tell when parents were lying by their clothing, such as "mom's handbag" and how they act.[147]

In a March 2016 memo from Alameda County Supervisors Richard Valle and Keith Carson recommending the suspension of fees, they acknowledged:

The County does not know how many families received fee reductions or waivers based on inability to pay or how many families are billed in full. The County keeps no data on families charged and cannot demonstrate that families who cannot pay have not been charged. In short, there is no data that confirms that only families who can pay have been assessed fees.[148]

ANY COUNTY MAKING ABILITY TO PAY EVALUATIONS WITHOUT PROPER NOTICE AND OPPORTUNITY TO BE HEARD BY AN IMPARTIAL DECISION MAKER IS DEPRIVING FAMILIES OF DUE PROCESS OF LAW.

b. Probation supervision and electronic monitoring fees violate equal protection

In California, state courts have held that equal protection principles "require that the state limit its parental charges to those reflective of the parents' own primary duty of support, and not seek to pass on public costs of incarceration, treatment, supervision, and rehabilitation."[149] In other words, parents of youth in the juvenile system cannot be singled out to pay costs that are intended to benefit society generally.

Although probation supervision and electronic monitoring are not "preexisting obligations of parents," and therefore fall outside the parental duty of support, the California Legislature authorized counties to charge families for both items in 1996.[150] The Legislature did so in spite of a Senate Committee analysis which concluded that such fees may violate constitutional equal protection principles. As the committee analyst noted, "[b]y imposing financial responsibility on parents or other responsible persons for costs undertaken for the protection of society or the rehabilitation of the minor, this bill may violate constitutional guarantees of equal protection."[151]

Thirty-three counties in California report charging juvenile administrative fees for probation supervision, home supervision, electronic monitoring or some combination thereof.[152] Probation supervision and electronic monitoring are not a preexisting obligation of a parent or guardian but are undertaken for the protection of society.

ANY COUNTY THAT CHARGES FEES TO FAMILIES FOR THE PROBATION SUPERVISION, HOME SUPERVISION, OR ELECTRONIC MONITORING OF YOUTH IS LIKELY DENYING THEM EQUAL PROTECTION OF THE LAWS.

C. JUVENILE ADMINISTRATIVE FEES ARE COSTLY

Counties are authorized by the state Legislature to charge juvenile administrative fees to protect their fiscal integrity.[153] We found that counties generate little net revenue from charging fees to families with youth in the juvenile system, because most families cannot afford to pay them.[154] Further, county fee revenue pays mostly for assessment and collection activity itself, not to support youth. Finally, the fees generate costly collateral consequences for families, communities, and society.

1. Counties collect little net revenue from the fees

In authorizing counties to charge and collect juvenile administrative fees, the California Legislature intended "to protect the fiscal integrity of the county," that is, to help pay for the care and supervision of youth.[155] However, counties collect a small percentage of the fees they charge. In fact, after tak-

ing into account the amount of juvenile fee debt collected and the time and resources spent trying to collect such fees annually, most counties generate little net revenue from the fees.

Counties annually charge families tens of millions of dollars in juvenile administrative fees. However, most counties recover a relatively small proportion of what they charge families each year and over time. For example, Sacramento County collected only $191,000 of the $1.1 million dollars it charged families for juvenile detention in fiscal year 2014–15, or 16.9 percent.[156] Such low return rates are not a result of lax county collection efforts. Although California counties are not required to maintain data on the socio-economic status of youth in the juvenile system, most system-involved youth come from low-income families who cannot afford to pay such fees.[157]

Counties spend significant time and resources trying to collect juvenile fees from families. Counties maintain staffing and infrastructure to administer the juvenile fee assessment and collection process, which entails fiscal obligations such as salaries, benefits, and non-personnel costs. In their probation department or collection agency, counties that charge fees must employ financial evaluation officers to conduct ability to pay evaluations. The expenses add up quickly.

For example, in fiscal year 2014–15, Orange County spent over $1.7 million to employ 23 individuals to collect just over $2 million in juvenile administrative fees.[158] The county netted $371,347, which represents a tiny fraction (less than 0.0068 percent) of its almost $5.4 billion annual budget.[159] In Santa Clara County—which experienced a net loss in 2014–15, spending $450,000 to collect only $400,000—Supervisors noted the futility of pursuing fees from low-income families when implementing its July 2016 moratorium:

> *There's a lot of numbers in here in terms of cost but also in terms of significant dollar amounts and collectibles that are probably not really collectibles or receivables.*[160]

2. Fee revenue pays mostly for collection activity, not support for youth

State law requires counties "[to] limit the charges it seeks to impose to the reasonable costs of support of the minor."[161] However, a considerable percentage of fee revenue funds assessment and collection activities, not support of youth. In four of the five counties for which we have revenue and cost data, more than half of all funds received pay for assessment and collection (Table 3).

Santa Clara County spent more money trying to collect fees than it recovered, and recently ended the practice. In Alameda and Contra Costa Counties, which have also since ended the fees, more than half of all fee revenue paid for collection activity and not support for youth. In Sacramento County,

County	Revenue	Collection Costs (% of Revenue)	Youth Support (% of Revenue)
Alameda	$419,830	59.77%	40.23%
Contra Costa	$430,926	67.38%	32.62%
Orange	$2,071,347	82.07%	17.93%
Sacramento	$682,636	32.53%	67.47%
Santa Clara	$399,228	112.72%	-12.72%

Table 3: Fees for Collection Activity and for Youth, FY 2014–15

more than 30 percent of the fee revenue pays for collection activity. Orange County spends more than 80 percent of its fee revenue on collections; in other words, more than four of every five dollars in fee revenue from Orange County families pays for collecting fee revenue from other families with youth in the juvenile system.

Across these five counties, more than 70 percent of all fee revenue pays to collect money from families, not to support youth in the juvenile system. As Contra Costa County Supervisor Karen Mitchoff remarked during a public hearing on juvenile administrative fees in her county:

> *These fees are supposed to be feeding and housing young people. This is funding a unit to collect money and not even benefiting juvenile hall as stated in the purpose of Welfare and Institutions Code.*[162]

3. Fees generate costly collateral consequences for families, communities, and society

The Legislature's intent in authorizing juvenile administrative fees was to protect the fiscal integrity of counties, protect families against excessive fees, ensure reasonable uniformity throughout the state, and limit liability to those who can afford to pay.[163] As described above, county fee policies and practices fail to achieve each of these aims. But we have also found that the juvenile fee regime generates costly collateral consequences for families, communities, and society.

A 2016 benefit-cost analysis found that eliminating fees in Alameda County alone would result in a net financial benefit to society of $192,000 annually or more than $5.5 million in perpetuity (present value) due to state and local administrative savings and the reduction of labor market harms and wage garnishment.[164] As noted above, juvenile fee debt may increase recidivism, but it can also cause families to spend less on positive goods, such as education and preventative healthcare. Crowding out such spending on these positive goods with juvenile administrative fee debt imposes harm over time, prolonging or exacerbating poverty and generating costs to families, communities and society.

As San Francisco County Chief Probation Officer Allan Nance explained when describing why his department does not charge juvenile administrative fees:

> *We believe that the goals and objectives of our juvenile justice system are being met without the need for fees imposed on those individuals and families that can least afford to pay them. One might argue that* [*our*] *successes are attributable to the fact that we did not create additional hardships and stressors for these families that would serve as additional barriers to their success.*[165]

III. FEE REFORMS

THERE IS GROWING RECOGNITION of the harmful, unlawful, and costly impact of charging fees to families with youth in the juvenile system. California counties have begun to end the assessment and collection of juvenile administrative fees. A California federal appeals court recently admonished Orange County for aggressively pursuing payment on a debt that forced a mother to sell her home and declare bankruptcy. And national voices have encouraged state and local jurisdictions to rethink the fees. In this Section, we outline recent fee reforms and rising calls for policymakers to end harmful fee practices.

A. CALIFORNIA COUNTIES ARE ENDING JUVENILE ADMINISTRATIVE FEES

In the last 12 months, the Boards of Supervisors in Alameda, Contra Costa, and Santa Clara Counties have carefully examined their juvenile administrative fee policies and practices, and they have each voted unanimously to repeal or suspend the assessment and collection of all fees. Los Angeles County, in the wake of revelations about high harm to families and costly collection practices, imposed a moratorium on the assessment of all juvenile detention fees in 2009. San Francisco County has never charged administrative fees to families on the grounds that they undermine the rehabilitative purpose of the juvenile system.

1. Alameda County repealed juvenile administrative fees in 2016

> *Imposing this kind of debt on families induces economic and familial instability, which undermines the rehabilitative purpose of the juvenile justice system.*[166]
>
> —KEITH CARSON AND RICHARD VALLE, ALAMEDA COUNTY SUPERVISORS

In July 2016, Alameda County became the first county in California to repeal in full the assessment and collection of juvenile fees.[167] The Board of Supervisors unanimously voted to end one of the most extensive fee schemes in the state, which included $25.29 per day for juvenile detention, $90 per month for probation supervision, $15 per day for electronic monitoring, $28.68 per drug test, $250 per day for juvenile investigation, and $300 for legal representation.[168] In fiscal year 2014–15, the county received less than $200,000 in net revenue from the fees.[169]

Even Departments that were affected by the repeal applauded the Board of Supervisors. According to Alameda County Chief Public Defender Brendon Woods, whose office stood to lose tens of thousands of dollars in annual revenue due to the repeal, "The Board of Supervisors deserves tremendous credit for recognizing that an existing county policy was harming families, and taking swift action to correct the problem."[170] The repeal relieved over 2,900 families of more than $2 million of outstanding debt.[171]

2. Contra Costa County suspended juvenile administrative fees in 2016

> *The purpose of our juvenile justice system is to promote public safety by rehabilitating young people, but the fee was counterproductive to this purpose. It harmed families already struggling to maintain stability, while providing little revenue to training and treatment programs that benefit youth.*[172]
>
> —JOHN GIOIA, CONTRA COSTA COUNTY SUPERVISOR

In November 2016, the Contra Costa County Board of Supervisors unanimously approved a resolution to impose a moratorium on the assessment and collection of fees.[173] Prior to the moratorium, Contra Costa County charged families $30 per day for juvenile detention and $17 per day for electronic monitoring.[174] Notably, the County also charged families of youth who were held in detention and later found not guilty.[175]

The Board was persuaded to act after considering the harm to families, the potential liability to the county of charging unlawful fees, and the small net revenue for youth care and supervision. The moratorium provided immediate relief to almost 6,900 families with more than $8.5 million in outstanding debt dating back to the early 1990s.[176] The Probation Department and County Administrator's Office is scheduled to report back to the Board of Supervisors about the implementation of the moratorium and plans for a repeal before May 31, 2017.[177]

3. Los Angeles County stopped assessing juvenile detention fees in 2009

> *The county does not appear to have made the effort to discern who can afford to pay and who cannot.*[178]
>
> —ZEV YAROSLAVSKY, LOS ANGELES COUNTY SUPERVISOR

The Los Angeles County Chief Probation Officer declared a moratorium on juvenile detention fee assessments in March 2009 after pressure from the Youth Justice Coalition and a series of articles by the Los Angeles Times reporting excessive fee amounts and aggressive collection tactics.[179] Prior to the moratorium, the county charged $11.94 per day for probation camp and $23.63 per day for juvenile hall.[180] In 2008, the county spent $812,000 on a team of five collection officers, and $56,000 on a Texas-based collections agency to recover just over ten percent of the $23.6 million it charged families in 2008.[181]

Felicia Cotton, L.A. Probation Department Deputy Chief of Juvenile Institutions, said that the leadership in her department supported the decision to end detention assessments, acknowledging that families often come to the juvenile system in crisis and the fees only compound their stress.[182] Deputy Chief Cotton also said that the County had not terminated employees or reduced services as a result of the moratorium.[183] Since 2009, neither the Board of Supervisors nor the Probation Department has sought

to reinstate the fees; however, the county still charges registration fees ($50 per case) for representation by counsel.[184]

4. San Francisco County has never charged juvenile administrative fees

> *We feel strongly that the policy [of not charging juvenile administrative fees] makes good fiscal sense and is solidly aligned with our youth rehabilitation and public safety objectives.*[185]
>
> —ALLEN NANCE, SAN FRANCISCO COUNTY CHIEF PROBATION OFFICER

San Francisco County has never charged juvenile administrative fees. During the recent economic recession—when many Boards of Supervisors increased juvenile administrative fees in an effort to increase revenue—the San Francisco Board of Supervisors tabled a proposal to enact a sliding juvenile fee scale.[186] The county's position is that the fees are unfair and unrealistic given the adverse economic conditions faced by families with system-involved youth.[187] In 2015, the Chief Probation Officer credited the county's no-fee policy for contributing to its success in reducing delinquency referrals by 50% and detentions by 43% over the prior six years.[188]

5. Santa Clara County repealed juvenile administrative fees in 2017

> *It is in the best interest of the County to adopt this resolution in an effort to address and potentially reduce the disproportionate representation of youth of color within our juvenile justice system.*[189]
>
> —SANTA CLARA COUNTY RESOLUTION

In January 2017, the Santa Clara County Board of Supervisors unanimously repealed its ordinances that authorized the assessment and collection of juvenile administrative fees.[190] Prior to a 2016 fee moratorium that led to the repeal, Santa Clara County charged families $30 per day for juvenile detention, $14 per day for electronic monitoring, and $280 per hour for legal representation.[191] In fiscal year 2014-15, the county spent almost $450,000 to collect less than $400,000 from families.[192] In fact, approximately 43 percent of the fees were found to be "uncollectible due to unsuccessful outreach, low financial means of the debtor, or other circumstances, such as incarceration."[193]

In its repeal resolution, the Board acknowledged that many low-income families were forced "to choose between basic necessities" and paying fees.[194] Further, the Board noted that youth of color were most affected by these fees and fines as they "are nearly two times as likely to live in poverty compared to white families."[195] The repeal relieved over 8,000 families of more than $7.5 million in outstanding debt.[196]

B. A FEDERAL COURT CRITICIZED JUVENILE ADMINISTRATIVE FEE PRACTICES IN CALIFORNIA

In addition to county lawmakers, courts have also started to cast a critical gaze on juvenile administrative fee practices. We described Orange County's pursuit of more than $16,000 from Maria Rivera, even after she sold her home, paid more than $9,500, and declared bankruptcy. After the debt was initially discharged by a bankruptcy court, the Orange County Probation Department refused to relent, arguing that the debt was not dischargeable in bankruptcy.[197]

During the hearing on the case before the U.S. Court of Appeals for the 9th Circuit, the three-judge panel was incredulous at the county's aggressive efforts to collect money from a mother who had been forced to sell her home because of juvenile fee debt.[198] In holding that the debt was legally dischargeable in bankruptcy, effectively ending the county's collection activity, the Court admonished the Orange County Probation Department for continuing to pursue payment:

> *Not only does such a policy unfairly conscript the poorest members of society to bear the costs of public institutions, operating "as a regressive tax," but it takes advantage of people when they are at their most vulnerable, essentially imposing "a tax upon distress." Moreover, experience shows that the practice undermines the credibility of government and the perceived integrity of the legal process.*
>
> *Section 903 [of the California Welfare & Institutions Code] permits the County to impose debts on the parents of children detained in juvenile hall, but it does not require it to do so. Like so much else, it is a matter of the County's discretion whether to send the parent a bill in the first place, and a matter of further discretion whether to persist in collecting the debt when that parent's circumstances change for the worse. We would hope that in the future the County will exercise its discretion in a way that protects the best interests of minors and the society they will join as adults, instead of following a directly opposite and harmful course.*[199]

C. NATIONAL VOICES ARE CALLING FOR AN END TO JUVENILE ADMINISTRATIVE FEES

California counties and courts are not alone in raising concerns about juvenile administrative fees. The country's leading non-profit law firm for youth issued a report in 2016 about the harmful impact of fines and fees in the juvenile system. In the wake of that report—and a policy brief we published about the issue in Alameda County—the New York Times called for an end to juvenile administrative fees nationally. In early 2017, the Obama Administration's outgoing Department of Justice issued an advisory cautioning local jurisdictions about unlawful juvenile fee practices and the burdens they impose on vulnerable families.

1. A National Report Identified the Scope of Juvenile Administrative Fees

The Juvenile Law Center reviewed laws and practices on fines, fees, and restitution imposed on youth involved in the juvenile system and their families in all 50 states and the District of Columbia. They also conducted a national survey of attorneys and youth and their families about their experience with the juvenile system and the costs they faced. In September 2016, the Center released its findings in a national report, Debtor's Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System.[200]

The report found that nearly every state in the country allows juvenile courts to impose fees on youth and their families for things like probation, representation by counsel, incarceration, and restitution.[201] For example, 47 states authorize fees for the cost of care, 21 authorize fees for probation and supervision, and 32 authorize fees for evaluation and testing.[202] The report found that these fees may increase recidivism, push impoverished young people deeper into the juvenile system, exacerbate existing racial disparities in the juvenile system, and heighten economic and emotional distress for families who may already be struggling financially.[203]

The report closed by highlighting solutions and jurisdictions taking on change in policies to ensure that youth are not punished for being poor.[204] One such jurisdiction was Alameda County in the wake of its fee repeal.[205] The report concluded that: "Counties and states across the country should consider a similar approach [to Alameda County]—eliminating harmful costs, fines, and fees."[206]

2. The Obama Justice Department Cautioned Against Imposing Fees on Youth

In December 2015, the U.S. Department of Justice (DOJ) held a two-day convening to discuss fines and fees in courts across the country.[207] In conjunction with the convening, the White House Council of Economic Advisors released an issue brief on the topic.[208] In September 2016, the DOJ held a follow-up convening on criminal justice debt, including a panel on juvenile fines and fees.[209]

Just a week before President Barack Obama left office, the DOJ issued a formal Advisory to Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles. The advisory was meant to remind state and local jurisdictions about the statutory and constitutional rights of youth in the juvenile system regarding fines and fees, including special nondiscrimination protections that apply to programs, such as county probation departments, that receive federal financial assistance. The advisory was also concerned about the undue hardship of imposing additional financial obligations on youth and their families in the juvenile system:

> *One overriding difference between the juvenile justice system and the criminal justice system is the former's primary focus on rehabilitation. Before courts impose fines and fees on juveniles—even on those rare juveniles who might be able to pay—they should consider whether such financial burdens serve rehabilitation. In many cases, fines and fees will be more punitive than rehabilitative, and they may in fact present an impediment to other rehabilitative steps, such as employment and education.*[210]

3. National Media Call Attention to the Harm of Juvenile Administrative Fees

In September 2016, The New York Times ran a front-page story about the impact of juvenile fees on a family in Florida.[211] The story emphasized the ways fines and fees can trap poor families. Imposing fees on families is counterproductive and draws youth, particularly youth of color, deeper into juvenile system.[212]

Shortly thereafter, the editorial board cited local fee reform efforts in California in calling for an end to juvenile administrative fees nationwide:

> *A recent study in Alameda County, Calif., found that juveniles in its justice system were charged, on average, about $2,000, or two months' salary for a single parent earning the federal minimum wage. Yet after the county paid the costs associated with collecting those fees, it netted almost no revenue.*
>
> *To their credit, Alameda County officials saw the folly of a system that harmed a lot of people and produced no discernible public benefit. Last March, the county Board of Supervisors put an immediate moratorium on all administrative court fees in juvenile cases. In July, the board voted to repeal those fees permanently. Counties across the country would be wise to follow suit.*[213]

In December 2016, The New Yorker published a piece about the long-term costs of imposing fines and fees on youth in the juvenile system.[214] The article noted that jurisdictions and individuals are beginning to recognize that fees are part of a larger problem with our juvenile system, which punishes youth rather than helping them.[215] In March 2017, the Washington Post ran a front-page story about juvenile fees, including coverage of reform efforts in California.[216]

IV. RECOMMENDATIONS

IN LIGHT OF STATE LAW, our research findings, and the reforms already underway in California, we make the following three recommendations:

(1) to end their harmful impact on youth and families, the state should repeal laws that permit the assessment and collection of juvenile administrative fees;

(2) to redress unlawful practices, counties should reimburse families for all payments they made on improperly charged juvenile administrative fees; and

(3) to understand the consequences of costly practices like juvenile administrative fees, the state and counties should collect and maintain better data in the juvenile system.

A. CALIFORNIA SHOULD END ALL JUVENILE ADMINISTRATIVE FEES

To stop their harmful impact on youth and families, California should repeal all juvenile administrative fees. On the assessment side, a repeal requires amending and striking relevant state statutes that currently authorize counties to charge fees for juvenile detention (in halls, ranches, and camps), probation supervision, electronic monitoring, drug testing, and legal representation by public defenders and court-appointed counsel. A forward-looking repeal would protect California families from further harm and would end unlawful and costly fee practices.

Fee repeal should also include retrospective provisions to end the collection of all outstanding juvenile administrative fee debt, including vacating existing fee judgments imposed pursuant to the repealed and amended statutes. Extrapolating from reliable figures provided by several counties, many tens of thousands of low income California families with youth in the juvenile system are laboring under millions of dollars in fee judgments, some of which were unlawfully imposed. Counties that recently ended the fees have found it difficult if not impossible to determine whether families were properly charged; all counties should stop collecting existing debt.

Fortunately, the Legislature and the Governor can act quickly to end the assessment and collection of juvenile administrative fees. As noted above, in January 2017, California Senators Holly Mitchell and Ricardo Lara—with nine co-authors—introduced Senate Bill 190 to repeal the fees statewide.[217] Senate Bill 190 would amend relevant state laws relating to the assessment and collection of juvenile fees.[218] The bill would also render the balance of any court-ordered debt imposed pursuant to these sections "unenforceable and uncollectable" and would vacate the portion of any court judgment imposing those costs.[219]

B. COUNTIES SHOULD REIMBURSE FAMILIES FOR PAYMENTS MADE FOR UNLAWFULLY CHARGED FEES

To redress unlawful practices, counties should reimburse families for all payments they made on improperly charged juvenile administrative fees. Beyond ending current fee assessment and collection, counties should account for amounts that families have already paid, including the types of fees charged and whether the counties had adequate procedures in place to evaluate families' ability to pay. Counties that have reviewed their fee practices in recent years have not been able to verify that they charged only lawful fees to families with the ability to pay them.

Counties should therefore refund to families all payments they made for fees charged in violation of:

STATE LAW (families who paid fees that exceeded the statutory maximum, investigation report fees for youth not tried as adults, and fees for youth found not guilty);

FEDERAL STATUTES (families who paid detention fees that included the cost of food or food preparation in counties that receive federal meal assistance for detained youth);

DUE PROCESS (families who paid fees without being evaluated for their ability to pay, including being given sufficient notice and a hearing by an impartial decision maker); and

EQUAL PROTECTION (families who paid fees for electronic monitoring, probation supervision, or other fees for the protection of society and not for the support of youth).

At least one California jurisdiction has undertaken the process of refunding improperly charged juvenile administrative fees. After suspending all fee assessment and collection in October 2016, Contra Costa County recently reviewed almost 5,500 accounts established during the last four years.[220] Of the 1,652 accounts on which families made payments, the Probation Department identified 224 accounts involving a youth whose petition was not sustained (found not guilty).[221] The county is now working to locate the families of the exonerated youth to refund the payments on those accounts, which totaled $58,172.[222]

C. THE STATE AND COUNTIES SHOULD COLLECT BETTER DATA ON YOUTH IN THE JUVENILE SYSTEM

To understand the consequences of costly practices like juvenile administrative fees, the state and counties should collect and maintain better data on youth in the system. State law requires the California Department of Justice (DOJ) to compile data from local law enforcement agencies, county probation departments, and Superior Courts.[223] The state DOJ issues an annual report that "provides insight into the juvenile justice process by reporting the number of arrests, referrals to probation departments, petitions filed, and dispositions for juveniles tried in juvenile and adult courts."[224] The department is required to interpret and present the information so "that it may be of value in guiding the policies of the Legislature" and decision-makers in the juvenile system.[225]

We found that the state and counties do not collect key information necessary to guide informed policymaking in the juvenile system. In particular, counties do not gather statistics on juvenile system cases and outcomes by race, ethnicity, and socio-economic status.[226] The harm and cost of juvenile administrative fees went largely unscrutinized, for example, because most counties did not track data that

would have readily revealed the problem with such practices, including their disparate impact on families of color. With the passage of Senate Bill 190, the need for data on the impact of fees would no longer be necessary, but the need for better data on youth in the juvenile system remains critical.

Our recommendation for better data collection is consistent with recommendations to the Legislature by the California Juvenile Justice Work Group (JJDWG), which was established by state law in 2014.[227] The JJDWG reports that "California has allowed its juvenile data systems to fall into a pattern of long-term decline" and describes the "chronic failure of the state to invest in system upgrades, compromising the ability to assess system and program performance and to support state and local policy and program development."[228] The JJDWG recommends improving data collection and reporting of caseloads, performance, and outcomes in California's juvenile system, including disaggregating data by race and ethnicity.[229]

Without better data, the state and counties cannot assess whether current programs and practices advance rehabilitative and public safety goals. Administrative fees may not be the only practice that needs to change. Counties impose a range of other financial obligations on youth and their families, including restitution and restitution fines, without regard to ability to pay or consideration of other consequences. In addition, county juvenile electronic monitoring and drug testing practices vary widely, with no apparent consideration of their impact on caseloads, performance, or outcomes for youth, families, and society.[230] Counties should collect and maintain such data to inform sound policy choices and best practices.

CONCLUSION

THE CALIFORNIA LEGISLATURE clearly stated its intent when authorizing counties to charge juvenile administrative fees. The fees are meant "to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay."[231] Unfortunately, our research has found that juvenile administrative fees fail to serve these purposes and are harmful, unlawful, and costly.

To continue to lead on criminal and juvenile justice reform, the California Legislature and the Governor should end the assessment and collection of all juvenile administrative fees. Further, counties should reimburse families for improperly charged fees. Finally, the state and counties should collect better data to inform policymaking and best practices. Such reforms will advance the rehabilitative and public safety goals of the juvenile system while mitigating the negative collateral consequences on individuals, families, and society.

APPENDICES

A. JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA COUNTIES BY TYPE AND NUMBER

County	Juvenile Hall	Public Defender	Electronic Monitoring	Probation Supervision	Drug Testing	Investigation Report	Fees Charged
Alameda							0
Alpine°	•						1
Amador	•						1
Butte		•					1
Calaveras	•						1
Colusa	•	•			•		3
Contra Costa							0
Del Norte	•						1
El Dorado	•	•					2
Fresno	•	•	•				3
Glenn°	•		•	•	•		4
Humboldt	•		•	•	•		4
Imperial°	•	•					2
Inyo	•	•	•	•			4
Kern	•		•				2
Kings	•	•		•			3
Lake	•	•	•	•			4
Lassen	•	•	•				3
Los Angeles		•					1
Madera	•	•	•	•	•	•	6
Marin	•		•	•			3
Mariposa	•	•	•	•	•	•	6
Mendocino	•	•		•	•		4
Merced	•	•	•				3
Modoc	•						1
Mono	•		•	•			3
Monterey	•		•	•	•	•	5
Napa	•	•					2
Nevada	•	•	•	•	•		5

County	Juvenile Hall	Public Defender	Electronic Monitoring	Probation Supervision	Drug Testing	Investigation Report	Fees Charged
Orange	•	•			•		3
Placer	•						1
Plumas	•		•				2
Riverside	•	•				•	3
Sacramento	•	•	•	•	•		5
San Benito	•	•	•	•			4
San Bernardino	•	•				•	3
San Diego	•		•				2
San Francisco							0
San Joaquin	•	•					2
San Luis Obispo	•	•	•	•	•		5
San Mateo	•	•	•				3
Santa Barbara	•	•					2
Santa Clara							0
Santa Cruz	•	•	•				3
Shasta		•	•				2
Sierra°	•						1
Siskiyou	•	•	•		•		4
Solano	•	•	•	•		•	5
Sonoma		•		•	•		3
Stanislaus	•	•		•			3
Sutter	•						1
Tehama	•	•			•	•	4
Trinity	•	•		•	•	•	5
Tulare	•	•	•	•	•		5
Tuolumne°			•	•			2
Ventura	•	•	•				3
Yolo	•	•	•	•			4
Yuba°	•						1
Total by Type	49	36	28	24	16	8	2.74

° Based on fee schedule only (did not respond to our survey of the Chief Probation Officers of California).

B. JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA COUNTIES BY AMOUNT

County	Juvenile Hall	Public Defender	Electronic Monitoring	Probation Supervision	Drug Testing	Investigation Report
Alameda						
Alpine	Paid by Youth Offender Block Grant					
Amador	$15/day					
Butte		$150/case				
Calaveras	$15/day					
Colusa	$15/day	No data			$252 flat fee if condition of probation	
Contra Costa						
Del Norte	$12/day					
El Dorado	$15/day	$50/case				
Fresno	$19/day	$73+/case	$11/day			
Glenn	$10/day		$25 +$20/day	$25/mo.	$15/test	
Humboldt	$30/day		$6.40–$8.60/day	Up to $122/mo. for EM supervision; $100 flat probation supervision	$5/test	
Imperial	$11.52/day	$25/case				
Inyo	$15/day	$36.50/hour	Paid by Youth Offender Block Grant, may pay $1/day	Based on Probation Officer hourly rate ($18.82/hour)		
Kern	$29/day		$25 + $22/day			
Kings	$25/day	No data		$20/mo.		
Lake	$3.18/day	$31/hour	$6.50/day	$20/mo.		
Lassen	$15/day	$150/case	$134 + $10/day			
Los Angeles		$50/case				
Madera	$22.90/day	$25/case + $75/hour	"reasonable costs"	$50 flat rate	$12.50/test	No data
Marin	$30/day		$50 + $10/day	$150/mo.		
Mariposa	$30/day	No data	$100 + $15/day	$20/mo.	$10/test	$300/report
Mendocino	$30/day	$50/case + $80/hour		$25/mo.	$29/test	
Merced	$4.72/day	$60/case	$4.90/day			
Modoc	Contracts w/ other counties					
Mono	$30/mo.		$3.50–$9.75/day	$20/mo. or $240/year		
Monterey	$29/day		$14/day	$25/mo.	$32/test	No data
Napa	$25/day	$25+/case				
Nevada	$26/day	$400/case	$15/day	$10/mo.	$65/referral	
Orange	$23.90/day	$245/case + $220/hour			$11.30/test	

County	Juvenile Hall	Public Defender	Electronic Monitoring	Probation Supervision	Drug Testing	Investigation Report
Placer	$30 /day					
Plumas	$10/day		$10/day			
Riverside	$30/day	$50 + $119.51/hour				No data
Sacramento	$18.40/day	$318+/case	$24/day	$206/mo.	$20/test	
San Benito	$20/day	$300/case	up to $10/day	$20/mo.		
San Bernardino	$20.53/day	$50/case				No data
San Diego	$30/day		$28/day			
San Francisco						
San Joaquin	$31.89/day	$125–175/case				
San Luis Obispo	$40/day	$25/case	$60 + $12/day	$46/mo.	$55/test	
San Mateo	$30/day	$220/case	$8/day			
Santa Barbara	$29.28/day	$90/hour				
Santa Clara						
Santa Cruz	$30/day	$50/case	$10/day			
Shasta		$60/hour	$24/day			
Sierra	$23/day					
Siskiyou	$15/day	$25/case	$40 + $12.50/day		$9–$24/test	
Solano	$30/day	$25/case	$23.00/day	$150/mo.		$1,200/report
Sonoma		$25/case		$132.30 once	$8.20/test	
Stanislaus	$24.41/day	$30/hour		$50–100		
Sutter	$15/day					
Tehama	$5–10/day	$60/hour			$50/test	No data
Trinity	$15/day	$70/hour		$10/mo.	$10/test	No data
Tulare	$19/day	$50/case	$30+ $2.16/day + $12/day	High risk $50/mo., informal $60/case, limited $10/mo.	$20/test	
Tuolumne			$40.25 + $17/day	$35/mo.		
Ventura	$33/day	$150–300 + $158.75/hour	$75 + $7.50/day			
Yolo	$30/day	$25/case + $125/hour	$30/day; $18/day GPS fee	$30/mo.		
Yuba	$15/day					

C. DETENTION FEES IN CALIFORNIA COUNTIES BY AVERAGE STAYS IN JUVENILE HALL, 2015

County	Average Length of Stay (days)*	Daily Fee	Average Fees
Alameda	35.50	$0.00	$0.00
Butte	31.93	$0.00	$957.75
Contra Costa	36.65	$0.00	$0.00
Del Norte	18.24	$12.00	$218.85
El Dorado	31.25	$15.00	$468.75
Fresno	37.50	$19.00	$712.50
Glenn	22.96	$10.00	$229.58
Humboldt	24.09	$30.00	$722.63
Imperial	10.25	$11.52	$118.08
Inyo	26.01	$15.00	$390.11
Kern	21.23	$29.00	$615.53
Kings	31.89	$25.00	$797.16
Lake	26.95	$3.18	$85.70
Lassen	22.75	$15.00	$341.25
Los Angeles	24.25	$0.00	$0.00
Madera	23.00	$22.90	$526.70
Marin	15.46	$30.00	$463.73
Mariposa	1.36	$30.00	$40.73
Mendocino	41.90	$30.00	$1,257.00
Merced	19.93	$4.72	$94.05
Monterey	20.00	$29.00	$580.00
Napa	24.75	$25.36	$627.66
Nevada	33.63	$26.00	$874.25
Orange	20.23	$23.90	$483.38
Placer	24.40	$30.00	$731.85
Riverside	25.85	$30.00	$775.50
Sacramento	31.68	$18.40	$582.91
San Benito	21.60	$20.00	$432.00
San Bernardino	32.73	$20.53	$671.84
San Diego	30.00	$30.00	$900.00
San Francisco	30.58	$0.00	$0.00
San Joaquin	31.75	$31.12	$988.06
San Luis Obispo	23.55	$40.00	$942.00
San Mateo	35.75	$30.00	$1,072.50
Santa Barbara	25.35	$29.28	$742.25
Santa Clara	34.50	$0.00	$0.00
Santa Cruz	18.43	$30.00	$552.75
Shasta	18.25	$0.00	$0.00
Siskiyou	28.42	$15.00	$426.26
Solano	40.17	$30.00	$1,204.95
Sonoma	46.00	$0.00	$0.00
Stanislaus	32.65	$24.41	$797.05
Tehama	27.48	$5–10.00	$137.40–274.80

County	Average Length of Stay (days)*	Daily Fee	Average Fees
Trinity	0.00	$15.00	$0.00
Tulare	23.38	$19.50	$455.91
Tuolumne	0.00	0.00	$0.00
Ventura	17.75	$33.00	$585.75
Yolo	25.75	$30.00	$772.58
Yuba	30.50	$15.00	$457.50

*rounded to nearest one-hundredth of a day

D. RACIAL DISPARITY IN DETENTION RATES IN CALIFORNIA COUNTIES, 2015

County	Youth Population (10–17)	# of Youth Admitted	Overall Detention Rate for Youth (per 1,000)	Rate for White Youth (per 1,000)	Rate for Black Youth (per 1,000)	Times more Likely for Black Youth than White Youth	Rate for Latino Youth (per 1,000)	Times more Likely for Latino Youth than White Youth
Alameda	150,549	689	4.6	1.2	22.7	18.5	4.3	3.5
Alpine	No data	No data	No data	No data	No data	No data	No data	No data
Amador	2,710	5	1.8	0.5	0	0	5.3	10.2
Butte	20,446	98	4.8	3.8	19.2	5	8.2	2.1
Calaveras	3,995	14	3.5	4.1	25.6	6.3	0	0
Colusa	2,745	11	4	1.4	0	0	4.2	2.9
Contra Costa	121,638	492	4	1.3	21	15.7	4	3
Del Norte	2,467	0	0	0	0	0	0	0
El Dorado	19,150	42	2.2	2.1	19	8.8	2.8	1.3
Fresno	119,873	1,181	9.9	6	48.9	8.1	9.5	1.6
Glenn	3,409	37	10.9	13.9	0	0	7	0.5
Humboldt	11,707	126	10.8	11.5	54.1	4.7	11.7	1
Imperial	23,114	240	10.4	8.3	62.5	7.5	10.3	1.2
Inyo	1,663	18	10.8	2.7	200	73	0	0
Kern	109,831	847	7.7	6.5	40.5	6.2	6.3	1
Kings	16,631	378	22.7	20.4	94.2	4.6	21	1
Lake	5,993	19	3.2	4.7	0	0	0	0
Lassen	2,495	0	0	0	0	0	0	0
Los Angeles	1,019,316	3,294	3.2	0.9	15.8	17.3	2.9	3.1
Madera	18,675	38	2	0.9	11.6	12.8	2.3	2.5
Marin	24,740	0	0	0	0	0	0	0
Mariposa	1,347	3	2.2	3	0	0	0	0
Mendocino	8,466	175	20.7	16.3	133.3	8.2	21.5	1.3
Merced	35,417	278	7.8	2.7	18.1	6.6	10	3.6
Modoc	814	9	11.1	12.4	166.7	13.5	0	0
Mono	1,251	2	1.6	1.8	0	0	1.6	0.9
Monterey	46,318	264	5.7	3.4	13.4	3.9	6.5	1.9
Napa	14,343	159	11.1	5.9	59.6	10.1	15.5	2.6
Nevada	8,433	0	0	0	0	0	0	0
Orange	327,999	1,139	3.5	1.1	15.9	14.7	6.1	5.6
Placer	41,928	4	0.1	0.1	2	27.7	0.1	1.5
Plumas	1,477	7	4.7	5.4	0	0	0	0
Riverside	278,525	340	1.2	0.7	5.4	7.4	1.1	1.4
Sacramento	158,470	250	1.6	0.8	7.7	10.2	1.4	1.8
San Benito	7,563	51	6.7	3.2	0	0	8.7	2.7
San Bernardino	252,590	1,776	7	5.6	34.2	6.1	5	0.9
San Diego	314,826	309	1	0.7	4.9	7.2	1	1.5
San Francisco	44,352	365	8.2	2.1	67.2	32.5	7.4	3.6

County	Youth Population (10–17)	# of Youth Admitted	Overall Detention Rate for Youth (per 1,000)	Rate for White Youth (per 1,000)	Rate for Black Youth (per 1,000)	Times more Likely for Black Youth than White Youth	Rate for Latino Youth (per 1,000)	Times more Likely for Latino Youth than White Youth
San Joaquin	89,719	415	4.6	4	24.3	6.1	3.6	0.9
San Luis Obispo	22,453	129	5.7	5.6	33.3	6	6.2	1.1
San Mateo	71,716	486	6.8	2.4	45.6	18.8	12.7	5.2
Santa Barbara	42,572	761	17.9	8.3	72.1	8.7	22.9	2.8
Santa Clara	193,441	1,009	5.2	1.9	29.1	15.2	10.8	5.6
Santa Cruz	24,586	203	8.3	4.1	54.9	13.6	11.8	2.9
Shasta	17,417	305	17.5	19.5	170.5	8.8	6.8	0.3
Sierra	229	No data	No data	No data	No data	No data	No data	No data
Siskiyou	4,131	33	8	6.9	58.8	8.6	1.3	0.2
Solano	45,524	478	10.5	7.4	38.5	5.2	7.6	1
Sonoma	48,018	439	9.1	7.4	44.4	6	10.9	1.5
Stanislaus	64,594	488	7.6	4.4	39.9	9.1	8.6	2
Sutter	11,453	67	5.8	5.8	22.7	3.9	8.1	1.4
Tehama	7,059	135	19.1	23.9	107.1	4.5	11.9	0.5
Trinity	1,046	4	3.8	5.2	0	0	0	0
Tulare	62,297	148	2.4	1.5	10.8	7.3	2.6	1.7
Tuolumne	4,156	14	3.4	3.9	32.3	8.4	0	0
Ventura	92,375	607	6.6	3.6	20.5	5.7	9.4	2.6
Yolo	19,922	137	6.9	2.8	26.9	9.5	11.3	4
Yuba	9,140	75	8.2	8	67.4	8.4	6.6	0.8

NOTES

1 U.S. Dep't of Justice, Civil Rights Div., Investigation of the Ferguson Police Department (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_ report_1.pdf (describing how the municipal court practice of imposing system-related fines and fees on the residents of Ferguson, Missouri exacerbates existing racial injustice in the community).

2 Robert D. Crutchfield, April Fernandes & Jorge Martinez, *Racial and Ethnic Disparity and Criminal Justice: How Much Is Too Much,* 100 J. Crim. L. & Criminology 903 (2010) (reviewing studies and research examining racial and ethnic disparities in the criminal justice system and affirming that such disparities exist in both our criminal and juvenile systems); Nat'l Council on Crime & Delinquency, And Justice for Some: Differential Treatment of Youth of Color in the Justice System (2007), http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf (discussing the disproportionate representation of racial and ethnic minorities in the juvenile system).

3 Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States,* 115 Am. J. Soc. 1753 (2010) (analyzing federal and state court data on the imposition of monetary sanctions and finding that legal indebtedness is "substantial[ly] relative to expected earnings[, . . . and] reproduces disadvantage by reducing family income, by limiting access to opportunities and resources, and by increasing the likelihood of ongoing criminal justice involvement."); Alexes Harris, A Pound of Flesh: Monetary Sanctions as a Punishment for the Poor (2016); Abby Shafroth & Larry Schwartzol, Harvard Law Sch. Criminal Justice Policy Program, Nat'l Consumer Law Ctr., Confronting Criminal Justice Debt: The Urgent Need for Comprehensive Reform (2016), http://cjpp.law.harvard.edu/assets/Confronting-Criminal-Justice-Debt-The-Urgent-Need-for-Comprehensive-Reform.pdf.

4 Rebekah Diller, Alicia Bannon & Mitali Nagrecha, N.Y. Univ. Sch. of Law, Brennan Ctr. for Justice, Criminal Justice Debt: A Barrier to Reentry (2010), https://www.brennancenter.org/publication/criminal-justice-debt-barrier-reentry (examining the imposition of "user fees" on adults with criminal convictions).

5 Jessica Feierman, Naomi Goldstein, Emily Haney-Caron & Jaymes Fairfax Columbo, Juvenile Law Ctr., Debtor's Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System (2016), http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf.

6 California counties impose a high amount of criminal justice debt generally, even in jurisdictions like San Francisco. José Cisneros, *San Francisco Has Become a Predatory Government*, S.F. Chron. (Nov. 28, 2016),

http://www.sfchronicle.com/opinion/openforum/article/San-Francisco-has-become-a-predatory-government-10641316.php.

7 Rivera v. Orange Cty. Prob. Dep't, 832 F.3d 1103, 1105 n.1 (9th Cir. 2016).

8 Notice of Motion and Motion for Order To Show Cause Why the Orange Cty. Prob. Dep't Should Not Be Held in Contempt for Violation of the Discharge Injunction; Memorandum of Points and Auths.; Declarations of Maria G. Rivera and Emma Elizabeth A. Gonzalez at 13-14 (declaration of debtor Maria G. Rivera), *In re* Rivera, No. 8:11-bk-22793-TA (Bankr. C.D. Cal. Sept. 16, 2013), *aff'd sub nom*. Rivera v. Orange Cty. Prob. Dep't (*In re* Rivera), 511 B.R. 643 (B.A.P. 2014), *rev'd*, 832 F.3d 1103 (9th Cir. 2016) [hereinafter Rivera Decl.].

9 *Id*.

10 *Rivera*, 832 F.3d at 1111.

11 Eli Hager, *Your Child's Been Sent to Jail. And Then Comes the Bill*., The Wash. Post (Mar. 2, 2017), http://wapo.st/2lzpbZ5.

12 Ms. Cuevas paid about $50 per month toward her fee bill. *Id*.

13 Sukey Lewis, *Will California Counties Rethink Charging Parents Fees for Locked up Kids*?, KQED News (Oct. 24, 2016), https://ww2.kqed.org/news/2016/10/24/many-california-counties-charge-parents-high-fees-while-kids-are-locked-up/.

14 Molly Hennessy-Fiske, *County Spent $13,000 to Chase $1,004*, L.A. Times (Mar. 4, 2009), http://articles.latimes.com/2009/mar/04/local/me-probation-fees4.

15 Celeste Fremon, *Charging Poor Parents for Law Breaking Children*, Witness L.A. (Mar. 6, 2009), http://witnessla.com/charging-poor-parents-for-lawbreaking-children/.

16 Hennessy-Fiske, *supra* note 14.

17 *Id*.

18 In 2015, 71,923 youth were arrested and 86,539 were referred to county probation departments in California (youth can be referred without being arrested). Cal. Dep't of Justice, Juvenile Justice in California (2015), https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj15/jj15.pdf.

19 *Id*. 51,693 male youths and 20,230 female youths were arrested in California in 2015. *Id*. 983 youth under age 12; 17,459 youth ages 12–14; and 53,480 youth ages 15–17 were arrested in California in 2015. *Id*.

20 *Id*. 13,434 Black youth; 38,379 Latino youth; and 15,929 White youth were arrested in California in 2015.

21 Cal. Welf. & Inst. Code § 1700 (West 2016) ("The purpose of this chapter is to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses.").

22 Cal. Welf. & Inst. Code § 903.1 (West 2016) (describing liability for public defender and court-appointed attorney services).

23 Many youth in the juvenile system spend time in juvenile hall, either immediately upon arrest, as part of their disposition or for short periods as punishment for probation violations. *See* Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 Iowa L. Rev. 297, 320–21 (2015); Soraya Shockley, *Unlocked: From Probation to Incarceration*, Youth Radio (July 28, 2015), https://youthradio.org/journalism/juvenile-justice/

unlocked-from-probation-to-incarceration/ (describing the emergence of probation as an alternative to detention and the risks associated with various probation conditions).

24 Cal. Welf. & Inst. Code § 202(b) (West 2016).

25 Cal. Welf. & Inst. Code § 729.9 (West 2016) (describing liability for cost of drug and substance abuse testing); Cal. Welf. & Inst. Code § 903 (West 2016) (describing liability for the cost of support while in detention); Welf. & Inst. § 903.1 (describing liability for public defender and court-appointed attorney services); Cal. Welf. & Inst. Code § 903.2 (West 2016) (describing liability for probation supervision and electronic surveillance).

26 Welf. & Inst. § 903(c).

27 *Id*., Cal. Welf. & Inst. Code § 903.45 (West 2016).

28 Welf. & Inst. § 729.9; Welf. & Inst. § 903; Welf. & Inst. § 903.1; Welf. & Inst. § 903.2.

29 Welf. & Inst. Code § 902 (West 2016).

30 Welf. & Inst. § 903(c).

31 1961 Cal. Stat. 3499, § 2.

32 Molly Hennessy-Fiske, *L.A. County Probation Department Suspends Aggressive Billing of Guardians*, L.A. Times (Feb. 14, 2009), http://articles.latimes.com/2009/feb/14/local/me-probation-fees14 ("'Although it sounds like a tough-guy law to make families pay, it actually was meant to prevent probation from becoming a baby-sitting service,' [Director of Commonweal Juvenile Justice Program David] Steinhart said.").

33 1965 Cal. Stat. 4535 (authorizing fees for home supervision and electronic monitoring); 1968 Cal. Stat. 2334 (authorizing fees for representation by a public defender).

34 1996 Cal. Stat. 2453. The Assembly Committee on Public Safety analysis stated that: "As a result of prior legislative actions, counties have seen their funds greatly reduced. Compounded by a growth in juvenile crime, county probation departments are experiencing great financial difficulties. This bill would allow counties to recover costs associated with home supervision of juveniles. The costs of juvenile crime and the dire financial status of counties and probation departments are what prompted this legislation." Cal. Bill Analysis, S.B. 1734 Assem. (July 2, 1996).

35 1987 Cal. Stat. 2778.

36 1992 Cal. Stat. 1712. In 2009, the Legislature authorized an increase in the maximum registration fee charged to families for court-appointed legal representation from $25 to $50. A.B. 1035, 2011–12 Reg. Sess. (Cal. 2011).

37 1996 Cal. Stat. 2453.

38 2001 Cal. Stat. 4038. The amount is adjusted every three years to reflect the percentage change in the calendar year annual average of the California Consumer Price Index. Cal. Welf. & Inst. Code § 903(c)(1) (West 2016).

39 Alameda County., Cal., Ordinance No. 35 (2016) [hereinafter Alameda Cty. Repeal], http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_07_12_16/GENERAL%20ADMINISTRATION/Regular%20Calendar/CAO_Auditor_Probation_PUBDEF_236774.pdf (codified at Alameda County Admin. Ordinance Code § 2.42.190); Santa Clara Cty., Cal., Res. No. 110 (2016) [hereinafter Santa Clara Cty. Moratorium] (enacted), http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=82241 (follow "Resolution – Juvenile Fee Moratorium" to download undated resolution printout); Contra Costa Cty.,

Cal., Res. No. 606 (2016) [hereinafter Contra Costa Cty. Moratorium] (enacted), http://64.166.146.245/docs/2016/BOS/20161025_813/27510%5FBO%5FJUVENILE%20FEES%20CHARGED%20BY%20THE%20PROBATION%20DEPARTMENT%2Epdf.

40 Memorandum from Robert B. Taylor, L.A. Cty. Chief Probation Officer, to Don Knabe, Gloria Molina, Mark Ridley-Thomas, Zev Yaroslavsky, and Michael D. Antonovich, L.A. Cty. Supervisors (Mar. 31, 2009) [hereinafter L.A. Cty. Prob. Dep't Moratorium], http://file.lacounty.gov/SDSInter/bos/supdocs/48284.pdf (on Probation Department Moratorium on Collection of Support Costs for Incarcerated Minors); email from Allen Nance, S.F. Cty. Chief Prob. Officer, to Policy Advocacy Clinic (Apr. 18, 2015, 15:22 PST) [hereinafter S.F. Chief Nance Email] (on file with authors).

41 S. 190, 2017–2018 Reg. Sess. (Cal. 2017). Co-authors include Senators Atkins, Beall, Bradford, Hertzberg, McGuire, Monning, Skinner, Wieckowski, and Wiener. In the 2015-16 legislative session, Senator Mitchell introduced SB 941, which passed the Public Safety Committee with bipartisan support but was held in the suspense file in the Appropriations Committee. The Legislature later eliminated an analogous fee for juvenile record sealing. S. 504, 2015–2016 Reg. Sess. (Cal. 2015) (codified at Welf. & Inst. § 1203.45).

42 Cal. Welf. & Inst. Code § 729.9 (West 2016); Welf. & Inst. § 903 (West 2010); Cal. Welf. & Inst. Code § 903.1 (West 2016); Cal. Welf. & Inst. Code § 903.2 (West 2016).

43 Welf. & Inst. § 903(c) (limiting the detention fee to "actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of thirty dollars ($30) per day). For other fees, monthly or daily charges are "not to exceed cost for care, support, and maintenance of minor persons placed or detained in or omitted to any institution by order of a juvenile court, the cost of delinquency-related legal services referred to by Section 903.1, the cost of probation supervision referred to by Section 903.2, and the cost of sealing records in county or local agency custody referred to by Section 903.3 . . . [as] determined by the board of supervisors." Cal. Welf. & Inst. Code § 904 (West 2016).

44 Cal. Welf. & Inst. Code § 903.45(a) (West 2016).

45 *Id.*

46 *Id.* Since fees are effectively ordered at the disposition of each case, families may be charged fees at multiple points during their children's involvement in the system. It is often difficult for families to distinguish among fee debt and between fee debt and restitution or other fines included in the same bill.

47 Welf. & Inst. § 903.45(b) ("In evaluating a person's ability to pay under this section, the county financial evaluation officer and the court shall take into consideration the family's income, the necessary obligations of the family, and the number of persons dependent upon this income.").

48 *Id.* ("Proper notice to the person shall contain all of the following: (1) That the person has a right to a statement of the costs as soon as it is available. (2) The person's procedural rights under Section 27755 of the Government Code. (3) The time limit within which the person's appearance is required. (4) A warning that if the person fails to appear before the county financial evaluation officer, the officer will recommend that the court order the person to pay the costs in full.").

49 *Id.*

50 *Id.* ("The person shall have the right to be represented by counsel, and, when the person is unable to afford counsel, the right to appointed counsel. If the court determines that the person has the ability to pay all or

part of the costs, including the costs of any counsel appointed to represent the person at the hearing, the court shall set the amount to be reimbursed and order him or her to pay that sum to the county or court, depending on which entity incurred the expense, in a manner in which the court believes reasonable and compatible with the person's financial ability.") Additionally, a family may petition the court to modify or vacate a judgment based on a change in circumstances relating to ability to pay. WELF. & INST. § 903.45(c).

51 *Id*. § 903.45(d) ("Execution may be issued on the order in the same manner as on a judgment in a civil action, including any balance remaining unpaid at the termination of the court's jurisdiction over the minor.").

52 Civil judgments in California are generally enforceable for 10 years. CAL. CIV. PROC. CODE § 683.020(a)–(c) (West 2009). However, state law exempts court-ordered "fines, forfeitures, penalties, fees, or assessments" from the 10-year limit on enforcement. CAL. PEN. CODE § 1214(e) (West 2015). Judgments can be reported to credit reporting agencies for seven years, or as long as the judgment is enforceable. 15 U.S.C. § 1681c(a)(2) (2012) ("Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.").

53 Through its Interagency Intercept Collection Program, the Franchise Tax Board (FTB) intercepts personal income tax refunds, lottery winnings, and unclaimed property disbursements. State of Cal. Franchise Tax Bd., *Interagency Intercept Collection Program*, https://www.ftb.ca.gov/individuals/Interagency_Intercept_Collections/index.shtml?WT.mc_id=AboutUs_IIC (last visited Feb. 6, 2017). Through its Court-Ordered Debt Program, the FTB can garnish wages (up to 25% of disposable earnings for each pay period). State of Cal. Franchise Tax Bd., *Court-Ordered Debt (COD)—Frequently Asked Questions (Debtor)*, https://www.ftb.ca.gov/online/Court_Ordered_Debt/faq_debtor.shtml (last visited Feb. 6, 2017). Once referred to the Franchise Tax Board, the debt can accrue interest. CAL. REV. AND TAX CODE § 19280 (West 2015 & Supp. 2017).

54 Policy Advocacy Clinic at Berkeley Law, California Juvenile Fees Survey of Chief Probation Officers (2015) [hereinafter Juvenile Fees Survey] (unpublished survey) (on file with authors) (surveying county Chief Probation Officers with the assistance of the Chief Probation Officers of California regarding juvenile administrative fee assessment and collection practices). Responses were adjusted for post-survey changes in county fee practices.

55 Despite multiple attempts, we did not receive survey responses from the following counties: Alpine, Glenn, Imperial, Mono, Sierra, and Tuolumne. It is important to note that county responses are self-reported. In some cases, what was reported by respondents does not correspond with county practice. For example, Sacramento County indicated it charged an investigation report fee to juveniles, but the county does not actually charge such a fee.

56 Juvenile Fees Survey, *supra* note 54. We conducted additional research and collected county fee schedules to compile this information. Where survey responses and publicly available or acquired fee schedules differ, we rely on information reported in fee schedules. All survey and fee schedule information have been adjusted for actions by California counties through March 3, 2017.

57 Telephone Interview with Wendy Mondfrans, Senior Deputy Prob. Officer, Lake Cty. (Jan. 31, 2017). San Luis Obispo Cty. Prob. Dep't, *Juvenile Hall FAQs*, http://www.slocounty.ca.gov/San_Luis_Obispo_Probation_Department/Juvenile_Hall/Juvenile_Hall_FAQs.htm (last visited Mar. 2, 2017).

58 Many counties also charge set-up costs, which are generally flat one-time fees, in addition to per day fees. Mono Cty., Fee Schedule (June 19, 2013) (on file with authors); Yolo County, Current Master Fee Schedule (Nov. 1, 2016), http://www.yolocounty.org/home/showdocument?id=7499.

59 See Andrew Horwitz, *Coercion, Pop-Psychology, and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*, 57 Wash. & Lee L. Rev. 75, 80-81 (2000) (describing wide discretion afforded to courts in imposing probation conditions); Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. Crim. L. & Criminology 1015, 1044 (2013) (observing that "[w]hile often reasonable when considered individually, in the aggregate, the sheer number of requirements imposes a nearly impossible burden on many offenders.").

60 The average length of stay in juvenile hall facilities ranged from a little over one day in Mariposa County to 46 days in Sonoma County. Data received from the W. Haywood Burns Institute, www.data.burnsinstitute.org.

61 We use the average length of stay in juvenile hall across the state according to the most recent available data. Data received from the W. Haywood Burns Institute, www.data.burnsinstitute.org. The public defender fees are per case in each county. Very few counties provided us with the average length of probation conditions. We estimate the average electronic monitoring terms from a one-month snapshot in 2013 in Alameda County (35 days per youth) and a three-month period in 2016 in Contra Costa County (65 days per youth). Alameda Cty. Prob. Dep't, A Look into Probation Monthly Report (July 2013), https://www.acgov.org/probation/documents/July2013Report.pdf; email from Danielle Fokkemma, Chief of Admin. Servs., Contra Costa Cty. Prob. Dep't, to Policy Advocacy Clinic (Oct. 18, 2016 10:30AM PST) (on file with authors). We estimate the average probation supervision term at 17 months based on a one-month snapshot in 2013 in Alameda County. Alameda Cty. Prob. Dep't, *supra*. We estimate the average number of drug tests based on consultation with public defenders who indicated that drug testing generally occurred once every other month while on probation supervision. Because we were unable to obtain reliable data from all counties, this table does not include charges for investigation fees. All figures are based on reported or publicly available fee schedules. In instances where counties reported information that contradicted publicly available fee schedules or resolutions by Boards of Supervisors, we used the publicly available data.

62 Butte County stopped charging its $30 Juvenile Hall fee to families who have youth detained in the facility in March 2017.

63 Alameda Cty. Repeal, *supra* note 39.

64 Contra Costa Cty. Moratorium, *supra* note 39.

65 L.A. Cty. Prob. Dep't Moratorium, *supra* note 40.

66 S.F. Chief Nance Email, *supra* note 40 ("We believe that the goals and objectives of our juvenile justice system are being made without the need for fees imposed on those individuals and families that can least afford to pay them. . . . [W]e feel strongly that the policy (of not charging fees) makes good fiscal sense and is solidly aligned with our youth rehabilitation and public safety objectives.").

67 Santa Clara Cty., Cal., Res. No. 6 (2017) [hereinafter Santa Clara Cty. Repeal] (enacted), http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=84679.

68 Cal. Welf. & Inst. Code § 202(a) (West 2016).

69 In addition to the interviews we conducted and reference in the report, other sources include published accounts by juvenile justice organizations and media outlets.

70 Cal. Welf. & Inst. Code § 903(c) (West 2016).

71 H. Ted Rubin, *Impoverished Youth and the Juvenile Court: A Call for Pre-Court Diversion*, 16 Juv. Just. Update 2 (Dec.–Jan. 2011) (noting that juvenile courts are considered courts of the poor and that juvenile courts

in wealthier jurisdictions are rare); Tamar R. Birckhead, *Delinquent by Reason of Poverty*, 38 Wash. U. J.L. & Pol'y 53 (2012) (arguing that emphasis on family need when adjudicating delinquency has a disproportionate effect on low-income children); Justice for Families, Families Unlocking Futures: Solutions to the Crisis in Juvenile Justice 13, 28 (2012) (finding youth involved with the juvenile justice system found that more than 50% came from families earning less than $25,000 per year, and that roughly 1 in 5 of these families spent over $1,000 per month on juvenile justice costs).

72 U.S. Dep't of Justice, Office for Civil Rights, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (2017) [hereinafter Advisory for Recipients of Financial Assistance], https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf ("Families burdened by these obligations may face a difficult choice, either paying juvenile justice debts or paying for food, clothing, shelter, or other necessities. The cost of fines and fees may foreclose educational opportunities for system-involved youth or other family members. When children and their families are unable to pay fines and fees, the children often suffer escalating negative consequences from the justice system that may follow them well into adulthood.").

73 Rivera Decl., *supra* note 8.

74 *Id*. In practice, it appears as though counties often only charge fees to the custodial parent. The extent to which non-custodial parents are held responsible for such debt is unclear, though Humboldt County has a written policy of pursuing fee payments from non-custodial parents. Humboldt Cty. Prob. Dep't Revenue Recovery Div., Juvenile Assessment Process (Apr. 1, 2016) [hereinafter Humboldt Cty. Prob. Juvenile Assessment Process] (on file with authors) ("Each parent, if not living in the same household, are individually noticed and assessed for their ability to reimburse costs to the county. Therefore, the determination of ability to reimburse by each parent cannot exceed 50% of all costs that may be incurred. However, if parents live together, up to 100% of costs may be assessed.").

75 Orange County Probation Department's Supplemental Brief in Opposition to Order to Show Cause; and Declaration of Marjorie Taylor in Support of Thereof at 12-13 (supplemental brief of creditor Orange County Probation Department), *In re* Rivera, No. 8:11-bk-22793-TA (Bankr. C.D. Cal. Sept. 16, 2013), *aff'd sub nom*. Rivera v. Orange Cty. Prob. Dep't (*In re* Rivera), 511 B.R. 643 (B.A.P. 2014), rev'd, 832 F.3d 1103 (9th Cir. 2016).

76 Rivera Decl., *supra* note 8, at 5.

77 *Id*.

78 In total, Ms. Rivera was billed $16,372. When she sold her home, Ms. Rivera paid $9,508 to the Probation Department and believed it would decrease the amount owed to $6,864. However, the Probation Department alleged that she still owed $9,905. The county was unable to explain the financial discrepancy in court. *Rivera*, 832 F.3d at 1105, n.1.

79 Notice of Motion and Motion for Order to Show Cause Why the Orange Cty. Prob. Dep't Should Not Be Held in Contempt for Violation of the Discharge Injunction; Memorandum of Points and Auths.; Declarations of Maria G. Rivera and EmmaElizabeth A. Gonzalez at 4 (motion for order to show cause of debtor Maria G. Rivera), *In re* Rivera, No. 8:11-bk-22793-TA (Bankr. C.D. Cal. Sept. 16, 2013), *aff'd sub nom*. Rivera v. Orange Cty. Prob. Dep't (*In re* Rivera), 511 B.R. 643 (B.A.P. 2014), rev'd, 832 F.3d 1103 (9th Cir. 2016).

80 *Rivera*, 832 F.3d 1103.

81 Telephone Interview with Bryan Prieto, Deputy Chief Prob. Officer of Orange Cty. (Dec. 1, 2016).

82 Cal. Welf. & Inst. Code § 202(a) (West 2016).

83 Youth Justice Coal., Getting Paid: The Bills Collected by the Los Angeles County Department of Probation Put Youth at Risk and Impoverish Families (2009), http://www.youth4justice.org/wp-content/uploads/2012/12/GettingPaidReportYJC.pdf.

84 Interview with R.P. in Alameda County, Cal. (Mar. 17, 2015) (on file with authors).

85 Cal. Welf. & Inst. § 202(a).

86 Interview with grandmother of a child in the Alameda County juvenile system (Apr. 13, 2015) (on file with authors).

87 *Id.*

88 *Id.*

89 *Id.*

90 *Id.*

91 Interview with youth in the Alameda County juvenile system (July 2, 2015) (on file with authors).

92 *Id.*

93 *Id.*

94 Youth Justice Coal., *supra* note 83, at 4.

95 Nat'l Council on Crime & Delinquency, *supra* note 2.

96 Data received from the W. Haywood Burns Institute, www.data.burnsinstitute.org.

97 Jessica Short & Christy Sharp, Child Welfare League of America, Disproportionate Minority Contact in the Juvenile Justice System (2005), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.603.9203&rep=rep1&type=pdf (stating that institutional racial bias in the juvenile justice system is one reason for disproportionate minority contact in the juvenile system).

98 Nat'l Council on Crime & Delinquency, *supra* note 2; *see also* Short & Sharp, *supra* note 97 (stating that overrepresentation of youth of color in detention and on probation are often "a product of actions that occur at earlier points in the juvenile justice system.").

99 Data received from the W. Haywood Burns Institute, www.data.burnsinstitute.org.

100 *Id.*

101 Alameda Cty. Prob. Dep't, *supra* note 61.

102 *Id.*

103 The figures in the table exclude the flat investigation and public defender/court-appointed counsel fees that apply to all youth.

104 *See also* Weisburd, *supra* note 23 (electronic monitoring has numerous detrimental effects, including prolonged time spent on probation as a result of violations of monitoring requirements).

105 Memorandum from Richard Valle & Keith Carson, Alameda Cty. Supervisors to Alameda Cty. Bd. of Supervisors (Mar. 16, 2016) [hereinafter Alameda Cty. Moratorium Proposal Memorandum], http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_03_29_16/PUBLIC%20PROTECTION/

Regular%20Calendar/Supervisor%20Valle_Supervisor%20Carson_229888.pdf (Adopt a Resolution Suspending the Assessment and Collection of Juvenile Probation Fees and the Juvenile Public Defender Fee for All Alameda County Residents).

106 Alex R. Piquero & Wesley G. Jennings, Research Note, *Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, Youth Violence & Juv. Just. (2016); Tamar R. Birckhead, *The New Peonage*, 72 Wash. & Lee L. Rev. 1595 (2015) (describing how mandatory fees for youth in the juvenile court system can create insurmountable fee burdens, increasing the likelihood of youth recidivating); Stacy Hoskins Haynes et al., *Juvenile Economic Sanctions: An Analysis of Their Imposition, Payment, and Effect on Recidivism*, 13 Criminology & Pub. Pol'y 31, 37–38 (2014) (describing studies showing that the burdens of economic sanctions "might interfere with a juvenile's ability to reenter society successfully after a conviction, thereby increasing the risk of recidivism"); R. Barry Ruback, *The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society*, 99 Minn. L. Rev. 1779, 1796, 1811–12 (2015) (describing how the imposition of economic sanctions increases the likelihood of recidivism for all offenders). Research also suggests that administrative fees are unlikely to have a general deterrent effect. *See* Barry R. Ruback & Mark H. Bergstrom, *Economic Sanctions in Criminal Justice Purposes, Effects, and Implications*, 33 Crim. Just. & Behav. 242–273 (2006), http://cjb.sagepub.com/content/33/2/242.full.pdf (concluding that the lack of deterrence effect from economic sanctions is due to the relatively low size of economic sanctions and lack of adjustment according to the nature of individual crimes).

107 Piquero & Jennings, *supra* note 106.

108 *Id*. at 10.

109 *Id*. at 7.

110 *Id*. at 10.

111 Some people who are assessed fees, including parents or guardians in this instance, may turn to crime to finance their payment of the fees. Ezra Cohn, Debbie Mayer, Caitlin O'Neil, Khalia Parish & Jenny van der Heyde, An Economic Analysis of Charging Administrative Fees to Justice-Involved Youth 2–3 (2016) (unpublished manuscript) (on file with authors) ("All people are prone to making suboptimal decisions in various circumstances, and chronic poverty is one such circumstance, due to the adverse effects of stress on executive functioning," citing Sendhil Mullainathan & Eldar Shafir, Scarcity: Why Having So Little Means So Much (2013)).

112 Santa Clara Cty. Repeal, *supra* note 67.

113 Cal. Penal Code § 1203.1a (West 2015). The relevant statute applies only to cases "in which a defendant is convicted of an offense." *Id*. In California, "convicted of an offense" is a term of art that refers to adults—by law, youth adjudicated delinquent "shall not be deemed a conviction of a crime for any purpose." Cal. Welf. & Inst. Code § 203 (West 2016).

114 A study commissioned by Sacramento County reached a similar conclusion, finding that "State law does not provide the County the authority to charge user fees for specified reports (Juvenile Pre-Sentence Investigation)." MAXIMUS, Sacramento County Probation Department User Fee Study 8 (2005) (on file with author).

115 These counties included Alameda, Monterey, Madera, Mariposa, Merced, Riverside, Sacramento, San Bernardino, Solano, Tehama, and Trinity. Juvenile Fees Survey, *supra* note 54.

116 For example, though Monterey and Sacramento counties reported that they charge investigation report fees, upon further research, we found that neither county actually charges such fees.

117 Mariposa Cty. Bd. of Supervisors, Agenda Action Form CH-9 (Dec. 15, 2009); Solano Cty., Fee Schedule (May 29, 2015) (on file with authors). Solano County cites section 54985(a) of the California Government Code for authorization of this fee. However, the Government Code only authorizes fees that are "otherwise authorized to be levied by another provision of law." Cal. Gov. Code § 54985(a) (West 2010). A fee for juvenile investigation or disposition reports is not otherwise authorized under another provision of California law.

118 Cal. Welf. & Inst. Code § 903(c)(1) (West 2016) ("The maximum cost of thirty dollars ($30) per day shall be adjusted every third year beginning January 1, 2012, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.").

119 Welf. & Inst. § 903(c).

120 Welf. & Inst. § 903(c)(1).

121 The California Consumer Price Index, All Urban Consumers on January 2012 was 232.930. In January 2015, it was 246.055. *See* Cal. Dep't of Indus. Relations, California Consumer Price Index (1955–2016), http://www.dir.ca.gov/OPRL/CPI/EntireCCPI.PDF (last visited Mar. 5, 2017).

122 San Luis Obispo Cty., Fee Schedule (Mar. 11, 2015) (on file with authors); Ventura Cty., Fee Schedule (Sept. 24, 2015) (on file with authors).

123 Welf. & Inst. § 903.

124 Welf. & Inst. § 903(a).

125 *In re* Gregory K., 106 Cal.App.3d 164, 169 (1980) (holding that when evidence fails to establish that a minor committed a crime, any detention of that minor serves only the purposes of society, and that requiring parents to pay for such detention violates the parent's due process rights); Welf. & Inst. § 903(b) ("The county shall . . . exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor.").

126 Youth Justice Coal., *supra* note 83, at 5.

127 For example, M.C., an Antioch resident, was charged for her 16-year-old son's detention even after all charges were dropped against him. Lewis, *supra* note 13.

128 *See* Humboldt Cty. Prob. Juvenile Assessment Process, *supra* note 74.

129 Authorized by the Child Nutrition Act of 1966 (as amended through PL. 111–296, effective Dec. 13, 2010), the School Breakfast Program is a federally assisted meal program that provides free or reduced price breakfasts to children through 18 years of age. Authorized by the National School Lunch Act (as amended through P.L. 113–79, enacted Feb. 7, 2014), the National School Lunch Program is a federally assisted meal program that provides low-cost or free lunches to children enrolled in participating schools.

130 *National School Lunch Program*, Cal. Dep't of Educ., http://www.cde.ca.gov/ls/nu/sn/nslp.asp (last visited Feb. 21, 2017).

131 7 C.F.R. § 245.3 (2011) ("When a child is not a member of a family (as defined in § 245.2), the child shall be considered a family of one."). For the purposes of the National School Lunch Act, youth in juvenile detention facilities (or residential childcare institutions) are "considered a household of one." USDA Food &

Nutrition Services, Child Nutrition Programs, Eligibility Manual for School Meals: Determining and Verifying Eligibility School Year 2016–2017 at 20 (2016), https://www.fns.usda.gov/sites/default/files/cn/EligibilityManualFinal.pdf. Juvenile detention facilities are allowed to submit an application for each child in their care or use an eligibility documentation sheet for all children residing in the facility, and the income-eligibility of those children is not individually verified, as is required of other facilities. *See id*. In the school context, children from families with incomes at or below 130% of the poverty level are eligible for free meals, and those with incomes between 130% and 185% of the poverty level are eligible for reduced-price meals. Child Nutrition Programs: Income Eligibility Guidelines, 81 Fed. Reg. 15,501 (Mar. 23, 2016).

132 7 C.F.R. § 245.2 (2013).

133 Forty-five of 58 counties responded to a 2016 Public Records Act request filed by the Western Center on Law and Poverty about federal funding for meals in their detention facilities. The 17 counties that reported receiving federal funding for meals provided to youth in juvenile facilities included: Fresno, Humboldt, Imperial, Kern, Kings, Napa, Placer, Riverside, San Bernardino, San Joaquin, Santa Barbara, Santa Cruz, Shasta, Solano, Tulare, Ventura, and Yolo. The remaining counties either did not respond to the request or did not clarify whether they received federal funding for meals in their juvenile detention centers. Nine counties (Amador, Calaveras, Mariposa, Modoc, Mono, San Benito, Sierra, Sutter, and Tuolumne) do not have juvenile hall facilities or contract with other counties for use of their facilities.

134 San Joaquin Cty., Food Service Plan (Mar. 22, 2016) (on file with authors).

135 We found very few counties that itemize detention costs since the Legislature ended the requirement to do so in 1992. 1992 Cal. Stats. 177. San Joaquin County itemizes costs, but not at a sufficient level of detail—such as distinguishing food and food preparation costs by meal types—to determine whether it is violating federal law.

136 *See* 7 C.F.R. § 210.9(b)(7) (2016); Davis v. Robinson, 346 F.Supp. 847, 857 (1972) (quoting H.R. Rep. No. 91-1032 (1970) (stating it is "the intent that free lunches be provided for the poorest of the poor and under no circumstances shall those unable to pay be charged for their lunches.").

137 Cal. Const. art. I, § 7(a) ("A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. . . ."); U.S. Const. amend. XIV, §1.

138 Cal. Welf. & Inst. Code § 903.45 (West 2016).

139 Cal. Welf. & Inst. Code § 903(c) (West 2016).

140 Welf. & Inst. § 903.45(b). Research conducted by the Samuelson Law, Technology, and Public Policy Clinic shows that in some cases private contractors who profit from electronic monitoring programs are conducting ability to pay determinations for youth assigned to electronic monitoring. *See* Christina Koningisor & Catherine Crump, Electronic Monitoring Programs in the Juvenile Justice System (forthcoming 2017) (on file with author).

141 *See* Fuentes v. Shevin, 407 U.S. 67, 80 (1972) (noting that the "central meaning of procedural due process" is the "right to notice and an opportunity to be heard . . . at a meaningful time and in a meaningful manner"); Goldberg v. Kelly, 397 U.S. 254, 271 (1970) (holding that procedural due process requires an impartial decisionmaker). In addition to due process concerns, we found some counties utilize ability to pay standards that are at odds with statutory requirements. For example, Sacramento County assesses families' ability to pay public defender and drug testing fees on an "all or none" basis without additional ability to pay reductions or waivers; "[i]f the [parent debtor] has an ability to pay $1.00 the entire amount is billed." The drug testing

fee is only charged to the minor, not his or her parents or guardians. Ability to pay is based on whether "[t]he minor is not so seriously disabled that they would be unable to perform any type of work to earn money, such as odd jobs [or] [c]ircustmances are so extenuating that there is no reasonable expectation that the minor could pay." Cty. of Sacramento Dept. of Rev. Recovery, Collector Desk Manual 18 (on file with authors).

142 Our findings bear out concerns raised when the California Legislature allowed counties to grant financial evaluation officers the authority to conduct ability to pay determinations in 1985. 1985 Cal. Stat. 5458, Senate Floor Analysis (S.B. 1252) (on file with authors). The American Civil Liberties Union opposed the bill, stating that such ability to pay determinations "are legal determinations and due process requires that they be made by a court, not a county bureaucrat." *Id*. at 4.

143 Twenty respondents stated that their counties do not have standardized criteria. Juvenile Fees Survey, *supra* note 54.

144 Email from Patricia McFadden, Principal Auditor, Alameda Cty. Cent. Collections Agency, to Policy Advocacy Clinic (Dec. 2, 2015, 15:30 PST) (on file with authors).

145 Interview with Alameda Cty. Cent. Collections Agency Assistant Auditor-Controller Kevin Hing, Div. Chief Matthew Yankee, Principal Auditor Patricia McFadden, and Collection Supervisor Jacalyn Richardson (Nov. 3, 2015).

146 Interview with Alameda Cty. Fin. Hearing Officer (Oct. 21, 2013).

147 *Id*.

148 Alameda Cty. Moratorium Proposal Memorandum, *supra* note 105.

149 County of Los Angeles v. Ralph V., 48 Cal.App.4th 1840, 1847 (1996) (citing *In re* Jerald C. 36 Cal.3d 1. (1984), and County of San Mateo v. Dell J., Sr., 46 Cal. 3d 1236 (1988)). In 1986, a California Court of Appeal held that fees for probation supervision and home supervision of a minor could not be assessed to a parent because such court-ordered supervision is for the protection of society and such costs cannot be shifted to relatives without denying them equal protection under the law. *In re* Nathaniel Z., 187 Cal. App. 3d 1132 (1986).

150 Under current state law, a family may be held "liable for the cost to the county of the probation supervision, home supervision, or electronic surveillance of the minor, pursuant to the order of the juvenile court, by the probation officer." Cal. Welf. & Inst. Code § 903.2 (West 2016).

151 Cal. Senate Committee on Criminal Procedure Bill Analysis (S.B. 1734), 5 (1996), http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_1701-1750/sb_1734_cfa_960222_151459_sen_comm.html.

152 Juvenile Fees Survey, *supra* note 54.

153 Cal. Welf. & Inst. Code § 903(c) (West 2016).

154 In response to Public Records Act requests, six counties provided juvenile administrative fee data by fiscal year (July 1 to June 30) from 2010 to 2015. The data was often internally inconsistent and challenging to interpret, even after consultation with local Collection and Probation officials. For example, the data is often recorded not by youth or family, but by account, or by category of fee assessment—making it difficult to determine how many families are charged and how much each family is able to pay. Nevertheless, we were able to identify common trends across the counties regarding the revenue they collect from juvenile administrative fees.

155 Welf. & Inst § 903(c).

156 Sacramento Cty. Prob. Dep't, AR-Recap by Fac. Code FY2014–15 (on file with authors). As a result of low recovery rates, approximately $21.2 million in fees remain outstanding in the county. *Id*.

157 *See, e.g.*, Rubin, *supra* note 71 (noting that juvenile courts are considered courts of the poor and that juvenile courts in wealthier jurisdictions are rare); Birckhead, *supra* note 71 (arguing that emphasis on family need when adjudicating delinquency has a disproportionate effect on low-income children); Justice for Families, *supra* note 71 (finding that youth involved with the juvenile justice system found that more than 50% came from families earning less than $25,000 per year, and that roughly 1 in 5 of these families spent over $1,000 per month on juvenile justice costs).

158 Orange Cty., Probation Financials (Jan. 15, 2016) [hereinafter Orange Cty. Probation Financials] (on file with authors). Orange County employs 16 Collection Officers, four Supervising Collection Officers, two clerks and one Collections Manager assigned to address juvenile case matters. The collection officer positions devote 100% of their time to juvenile collections matters, while one of the four supervisors devotes 100% of their time. The remaining positions devote anywhere from 20–80% of their time addressing juvenile case(s) collections matters. Email from Bryan Prieto, Deputy Chief Prob. Officer of Orange County, to Policy Advocacy Clinic (Dec. 7, 2016, 5:31PM PST).

159 Orange Cty. Probation Financials, *supra* note 158; Orange Cty., FY 2014–15 Annual Budget at 21 (2014), http://bos.ocgov.com/finance/2015FN/charts_frm.htm.

160 *Plan for the Repeal of Juvenile Administrative Fees: Meeting on Office of the County Executive Rep. No. 84353 Before the Board of Supervisors, Children, Seniors & Families Comm.* (Santa Clara County, Cal. Dec. 15, 2016) [hereinafter Santa Clara Cty. Hearing on Report No. 84353], http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=SplitView&MeetingID=7309&MediaPosition=2291.027&ID=84353&CssClass= (transcript at 1:36 PM).

161 Cal. Welf. & Inst. Code § 903(b) (West 2016).

162 *Contra Costa County Board of Supervisors Meeting*, Contra Costa Cty., Cal., at D6 (Oct. 25, 2016), http://contra-costa.granicus.com/MediaPlayer.php?publish_id=2a9ed1db-9b0d-11e6-9380-00219ba2f017 (video recording of meeting).

163 Welf. & Inst. § 903(c).

164 Cohn et al., *supra* note 111. In the analysis, researchers ran the economic model 1,000 times and never showed a net societal loss from eliminating fees. *Id*. at 1.

165 S.F. Chief Nance Email, *supra* note 40.

166 Alameda Cty. Moratorium Proposal Memorandum, *supra* note 105.

167 Alameda Cty. Repeal, *supra* note 39.

168 Alameda Cty. Moratorium Proposal Memorandum, *supra* note 105.

169 *Id*.

170 Press Release, East Bay Cmty. Law Ctr., Alameda County Halts Juvenile Probation Fees (Apr. 7, 2016), https://ebclc.org/in-the-news/alameda-county-halts-juvenile-probation-fees/.

171 Interview with Kevin Hing, Assistant Auditor-Controller, Alameda County Auditor-Controller Agency (Mar. 31, 2016).

172 Press Release, Reentry Solutions Grp., Contra Costa County Probation Collections Unit Begins Notifying Parents /Guardians of a New Moratorium on Juvenile Probation Fees (Nov. 1, 2016), http://reentrysolutions-group.org/meeting_materials/Press_release_and_moratorium_letters_10-28-16_english_and_spanish.pdf.

173 Contra Costa Cty. Moratorium, *supra* note 39.

174 *Id*.

175 Lewis, *supra* note 13.

176 Contra Costa Cty., Probation Collections Unit, Outstanding Balances (June 30, 2016), http://64.166.146.245/docs/2016/PBP/20160926_851/27183%5FPCU%20outstanding%20balances%2Epdf.

177 Contra Costa Cty. Moratorium, *supra* note 39.

178 Molly Hennessy-Fiske, *L.A. County Probation Department suspends aggressive billing of guardians,* L.A. Times (Mar. 24, 2009), http://articles.latimes.com/2009/feb/14/local/me-probation-fees14; Hennessy-Fiske, *supra* note 32.

179 L.A. Cty. Prob. Dep't Moratorium, *supra* note 40.

180 Hennessy-Fiske, *supra* note 14 ("Chief Probation Officer Robert Taylor has said that he expects billing to resume and has circulated a proposal to increase daily charges—now $11.94 for camps, $23.63 for halls—by about 24%.").

181 Hennessy-Fiske, *supra* note 32.

182 Telephone interview with Felicia Cotton, L.A. Prob. Dep't Deputy Chief of Juv. Insts. (Nov. 1, 2014). The moratorium only applied to new assessments; families who had entered into payment plans before February 16, 2009 were not covered; L.A. Cty. Prob. Dep't Moratorium, *supra* note 40.

183 Molly Hennessy-Fiske, *L.A. County Probation Officials Define Billing Moratorium*, L.A. Times (Apr. 1, 2009) http://articles.latimes.com/2009/apr/01/local/me-probation-fees1.

184 Los Angeles Cty. Cal., Res. to Increase Registration Fees for a Minor Who is Represented by the Public Defender, Alternate Public Defender, or Other Court-Appointed Counsel in Juvenile Delinquency Court (2011)(enacted), http://file.lacounty.gov/SDSInter/bos/supdocs/64642.pdf.

184 S.F. Chief Nance Email, *supra* note 40.

186 S.F. City & County, Proposed Ordinance, Juvenile Probation Department-Daily Fee at Juvenile Hall and Log Cabin Ranch (June 25, 2009), https://sfgov.legistar.com/LegislationDetail.aspx?ID=483686&GUID=09C53DEA-4619-4A48-9AD5-16557011FDE1&Options=ID%7cText%7c&Search=090709 (tabled proposal to establish daily fees for juvenile hall and ranch).

187 S.F. Chief Nance Email, *supra* note 40.

188 *Id*.

189 Santa Clara Cty. Moratorium, *supra* note 39.

190 Santa Clara Cty. Repeal, *supra* note 67. Six months earlier, the Board had instituted a moratorium on the fees. Santa Clara Cty. Moratorium, *supra* note 39.

191 Santa Clara Cty. Repeal, *supra* note 67 (follow "Resolution" link for the adopted text).

192 *Id*.

193 Santa Clara Cty. Repeal, *supra* note 67.

194 *Id*.

195 Santa Clara Cty. Moratorium, *supra* note 39.

196 *Santa Clara Cty. Hearing on Report No. 84353*, *supra* note 160 (click "Juv Admin Fees-Printout #84353 12-15-16" to download the report); Santa Clara County Repeal, *supra* note 67.

197 *Rivera v. Orange Cty. Prob. Dep't,* 832 F.3d 1103 (9th Cir. 2016).

198 See U.S. Court of Appeals for the Ninth Circuit, *14-60044 Maria Rivera v. Orange County Probation Dept*. (June 6, 2016), https://www.youtube.com/watch?v=M_mOKQL-UBg (video of oral argument).

199 *Rivera v. Orange Cty. Prob. Dep't*, 832 F.3d 1103, 1112 (9th Cir. 2016). In a footnote to a sentence encouraging Orange County to exercise its discretion to protect youth and society, the Court observed, "Earlier this year, the Alameda County Board of Supervisors voted to end the collection of juvenile probation fees under [section] 903 [of the California Welfare and Institutions Code], noting that "it is in the interest of the County, of young people involved in the juvenile justice system and their families, and of the larger community that the County repeal the . . . juvenile probation fees." *Id*. at 1112 n.11.

200 Feierman et al., *supra* note 5.

201 *Id*.

202 *Id*.

203 *Id*. at 6–8.

204 *Id*. at 9.

205 Alameda Cty. Repeal, *supra* note 39.

206 Feierman et al., *supra* note 5.

207 *See* U.S. Dep't of Justice, Fact Sheet on White House and Justice Department Convening—A Cycle of Incarceration: Prison, Debt and Bail Practices (2015), https://www.justice.gov/opa/pr/fact-sheet-white-house-and-justice-department-convening-cycle-incarceration-prison-debt-and.

208 Exec. Office of the President, Council of Econ. Advisors, Issue Brief, Fines Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor (2015), http://nacmconference.org/wp-content/uploads/2014/01/1215_cea_fine_fee_bail_issue_brief.pdf.

209 *See* U.S. Dep't of Justice, Bureau of Justice Assistance, Office of Justice Assistance, BJA's Justice Today (Sept. 2016), https://www.bja.gov/JusticeToday/Sept_2016_newsletter.html (The Bureau of Justice Assistance hosted a meeting, "Progress and Promise: Momentum in the Reform of Justice Debt and Bail Practices," of legal professionals, academics, advocates, and others.).

210 Advisory for Recipients of Financial Assistance, *supra* note 72.

211 Erick Eckholm, *Court Costs Entrap Nonwhite, Poor Juvenile Offenders*, N.Y. Times, Aug. 31, 2016, https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html?_r=1.

212 *Id*.

213 Editorial Bd., *The Injustice of Making Kids Pay*, N.Y. Times, Sept. 5, 2016, https://www.nytimes.com/2016/09/05/opinion/the-injustice-of-making-kids-pay.html?_r=3.

214 Eric Markowitz, *The Long-Term Costs of Fining Juvenile Offenders*, New Yorker, Dec. 24, 2016, http://www.newyorker.com/business/currency/the-long-term-costs-of-fining-juvenile-offenders.

215 *Id*.

216 Hager, *supra* note 11.

217 S. 190, 2017–2018 Reg. Sess. (Cal. 2017).

218 *Id*.

219 *Id*.

220 Email from Todd Billeci, Contra Costa Cty. Prob. Officer to Policy Advocacy Clinic (Mar. 7, 2017, 9:27 AM PST) (on file with authors).

221 *Id*. Officer Billeci noted that, "It looks like there are a few accounts for the same family but most are unique accounts." *Id*.

222 *Id*. Email from Rebecca Brown, Reentry Solutions Group to Policy Advocacy Clinic (Mar. 6, 2017, 5:14 PM PST) (on file with authors).

223 Cal. Penal Code §§ 13010–13012.5 (West 2015) (setting forth the state DOJ's duty to collect and report specified data in the juvenile system); Cal. Welf. & Inst. Code § 285 (West 2016) (requiring probation officers to "make periodic reports to the Attorney General at those times and in the manner prescribed by the Attorney General. . . .").

224 Cal. Dep't of Justice, *supra* note 18, at i.

225 Cal. Penal Code § 13012(e) (West 2015).

226 The state DOJ is required to gather information that includes the "personal and social characteristics" of youth in the juvenile system. Cal. Penal Code § 13012(b) (West 2015). The agency is also required to document the "administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system." Cal. Penal Code § 13012(c) (West 2015).

227 The Juvenile Justice Data Working Group was mandated by the enactment of Assembly Bill 1468. A.B. 1468, 2013-14 Reg. Sess. (Cal. 2014).

228 Juvenile Justice Data Working Grp., Rebuilding California's Juvenile Justice Data System: Recommendations to Improve Data Collection, Performance Measures and Outcomes for California Youth 1, 51 (2016), http://www.bscc.ca.gov/downloads/JJDWG%20Report%20FINAL%201-11-16.pdf.

229 *Id*. at 36. More recent legislation requires the Board of State and Community Corrections to develop recommendations on best practices and standardization for counties on how to disaggregate juvenile system data by race and ethnicity. A.B. 1998, 2015–16 Reg. Sess. (Cal. 2016). The recommendations should include requiring such disaggregated data on the: (1) number of youth on each post-dispositional probation caseload type and program, including informal probation; (2) average length of time on probation, and the success rates of youth on probation; (3) probation terms and conditions, including electronic monitoring, and drug tests; and (4) rates of probation violation by type.

230 *See* Koningisor & Crump, *supra* note 140.

231 Cal. Welf. & Inst. Code § 903.45 (West 2016).

BerkeleyLaw
UNIVERSITY OF CALIFORNIA

Policy Advocacy Clinic

353 BOALT HALL BERKELEY, CA 94720

HTTPS://WWW.LAW.BERKELEY.EDU/EXPERIENTIAL/CLINICS/POLICY-ADVOCACY-CLINIC/

To: County Boards of Supervisors
From: SB 190 Implementation Working Group
Re: Implementation of Senate Bill 190 (Ending Juvenile Fees)
Date: November 2, 2017

We write regarding the implementation of Senate Bill 190, authored by Senators Holly J. Mitchell and Ricardo Lara and signed into law by Governor Jerry Brown on October 11, 2017. Effective January 1, 2018, SB 190 repeals county authority to charge specified fees to parents, guardians, and youth for a youth's involvement in the juvenile delinquency system. We encourage you and your colleagues to implement SB 190 quickly and robustly.

SB 190 was enacted to end regressive and racially discriminatory juvenile fee practices, which undermine youth rehabilitation and public safety. For these reasons—and to reduce the liability facing counties that continue such practices—we are urging counties to:

(1) Stop all juvenile fees assessments immediately,

(2) End all juvenile fee collection activity,

(3) Discharge all previously assessed juvenile fees, and

(4) Refund families who paid unlawfully assessed juvenile fees.

To assist counties in taking the above actions, we have enclosed an SB 190 Implementation Checklist, which sets forth concrete steps to implement the letter and spirit of the new law. The Checklist is informed by the actions in counties that have recently ended assessment and collection of the fees. We have also enclosed an SB 190 Flyer that can be posted in relevant county facilities.

(1) Stop All Juvenile Fee Assessments Immediately

SB 190 repeals county authority to assess all juvenile fees in the delinquency system, including fees related to:

(a) detention (Cal. Welf. & Inst. Code § 903),

(b) legal representation (Cal. Welf. & Inst. Code §§ 903.1, 903.15),

(c) electronic monitoring (Cal. Welf. & Inst. Code § 903.2),

(d) probation or home supervision (Cal. Welf. & Inst. Code § 903.2), and

(e) drug testing (Cal. Welf. & Inst. Code § 729.9).

Although the prohibition does not go into effect until January 1, 2018, the legal basis and public policy rationale for ending the assessment of these fees are as strong today as they will be in January.

Alameda, Contra Costa, Los Angeles, Sacramento, Santa Clara, and Sonoma Counties stopped assessing juvenile fees before the enactment of SB 190. Solano County stopped assessing fees after SB 190 was signed. San Francisco County has never charged such fees. As

noted in more detail below, juvenile fees frequently are being imposed unlawfully, which exposes counties to legal liability.

To implement SB 190's public policy purpose and to comply with state and federal law, all counties should stop all juvenile fee assessments immediately.

(2) End All Juvenile Fee Collection Activity

SB 190 requires counties to end the assessment of all juvenile fees, but it does not prohibit the collection of previously assessed juvenile fees, some of which date back to the 1970s.

UC Berkeley researchers found that juvenile fee assessment and collection practices harm some of California's most vulnerable families, perpetuating cycles of poverty, exacerbating racial injustice, and undermining youth rehabilitation and family reunification.[1] The researchers also found that counties often charge and collect fees in violation of state and federal law. The fees are costly to collect, with little or no net revenue, since most families cannot afford to pay them. Finally, the fees correlate with higher recidivism, which undermines public safety.

All California counties that have stopped assessing juvenile fees since 2016 have also ended fee collection, without reporting any negative consequences (Alameda, Contra Costa, Sacramento, Santa Clara, Solano, and Sonoma). Most recently, on October 24, 2017, the Solano County Board of Supervisors adopted a resolution that authorized the discharge of all juvenile fee accounts receivable balances in the amount of approximately $3.9 million.[2]

To reduce their harmful, unlawful, and costly impacts, counties should end the collection of all juvenile fees immediately.

(3) Discharge All Previously Assessed Juvenile Fees

Previously assessed juvenile fees are memorialized in fee agreements and stipulations and are entered against parents and guardians in the form of civil judgments. Such judgments can impair a family's ability to secure housing, jobs, and credit. Ending fee assessment and collection alone, therefore, will not relieve families of the collateral consequences of juvenile fees.

In many cases, counties that ended fee assessments and collections have discharged all outstanding juvenile fees. For example, the October 2017 Solano County Board of Supervisors resolution noted above authorized the satisfaction and release of liens and stipulated judgments for juvenile fees in the amount of approximately $1.7 million.

To foster rehabilitation, enhance public safety, and ensure compliance with state and federal law, counties should discharge all juvenile fee judgments against families, including agreements and stipulations.

(4) Refund Families Who Paid Unlawfully Assessed Juvenile Fees

SB 190 does not address the harm to families who made payments on juvenile fees that were unlawfully assessed or collected. As described in the UC Berkeley study, such unlawful practices may have included collecting payment from families:

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[1] UC Berkeley Public Law Research Paper, *Making Families Pay: The Harmful, Unlawful, and Costly Practice of Charging Juvenile Administrative Fees in California* (Mar. 2017), https://ssrn.com/abstract=2937534.

[2] Solano County, Cal. Res. No. 2017-___ (Oct. 24, 2017), http://solano.legistar.com/gateway.aspx?M=F&ID=0970161b-b17e-48aa-9c84-91f522039134.docx.

a. for fees related to petitions that are not sustained (i.e., where youth have not been found to violate any law) (violates due process and state law),
b. that include meals provided to youth for which the county receives reimbursement from national nutrition programs (violates federal law),
c. without conducting a proper ability-to-pay evaluation (violates due process and state law),
d. for services that benefit society as a whole, such as probation supervision, home supervision, or electronic monitoring (violates equal protection),
e. for a juvenile investigation report (violates state law), and
f. for detention fees that exceed $31.69 per day (violates state law).

Contra Costa County has already taken the lead in refunding families for fees that were unlawfully assessed and collected. The county has identified hundreds of cases during a six-year period prior to its fee repeal in which families made payments for youth whose petitions were not sustained, and is contacting families to make refunds.

To remedy unlawful practices, counties should refund families who made payments on juvenile fees that should not have been charged.

Thank you for everything you are doing to help young people succeed. Please do not hesitate to contact us if we can assist you in implementing SB 190, which will foster youth rehabilitation and public safety.

Sincerely,

Jessica Bartholow
Policy Advocate
Western Center on Law & Poverty
(916) 282-5119
jbartholow@wclp.org

Kate Weisburd
Director, Youth Defender Clinic
East Bay Community Law Center
(510) 548-4040
kweisburd@ebclc.org

Elisa Della-Piana
Legal Director
Lawyers' Committee for Civil Rights
(510) 847-3001
edellapiana@lccr.com

Kim McGill
Organizer
Youth Justice Coalition
(323) 235-4243
kim@youth4justice.org

Stephanie Campos-Bui
Supervising Attorney
UC Berkeley Policy Advocacy Clinic
(510) 643-4624
scamposbui@clinical.law.berkeley.edu

Mark Rosenbaum
Director, Opportunity Under Law
Public Counsel
(213) 385-2977
mrosenbaum@publiccounsel.org

encl. SB 190 Implementation Checklist
SB 190 Flyer

cc: County Administrator
County Counsel
Chief Probation Officer
Collections/Revenue Officer
Public Defender
District Attorney
Presiding Juvenile Court Judge
Court Executive Officer

The Honorable Holly J. Mitchell, California State Senate (SB 190 Author)
The Honorable Ricardo Lara, California State Senate (SB 190 Author)
The Honorable Governor Jerry Brown
The Honorable Senate President and Lieutenant Governor Gavin Newsom
The Honorable Senate President pro Tempore Kevin de León
The Honorable Assembly Speaker Anthony Rendon
The Honorable Assembly Speaker pro Tempore Kevin Mullin
The Honorable Senate Majority Floor Leader William W. Monning
The Honorable Senate Minority Floor Leader Jean Fuller
The Honorable Assembly Majority Floor Leader Ian Calderon
The Honorable Assembly Minority Floor Leader Brian Dahle

SB 190 (Ending Juvenile Fees)
County Implementation Checklist

This Checklist sets forth best practices for counties to implement Senate Bill 190, which repeals all juvenile fees in the delinquency system effective January 1, 2018. For purposes of SB 190, "juvenile fees" refers to fees charged to parents, guardians, and youth for detention, legal representation, electronic monitoring, probation or home supervision, and drug testing while the youth is under the jurisdiction of a juvenile court.

Although SB 190 does not address previously assessed juvenile fees, the Legislature and the Governor made clear their intention to end harmful, unlawful, and costly juvenile fee practices. To further the purpose of SB 190 and to comply with other state and federal laws, counties should take the following steps:

(1) Stop All Juvenile Fee Assessments Immediately (must end by December 31, 2017)

To stop juvenile fee assessments against families, counties should:

- ❑ Designate an SB 190 implementation point person
- ❑ Inform all relevant county employees that no juvenile fees may be assessed, including, but not limited to:
  - ❑ Board of Supervisors
  - ❑ County Administrator
  - ❑ County Counsel
  - ❑ Chief Probation Officer
  - ❑ Collections/Revenue Officer
  - ❑ Public Defender
  - ❑ District Attorney
  - ❑ Presiding Juvenile Court Judge
  - ❑ Court Executive Officer
- ❑ Update applicable online payment platforms and relevant county webpages to inform visitors that juvenile fees cannot be assessed on or after January 1, 2018 (or earlier date if applicable in your county)

(2) End All Juvenile Fee Collection Activity

To end juvenile fee collection activity against families, counties should:

- ❑ Write off all accounts receivable balances for juvenile fees as satisfied
- ❑ Cease all solicitation of payment for previously assessed juvenile fees, including from third party debt collectors.

- ❑ Inform all families by mail that unpaid previously assessed juvenile fees are no longer owed and that no payment will be collected or accepted
- ❑ Update applicable online payment platforms and relevant county webpages to inform visitors that no payments on juvenile fees will be collected or accepted
- ❑ Recall all previously assessed juvenile fees referred to the Franchise Tax Board's Court-Ordered Debt Collections and/or the Interagency Intercept Collection Program

(3) Discharge All Previously Assessed Juvenile Fees

To discharge previously assessed juvenile fees, counties should:

- ❑ Satisfy and release all juvenile fee agreements and stipulations entered into between the county financial evaluation officer and families, and notify the families in writing
- ❑ File an acknowledgement of satisfaction with the court of all juvenile fee judgments and serve notice to families

(4) Refund Families Who Paid Unlawfully Assessed Juvenile Fees

To refund families who paid unlawful juvenile fees, counties should:

- ❑ Undertake a comprehensive review of juvenile fees that have been assessed and collected to determine if any were assessed in violation of a state or federal statute, or the California or U.S. Constitution. Such unlawful practices may include, but are not limited to, collecting or accepting payment from families:
  - ❑ with a youth whose petition is not sustained (violates due process and state law)
  - ❑ for detention fees that include meals provided to youth for which the county receives national nutrition program funding (violates federal law)
  - ❑ without conducting a proper ability-to-pay evaluation (violates due process and state law)
  - ❑ for items that benefit society as a whole such as probation supervision, home supervision, or electronic monitoring (violates equal protection)
  - ❑ for a juvenile investigation report (violates state law)
  - ❑ for detention fees that exceed $31.69 per day (violates state law)
- ❑ Refund families for any payments they have made on juvenile fees that were unlawfully assessed, including any additional costs associated with collection, with interest.

***

As local practices may vary, counties should take whatever actions are necessary to:

(1) Stop all juvenile fees assessments immediately,

(2) End all juvenile fee collection activity,

(3) Discharge all previously assessed juvenile fees, and

(4) Refund families who paid unlawfully assessed juvenile fees.

NO MORE JUVENILE FEES

Under a new California law (SB 190), counties cannot charge fees to parents and guardians with youth in the juvenile delinquency system beginning January 1, 2018.

***

What cannot be charged?

Under the new law, families with youth in juvenile court ***cannot*** be charged:

- **Detention fees**
  Food, clothing, personal supplies, or medical care in juvenile hall or any other detention facility
- **Lawyer fees**
  Public defender or court-appointed lawyer
- **Electronic monitoring fees**
  Ankle monitors or any other GPS tracking device
- **Probation and home supervision fees**
  For the period of probation monitoring
- **Drug testing fees**
  Court-ordered drug testing and results

If you are charged any of these fees starting January 1, 2018, or have questions about a bill you got from the county after your child was arrested, contact the county department that sent the bill and your child's court-appointed lawyer immediately.

What can still be charged?

- **Restitution**
  Payment to crime victims
- **Restitution fines**
  Fixed amount to a state restitution fund

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LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA
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Probation Practice and Reform: Key Themes and Findings from Available Literature

May 2016

THE ANNIE E. CASEY FOUNDATION

Research on how well juvenile probation works as an intervention is surprisingly limited, given the extensive use of probation within the juvenile justice system. That said, the limited evidence does suggest routine probation, or 'probation as usual', has little or no positive effect on delinquent behavior. Additionally, there's a compelling argument that, by and large, probation agencies and probation officers have been slow to adopt their work to conform to the best practice research, and that the quality of supervision received by most probation departments is far from optimal. To understand the challenges that exists, it's important to build an empirical foundation upon which probation practice can utilize targeted, reform efforts to better design a best-practice probation model.

Building support for the use of evidence based practice (EBP) in reforming probation is critical toward creating a better functioning system for both the clients and officers. *The Desktop Guide to Good Juvenile Probation*[1] (revised edition) offers a comprehensive look at the theory and practice of juvenile probation, serving as a tool for developing standards and training curriculums and as a resource for exploring best practices. The revised version is essential reading because it serves as the starting point toward reshaping the thinking towards a more collaborative probation practice tailored to young people. As noted in an article previewing the last update of the Desktop Guide:

> A "junior criminal justice system" that simply adapts the adult system to fit smaller bodies would be wasteful in more ways than one. The vast majority of the young people under juvenile court jurisdiction need only a little structure and tangible help to grow up straight.[2]

The revised *Guidebook* provides a foundation for answering two key questions: who is juvenile probation for, and how should it function?

As Patrick Griffin puts it, juvenile probation "is a catalyst - it makes things happen."[3] But is what's happening always best suited for the recipient? Though there has been limited research directly comparing probation supervision with diversion from juvenile court, some carefully controlled studies have found that probation produces poor recidivism outcomes, particularly for youth assessed as low risk. Ed Latessa and Christopher Lowenkamp articulate the flip side of this point in *What Works in Reducing Recidivism?*: "intensive services like probation work best on those offenders who pose the highest risk of continued criminal conduct."[4]

Researchers identify this concept as "the risk principle." is the idea that the intersection of services and supervision should be informed by the level of risk. "Simply stated, the risk principle indicates that offenders should be provided with supervision and treatment levels that are commensurate with their risk levels."[5] Often we find that youth assessed as "high risk," those with the greatest need for interventions, are the first to be excluded from programming.[6] Failure to match risk with intensity can diminish public safety, waste resources and create greater probability of criminal behavior among youth who pose a low risk. Research examining intensive rehabilitation supervision models found that "low-risk offenders who received intensive levels of treatment demonstrated higher recidivism rate than non-treated low-risk offenders."[7] Additionally, the research identified a potential link between the intensive levels of treatment and an increased recidivism rate among youth with low-level offending.

Another common theme in the research is the deployment of resources within probation practice, specifically examining the effectiveness of probation to deter delinquency. Peter Greenwood's work examining the dispositional responses to juvenile crime notes that:

> [A]n overworked probation officer who sees a client only once a month has little ability either to monitor the client's behavior or to exert much of an influence over his life. In the [Mark] Lipsey meta-analysis, "probation as usual" was the only regular juvenile justice intervention that, when applied to control groups, did not reduce the magnitude of the difference in effects between experimental and control groups. ***In other words, regular probation is effectively no treatment at all.***"[8] [emphasis added]

Greenwood concludes that an array of dispositional options are necessary, with flexibility to find the appropriate placement for each young person. Additionally, Greenwood notes that the most effective programs share characteristics of multiple-intervention levels, focus on changing individual behavior patterns and innovative freedom.

This is consistent with research that finds the impact of community supervision is "at best limited and at worst leaves clients more likely to recidivate,"[9] and another study showing significantly higher than-average recidivism among youth assessed as low risk, no significant difference for youth assessed as moderate risk, and a modest but statistically significant reduction in recidivism among youth assessed as high risk. In other words, effective programming aimed at reducing delinquency should be incorporating the elements of the risk principle, with flexibility to tailor programming appropriateness and include best practices such as structured social learning programs aimed at pro-social skill building.

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[1] Juvenile Probation Officer Initiative Working Group, National Center for Juvenile Justice., United States. Office of Juvenile Justice and Delinquency Prevention (2002). *Desktop guide to good juvenile probation practice (revised version).* Washington, D.C.: U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

[2] Griffin, P. (2000). *Rethinking juvenile probation: The desktop guide to good juvenile probation practice revisited.* In FOCUS. 2(1). November. Pittsburgh: National Center for Juvenile Justice.

[3] *Id.*

[4] Latessa, E.J. (2006). What Works in Reducing Recidivism? *University of St. Thomas Law Journal*: *Vol. 3* (3) Art. 7.

[5] Lowenkamp, C.T. & Latessa, E. (2004). Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders. Topics in Community Corrections, at 3.

[6] Lowenkamp, C.T. & Latessa, E. (2004). Increasing the effectiveness of correctional programming through the risk principle: Identifying offenders for residential placement. *Criminology & Public Policy 4* (2) (2004): 263-90.

[7] Bonta, J., Wallace-Capretta, S & Rooney, J. (2000). A quasi-experimental evaluation of an intensive rehabilitation supervision program. Criminal Justice & Behavior 27 (3) 312-329, at 325.

[8] Greenwood, Peter W. (1996). Responding to Juvenile Crime: Lessons Learned. *The Future of Children – The Juvenile Court.* Vol. 6, No. 3.

[9] Rudes, D. S., Viglione, J., et al. (2011). Juvenile Probation Officers: How the Perception of Roles Affects Training Experiences for Evidence Based Practice Implementation. Federal Probation 75(3): 3 - 10, 62.

Case Now Strong for Ending Probation's Place As Default Disposition in Juvenile Justice

By **Dick Mendel** | April 14, 2016

Forty-plus years after sociologist Robert Martinson rocked the worlds of juvenile and criminal justice by declaring that "nothing works" in offender rehabilitation, Jens Ludwig and his colleagues at the Chicago Crime Lab (https://crimelab.uchicago.edu/) have gone on a remarkable roll.

(http://jjie.org/hub/evidence-based-practices/reform-trends/) In a series of carefully controlled studies since 2012 testing a variety of strategies to prevent delinquency or reverse behavior problems of already adjudicated youth, Ludwig and his team have documented dramatic positive impacts on violent offending, other offending and the closely linked domain of academic success.

- One study examined the impact of an inexpensive, light-touch intervention program called "Becoming A Man" (or BAM) on seventh- to 10th-graders in some of Chicago's toughest neighborhoods. In BAM, trained counselors employ cognitive-behavioral techniques to teach groups of high-risk students to "stop, look, and listen" in emotionally charged situations where poor decisions can lead to severe consequences. Students assigned to BAM (plus an after-school sports program) had 44 percent fewer violent crime arrests during the program period and 38 percent fewer arrests for other offenses than a randomly assigned control group. The intervention, which also yielded long-term gains in academic achievement, cost only $1,100 per participant.

- In a random assignment study with high-risk ninth- and 10th- graders in Chicago, some students were selected to participate in the same Becoming A Man program, others in BAM plus intensive math tutoring, while a control group received no special services. Again the results were remarkable. Students in either of the treatment groups (BAM, or BAM plus tutoring) proved 66 percent less likely to fail a class than control group youth. Also, they made dramatic gains in math achievement, had 25 percent fewer absences and showed behavioral improvements consistent with a 26 percent reduction in future violent crime arrests.

- A third study tested the impact of a BAM-like cognitive-behavioral program inside the Cook County Temporary Detention Center, where facility administrators were seeking to improve the quality of care in the facility one unit at a time. From November 2009 to March 2011, youth were randomly assigned either to treatment-as-usual units or to units incorporating the CBT training along with increased educational requirements for staff and a new "token economy" to reward positive behavior. Youth in the reformed units returned to detention 21 percent less often following release, and they were 10 percent less likely to be involved serious disciplinary infractions while in the facility.

Standing on the shoulders of recent research documenting the effectiveness of other adolescent intervention models, these studies leave no doubt that our society has amassed a wealth of new practical knowledge on how to reduce delinquency. Combined with revolutionary advances in brain science and adolescent development research, the Chicago Crime Lab studies help to clarify the dimensions of a more targeted approach for combating delinquency and improving outcomes for high-risk youth generally.

If only our nation's juvenile justice systems took proper notice.

Evidence against probation's effectiveness

Think about it: Well over half of all youth adjudicated delinquent in U.S. juvenile courts each year are sentenced to probation. Even many youth referred to juvenile court but not adjudicated (24 percent in 2013) are placed on informal probation.

Yet there is virtually no evidence that probation as commonly practiced reduces the reoffending rates of youth. Quite the contrary. As I'll detail below, what research exists on the impact of standard-issue probation suggests that, on balance, it does nothing, or next to nothing, to reduce offending. Nonetheless, probation has remained largely unchanged in recent decades, and it remains the disposition of choice for system-involved youth.

This arrangement may have been defensible in previous eras, when we lacked solid research to understand the dynamics of delinquency, the factors that propel adolescents toward lawbreaking and the characteristics of effective interventions. But that day has passed.

What should we do instead of probation? Well, there are lots of alternatives, and much more experimentation and learning to be done. But based on the Chicago Crime Lab studies and other research I suggest we begin with a pair of three-letter answers, BAM and YAP, plus two more options — citations and intensive tutoring — that lack acronyms but also make tons more sense than standard supervision for many or most youth currently enmeshed in probation.

Before talking about these alternatives, though, let me explain three reasons why probation's central place in the juvenile justice system is so problematic.

- The available evidence shows that probation doesn't work.

In a 2008 review of research on probation (http://www.pbpp.pa.gov/research_statistics/Documents/27%20Exploring%20the%20Black%20Box%20of%20Community%20Supervision%20Bonta.pdf) (aka community supervision), a team of scholars led by James Bonta reported that, on average, probation was associated with just a 2 percent decrease in recidivism for both youth and adult offenders, and had no impact at all on violent offending. "On the whole," the study authors reported, "community supervision does not appear to work very well." Likewise, a 2012 article (http://www.fjc.gov/public/pdf.nsf/lookup/NSPI201226.pdf/$file/NSPI201226.pdf) in the Journal of Crime and Justice reviewed the available research literature and declared that "the impact of community supervision is at best limited and at worst leaves clients more likely to recidivate." And in 2013, a paper by Ed Latessa (https://www.uc.edu/content/dam/uc/ccjr/docs/reports/Final%20OCJS%20Report%202.22.13.pdf) and his colleagues at the University of Cincinnati came to a similar conclusion: "traditional community supervision — both as an alternative to residential supervision (probation) and as a means to continue supervision after release from a correctional institution (parole) — is ineffective."

Most recently, an updated evaluation (http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=JtVZ6JcbUc4%3D&tabid=131&mid=764) of Ohio's RECLAIM programs, published in 2014, found that low-risk youth referred to probation had "a 3 percent greater likelihood of reoffending compared to youth who participated in any other programs." At every risk level, the RECLAIM study found, youth placed on probation experienced significantly higher reoffending rates than comparable youth whose cases were not processed in juvenile court and were instead placed in diversion programs.

- New research into brain science and adolescent development makes clear that traditional probation is fundamentally ill-suited to the challenges of reversing behavior problems and fostering success among high-risk youth.

While probation practices vary widely from jurisdiction to jurisdiction, even officer to officer, the core of the juvenile probation model involves a judge imposing a list (often a long one) of rules and requirements the young person must follow, and then a probation officer keeping tabs on the young person and sometimes referring him or her to counseling or treatment services. Whenever youth formally sentenced to probation break these rules — skipping school, failing a drug test, falling behind on restitution payments, missing a required check-in with the probation officer — they are in violation of their probation and may be punished accordingly, up to and including incarceration in state or local correctional institutions. Indeed, a substantial share of youth committed to juvenile corrections facilities each year are sentenced not for committing new crimes but for violating probation rules.

Given what we know about delinquency and adolescent development, probation's emphasis on surveillance and rule-following makes no sense. Here's why.

Thanks to new brain imaging technologies developed over the past quarter-century, we now know that the human brain does not fully mature until age 25 or later. The last section of the brain to mature is the prefrontal cortex, which is responsible for controlling impulses, weighing consequences and regulating emotions. Meanwhile, the part of the brain focused on sensation-seeking and risk taking (the limbic system) is unusually active during adolescence.

As a result, law-breaking and other risky behaviors are common, even normal, during adolescence. But in the vast majority of cases, youth grow out of their lawbreaking even without any intervention from the justice or mental health systems. What sense does it make, then, to impose additional rules on already troubled youth, heighten scrutiny of their behaviors and then punish them for entirely predictable transgressions when most would likely desist from delinquency on their own?

Increasingly, scholars have determined that the key difference distinguishing youth who desist from delinquency and those who become chronic offenders is "psychosocial maturity" — the abilities to control impulses, consider the implications of their actions, delay gratification and resist peer pressure — all of which enable the young person to assume adult roles in society (employment, marriage, parenting). As Temple University adolescence scholar Laurence Steinberg and two colleagues explained in a 2015 essay (http://www.ojjdp.gov/pubs/248391.pdf), "Just as immaturity is an important contributor to the emergence of much adolescent misbehavior, maturity is an important contributor to its cessation."

Meanwhile, another powerful strand of recent research has found that chronic offending is tightly linked to extensive and wide-ranging exposure to trauma in childhood. And delinquency scholars have long recognized the close connection between academic failure and delinquency.

Yet, rather than concentrating first and foremost on helping court-involved young people accelerate their maturation, rather than address the traumas they have experienced or overcome their academic deficits, probation instead imposes additional rules and punishes those who — like most adolescents — are unable or unwilling to follow them.

- Emerging "what works" research offers a valuable yardstick for determining which types of interventions effectively foster adolescent behavior change.

The juvenile justice field has also been blessed in recent decades with a wealth of new research on what works and doesn't work in preventing and reversing delinquency. Using meta-analysis, a technique for aggregating the results of many studies to identify cross-cutting findings from an entire body of research, scholars have gleaned several clear lessons.

The first is that some types of interventions (http://cjjr.georgetown.edu/wp-content/uploads/2015/03/ImprovingEffectiveness_December2010.pdf) work much better than others with delinquent youth. Specifically, programs aimed at deterrence and discipline (Scared Straight, boot camps) tend to actually worsen recidivism. Programs geared toward surveillance (i.e., probation) tend to have little or no effect on recidivism. But therapeutic programs aimed at helping youth accelerate their psychosocial maturation consistently reduce recidivism rates — and by a considerable margin. These counseling and skill-building models include cognitive-behavioral therapy to help youth address anti-social attitudes and learn problem-solving and perspective-taking skills, as well as family counseling and mentoring by volunteers or youth workers in the community.

Second, correctional interventions work best when they target youth at high risk to reoffend. Mark Lipsey of Vanderbilt University has found (http://cjjr.georgetown.edu/wp-content/uploads/2015/03/ImprovingEffectiveness_December2010.pdf) that delinquency risk is the variable with "the largest relationship by far" with success in juvenile justice intervention programs, and that "larger effect sizes (greater recidivism reductions) [are] associated with higher risk juveniles." The crucial corollary to this finding is that intervention programs targeting lower-risk youth are far less effective — and can even worsen outcomes.

A third lesson is that close relationships with caring and responsible adults are a key to adolescent behavior change. Canadian scholars Craig Dowden and Donald Andrews have identified relationship-building — the ability to foster open, warm and enthusiastic communication — as "arguably the most important (http://ijo.sagepub.com/content/48/2/203.abstract)" of the five "core correctional practices" that have consistently proven effective in improving recidivism outcomes.

How to implement reform

Taken together, the research leaves little doubt that continued heavy reliance on surveillance-oriented probation is a flawed strategy, and it is especially problematic when applied to lower-risk youth who are likely to desist from delinquency on their own.

How should the juvenile justice field correct this imbalance?

One option is to fundamentally reorient probation to do what works. This past week, I attended a probation system reform symposium organized by the Robert F. Kennedy National Resource Center for Juvenile Justice (http://rfknrcjj.org/). Led by former probation officer John Tuell, the probation reform unit at the RFK Center has developed a rigorous system review process for juvenile probation offices, and it has provided extensive assistance over the past decade to shepherd just over a dozen probation agencies through that process.

Results to date are encouraging. Through the RFK process, juvenile probation agencies are rethinking their mission, improving their screening and assessment processes, crafting new response grids, retraining their officers and expanding the range and quality of their intervention programs. At least in some cases, sites are shifting lower-risk youth away from probation supervision and into diversion programs. Jefferson Parish, Louisiana, for instance, has reduced its probation population by 48 percent since 2011, more than doubled the number of youth diverted from court and developed an array of evidence-based interventions to meet the needs of diverted youth without the stigma of court supervision.

Though some RFK sites are not as focused on reducing probation caseloads or increasing the use of diversion, Tuell described trimming the probation population as "one of the primary goals of system reform."

"We need to make sure that kids who do not need to be involved do indeed stay out of the justice system," Tuell added. "And at the same time we still need to be able to address the needs those young people are facing" through effective alternative responses and diversion programs.

However, the RFK Center's reform model is time-consuming and labor-intensive. The review process itself takes 10-12 months, followed by an implementation phase that can last a year or longer. And like any ambitious system reform aiming to shift the culture of entrenched organizations, success depends heavily on motivated participation from administrators and line staff within the local probation agency. With more than 2,000 juvenile probation offices coast to coast, the RFK approach will be difficult to replicate effectively at scale.

That's why I believe the first step in probation reform should be shrinkage. Many or most of the young people currently assigned to supervision (which, again, doesn't reduce reoffending) should instead be steered toward interventions with proven power to lower their likelihood of reoffending — or diverted from the juvenile court system entirely and left to mature on their own.

At a minimum, courts should refrain from employing probation to supervise young people whose cases are diverted from court and those who are referred to court but never adjudicated. And even among youth who are adjudicated, formal probation should not be imposed on youth with limited prior offending and low risk to reoffend.

Instead of probation, young people should be steered to effective intervention programs like BAM that employ cognitive behavioral therapy delivered by skilled and personable counselors to help young people learn to resist peer pressure, control their impulses, and apply restraint and forethought in heated situations.

Or they should be assigned mentors in the community who offer coaching, encouragement and support to help youth avoid lapsing back into problematic behavior patterns. For 40 years, Youth Advocate Programs (http://www.yapinc.org/), Inc. (or YAP) has been assigning trained advocates to work with court-involved youth as an alternative to incarceration. These advocates, who hail from the same communities as the youth they serve, form close trusting relationships with the youth and help the young people complete individualized service plans developed in partnership with their families.

A recent analysis (https://jjrec.files.wordpress.com/2011/07/yapfacts201401.pdf) found that 86 percent of participating youth in multiple YAP sites nationwide were not arrested while participating in the program, which typically lasts four months, and 93 percent were still living at home when the program completed. (Similar programs not affiliated with YAP operate in Maryland (http://www.choiceprograms.org/), and in the Twin Cities area of Minnesota (http://www.jdaihelpdesk.org/JDAI%20Sites%20Report/Dakota%20County%20JDAI%20Newsletter%20July%202015.pdf).)

Or, given the powerful impacts documented in Chicago, diverted youth should receive intensive math tutoring to help them bridge academic learning gaps that commonly frustrate youth and cause them to drop out of school, greatly exacerbating their risk for delinquency.

Finally, for those youth whose offenses are minor and who show limited risk for future offending, the juvenile court should avoid any action beyond a warning. Indeed, a recent meta-analysis (http://childhub.org/sites/default/wp-content/uploads/library/attachments/wilson_hoge_diversion_2013.pdf) by Canadian scholars Holly Wilson and Robert Hague found that diversion from court is more effective in reducing recidivism than the traditional justice system. Diversion was superior to court processing, whether diverted youth received only a caution or were referred to a counseling or intervention program. In fact, low-risk youth receiving only a caution fared better than those referred to a diversion intervention.

In recent years, Florida has steadily expanded the use of "civil citations" in lieu of arrest and court processing for first-time misdemeanor offenders. In 2014-15, nearly 12,000 young (http://www.djj.state.fl.us/docs/car-reports/(2014-15-car)-civil-citation-(12-21-2015)-mg-final.pdf?sfvrsn=2) people received these citations. State recidivism data show that only 4 percent of citation youth reoffended, as compared to 13 percent of youth placed in court-supervised diversion programs and 17 percent for youth placed on probation.

There are, of course, many probation officers, and even some whole probation agencies, who are doing their best to heed the research, divert youth whenever possible and provide the most promising, evidence-based care for youth with more serious offending behaviors who really do require supervision.
But for the hundreds of thousands of youth nationwide who are guilty of minor misbehavior typical for adolescence, the lesson is clear: When it comes to probation, less is more.

This story has been updated.

National Council of Juvenile and Family Court Judges

NCJFCJ Resolves to Help Modernize Approach to Juvenile Probation With Better Understanding of Adolescent Brain Development

August 21, 2017

The National Council of Juvenile and Family Court Judges (NCJFCJ) passed a resolution supporting the commitment to juvenile probation systems that conform to the latest knowledge of adolescent brain development.

Current research on adolescent brain development is key in juvenile and family court judges' understanding, anticipating and responding to the behavior of adolescents by holding them accountable in developmentally appropriate ways. The NCJFCJ encourages judicial leadership to guide policy and practice changes that incorporate these research findings.

"The NCJFCJ's resolution sets an expectation that patience, persistence, flexibility and individualized care are the priorities for juvenile probation professionals," said Steve Bishop, senior associate, Juvenile Justice Strategy Group, Annie E. Casey Foundation. "Currently nearly one-quarter of all out-of-home placements are the result of violations of probation. We encourage juvenile probation departments to heed NCJFCJ's call to cease imposing conditions of probation and never use secure detention or incarceration as a sanction for youth who fail to meet probation expectations."

Research indicates the brain undergoes rapid changes during adolescence, and continues to develop into a person's early 20s, directly affecting the way youth think and reason, indicating adolescents are developmentally different from adults. Juvenile justice system policies, programs and supervision should be tailored to reflect the distinct development needs of adolescents.

In the 2005 *Juvenile Delinquency Guidelines,* juvenile delinquency court judges should ensure that court dispositions are individualized and include differential responses of sanctions and incentives.

"Probation supervision continues to be the most common disposition ordered for youth adjudicated in juvenile courts for their law violating behavior," said Melissa Sickmund, Ph.D., director of the NCJFCJ's National Center for Juvenile Justice. "This resolution encourages judicial leadership to push juvenile probation agencies to modernize juvenile probation—to implement evidence-based practices."

Modernizing juvenile probation approaches to incorporate knowledge on adolescent development and behavior decision-making will: help youths understand, appreciate, and remember their probation requirements; emphasize short-term, positive outcomes for probation compliant behaviors; deliver sanctions for noncompliant behaviors in ways that enable youths to learn from their mistakes and modify their behaviors in the future; and promote affiliation with positive peers.

The resolution recommends a developmental approach to juvenile probation that leads to a normal path to adulthood, which includes family engagement and community partnerships, and using out-of-home placement as a last resort.

"The American Probation and Parole Association believes that taking an individualized and developmental approach will achieve better overall success rates for our young people," said Veronica Cunningham, executive director, American Probation and Parole Association.

"As the resolution indicates, the juvenile justice system acknowledges the inherent differences between youth and adults. As such, juvenile probation practices should be designed to reflect those differences, and departments should modernize their approach to juvenile delinquency by incorporating knowledge about adolescent development in their work. Juvenile probation departments can play a significant role in helping young people develop the competencies and skills to become successful adults."

Too many juvenile courts and juvenile probation departments impose conditions of probation that are not individualized, have too many requirements and lead to unnecessary detention or incarceration for technical violations. Also, probation conditions are too often subjective and exacerbate racial and ethnic disparities.

"The juvenile justice system was created to maintain a rehabilitative focus while holding youth accountable for their actions," said Susan Vivian Mangold, Esq., executive director of Juvenile Law Center. "Juvenile Law Center has been advocating for more than two decades to ensure that the latest adolescent neurological science and behavioral science inform policies and practices that impact adolescents."

The NCJFCJ supports and is committed to the development of robust education and training of juvenile probation staff on adolescent brain development; its impact on juvenile justice policy, practice and the law; and its relationship to juvenile probation case planning, conditions of probation, supervision, monitoring and enforcement and data collection. The NCJFCJ also encourages the use of incentives, rather than sanctions, to modify youth behavior, and for the adoption of a developmentally designed juvenile probation system with a different response system.

"With this resolution, the NCJFCJ encourages judicial leadership to guide policy and practice changes that incorporate the research findings on adolescent brain development," said Judge Anthony (Tony) Capizzi, NCJFCJ president. "It outlines what judges can do to transform juvenile probation supervision to an approach that works to incentivize kids doing things right rather than a punitive approach. In jurisdictions large and small, from coast to coast, judges can make a difference."

For more NCJFCJ resolutions and policy statements, click here.

About the National Council of Juvenile and Family Court Judges (NCJFCJ):

Founded in 1937, the Reno, Nev.-based National Council of Juvenile and Family Court Judges, is the nation's oldest judicial membership organization and focused on improving the effectiveness of our nation's juvenile and family courts. A leader in continuing education opportunities, research, and policy development in the field of juvenile and family justice, the 2,000-member organization is unique in providing practice-based resources to jurisdictions and communities nationwide.

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ISSUE BRIEF

NJDC
NATIONAL JUVENILE DEFENDER CENTER

Promoting Positive Development

The Critical Need to Reform Youth Probation Orders

THE ISSUE

Probation is the most common disposition in juvenile court when youth are adjudicated delinquent.[1] In 2013, formal probation was ordered in 64% of adjudicated delinquency cases.[2] Though intended to lead youth toward success, unwieldy conditions of probation can lead to technical violations and cause lasting harm in the lives of children, including removal from their communities and incarceration.[3] Probation orders often make it difficult for youth to succeed while on probation, despite the fact that probation agencies are focused on achieving positive youth development and accountability.[4] In some places, youth are required to manage over thirty conditions of probation—a near impossible number of rules for children to understand, follow, and even recall. Overly broad and unclear orders that are not tailored to the strengths, interests, and challenges of an individual youth can result in significant numbers failing on probation, ultimately leading to costly and unnecessary out-of-home placement. In 2013, 17% of youth in residential placement facilities were being held for technical violations of probation.[5]

The Number of Conditions on Juvenile Probation Orders

Juvenile probation orders should have a limited number of conditions, and they should be individually tailored to achieve community safety and accountability by helping the youth develop skills necessary to contribute as a positive member of the community. In a brief survey conducted by the National Juvenile Defender Center, juvenile defenders reported that their juvenile court probation orders include anywhere from five to over thirty conditions of probation. Further, a study from Washington State, the Washington Judicial Colloquies Project, found that youth recall and understand very little of what is said during the court hearing when the conditions of probation are ordered.[6] Project staff reported, "Youth were interviewed minutes after the hearings, and most of them were confused and mistaken about what the judge had stated and ordered just moments before. Overall, the youth surveyed recalled only 1/3 of the conditions that were ordered."[7] By reducing the number of probation conditions and ensuring that each condition correlates to the youth's interests and goals of probation, youth will be more likely to understand the expectations and be more able to comply with the conditions of probation. Further, this will enable probation officers to address the unique and individualized characteristics of youth outside the realm of compliance and punishment. Goals identified for the youth should be youth-centered, strengths-based, and developed as the probation officer builds a relationship with the youth. Engaging the youth to identify and prioritize these goals will help achieve the youth's buy-in and thus increase the likelihood of success and compliance.[8]

The Types of Conditions on Juvenile Probation Orders

Juvenile probation plays an important role in achieving community safety, accountability, and positive development for youth. To attain these goals, juvenile probation officers are tasked with helping youth achieve positive development by providing opportunities for skill building and growth, as well as proper supervision.[9] Accordingly, juvenile probation officers' authority and duty should closely align with the individual goals of influencing positive behaviors for each unique child in the system.[10] Unfortunately, far too many probation orders contain a list of standardized conditions that make it easier for the court and probation staff to monitor youth, but which have no positive value in youth development and are simply another opportunity to perpetuate a child's involvement in the juvenile court system.

Instead, probation orders in which each condition of probation is thoughtfully tailored to a particular child's strengths or challenges are a mechanism to ensure that each condition of probation is geared toward positive youth development, thereby fulfilling the objectives of youth accountability and community safety. Further, probation conditions that are developmentally appropriate and individually tailored for each youth will help legitimize a youth's experience on probation, increase compliance, reduce unnecessary incarceration, and lead to better outcomes. Several types of conditions reported by juvenile defenders raise significant concerns for effective juvenile probation practice.

Search and Seizure Conditions

Juvenile probation orders should not include a condition compelling youth to submit to a search or seizure by a probation officer at any time and place, without cause. These search and seizure conditions, which are ordered in numerous states across the country, not only go against the goals of juvenile probation by hindering a youth's development, but also may violate a child's Fourth Amendment right to be free from unlawful search and seizure.

The Fourth Amendment protects all individuals, including children, from unreasonable search and seizure, generally meaning that a warrant based on probable cause is required beforehand.[11] While a person may choose to give up this right by consenting to a search or seizure, the consent must be voluntary.[12] The U.S. Supreme Court has defined voluntary consent in this context as a subjective inquiry based on a totality of the circumstances, meaning that the court should consider the individual characteristics of the person providing consent, the surrounding circumstances, and the manner in which the consent was sought to determine whether the waiver of rights was truly voluntary.[13] The crux of this inquiry is to gauge whether there was a choice at all. Absent a voluntary waiver, any search or seizure conducted without cause may be grounds for a constitutional violation, implicating any and all evidence derived from the unlawful search as inadmissible in court.

For purposes of juvenile probation, to determine the voluntary nature of a child signing a probation order that allows for a search or seizure of the child without limitation, the court should consider, among other factors, the child's age, developmental stage, context in which the waiver was sought, and the nature of juvenile probation as part of a final disposition order. The child must have had an understandable and meaningful choice to keep or waive his or her Fourth Amendment protection at the moment of signing. Without such a choice, the child's signature cannot be considered voluntary consent, meaning that a probation officer's subsequent search of the child may violate the child's constitutional rights if it was made without cause, and thus any evidence found from that search would be inadmissible in court.

However, regardless of whether the probation order grants the probation officer the specific authority to search or seize the child, all juvenile probation officers may still conduct a lawful search or seizure of the child so long as the officers obtain a warrant beforehand or have probable cause (and in some circumstances, reasonable suspicion) in an emergency or other special situation.[14] Therefore search and seizure conditions in juvenile probation orders are unnecessary and place probation officers at risk of violating a child's constitutional rights by seemingly allowing probation officers to search or seize a child without cause. Further, search and seizure conditions are likely to affect the youth's trust in the legal system, because it conflates the

role of probation officers with law enforcement. By tasking a probation officer to focus on catching the child in a wrong through arbitrary searches, as opposed to providing a program of proper supervision and youth development, the child's perception of the legitimacy of the system will diminish, often leading to worse outcomes, such as increased recidivism.[15] A former judge stated, "[w]hen a probation officer crosses the line into behaving as a police officer, the probationer may lose the confidence needed to pay attention to the officer's advice and choice of services and programs."[16] As such, search and seizure conditions should not be included in juvenile probation orders because they conflict with the goals of juvenile probation by hindering positive youth development, affect a youth's perception of the legitimacy of the system, and may violate the youth's constitutional right to be free from unreasonable search and seizure.

Electronic Monitoring Conditions

The use of electronic monitoring in juvenile probation should be severely limited because it hinders the goals of achieving positive youth development and teaching accountability, thereby deterring efforts to achieve community safety.[17] A probation officer's relationship with the youth is the most significant factor in influencing behavior change. However, electronic monitoring impedes this relationship by shifting the focus away from intensive case management and more towards technical compliance. Electronic monitoring conditions often are accompanied with an additional set of technical rules, such as calling the electronic monitoring office every time the youth leaves her home and asking permission ahead of time to go to certain locations.[18] By reducing meaningful interactions between the probation officer and the youth and instead focusing on technical compliance, normative behavior consistent with adolescent development is often punished and opportunities for positive youth development are hindered.

As recognized by the U.S. Supreme Court, youth are less susceptible to deterrence and more vulnerable to negative influences, due to their developmental status.[19] Accordingly, youth subject to electronic monitoring may fail to self-regulate, plan ahead, and calculate the future consequences of non-compliance. Thus, youth who forget to follow technical rules such as calling the electronic monitoring office every time the youth leaves her home or asking for permission ahead of time to go to certain locations, face probation violations.[20] These restrictive rules, which do not have a direct relationship in helping youth achieve positive development, often contribute to the deterioration of the youth's trust and respect in the system, leading to worse outcomes for the youth and the community.

Association Conditions

A general prohibition against associating with an entire class of individuals is overbroad because it includes individuals with backgrounds unknown to the youth.[21] Under this condition, though a youth may have had no means of knowing that her friend, acquaintance, or family member is also on probation, has a criminal record, or is part of a gang, the youth would be subject to a probation violation. Not only does such a condition violate the youth's freedom to associate under the First Amendment, it also affects the youth's trust in the fairness of the system. When youth are faced with impractical conditions that are essentially impossible to follow, they are more likely to oppose the program as a whole, leading to worse outcomes. Further, association conditions exacerbate the racial disparities in the juvenile court system. Youth of color are disproportionately involved in the juvenile court system, removed from their homes, and committed to a residential facility.[22] Thus, by enforcing a blanket prohibition on associating with others involved in the criminal or juvenile court system through punitive measures, the system widens the disparities by increasing the likelihood that a youth of color will be further involved in the system for violating a probation condition. In fact, among youth committed to a residential facility for violating a probation order, 67% are youth of color, even though they make up 46% of the general population.[23]

Furthermore, even if the condition specifies that the youth may not associate with known individuals subject to one or more of the prohibited categories, the condition still lacks a sufficiently narrow link with the overall purpose of the juvenile justice system.[24] Often times, family members or positive community members may fall into these broad categories of prohibited association. In fact, there are a number of successful community-based programs designed to connect system-involved youth with formerly system-involved peers and mentors to help youth achieve positive

development, effectively navigate through the juvenile court system, and reduce crime.[25] Yet, despite the positive influence that an individual may carry, broad association conditions may lead to technical violations that do not aid, but rather hinder the growth and development of youth. As such, it is important that each condition is thoughtful, appropriate, and closely related to the goals of influencing behavior to ensure positive youth development and community safety.

The Language Used in Juvenile Probation Orders

Probation orders should be written and explained in the youth's primary language, using simplified words and phrases, taking into account adolescent development and the prevalence of language and literacy-related disabilities among youth in the juvenile justice system. The spoken and written language of legal proceedings is more complex than the typical language of adolescent daily life, and such legal language is even less accessible for youth with language, literacy, or educational disabilities or delays. Research in the juvenile justice system has demonstrated conclusively that language- and/or literacy-related disabilities, often undiagnosed, are prevalent among youth in the juvenile justice system.[26] One study found that 52% of young offenders in the juvenile justice system had a language impairment.[27] As a comparison, 7.4% of the general population has a language impairment.[28]

Language Development

Language deficits pose a significant disadvantage for children in the legal system because it affects their ability to process information and explain plans, perceived consequences, and resolution in a given situation.[29] This is further exacerbated when youth are faced with complex probation orders and the expectation to fully understand and adhere to its demands. The language on most probation orders is often beyond the expected comprehension level of an average youth. All children, regardless of whether they have a language and/or literacy disability, have incomplete language development, as many subtleties of grammatical complexity and word meaning are not fully acquired until the end of adolescence. Accordingly, expecting youth, many of whom face language and/or disability impairments, to understand and remember a long list of complexly worded conditions is incompatible with what is known about adolescent language development.

Reading Level of Juvenile Probation Orders

As part of a national survey, the National Juvenile Defender Center obtained several juvenile probation orders from jurisdictions across the country which were evaluated by a speech-language pathologist to determine their reading level.[30] The juvenile probation orders collected ranged from a ninth grade to collegiate reading level, the majority of which were written at a tenth or eleventh grade level, based on measures that take both grammatical complexity and vocabulary into account. As a comparison, approximately half of the adult population in the United States reads at or below an eighth-grade level.[31] Accordingly, various regulations commonly require materials to be written at a sixth- to eighth-grade reading level to ensure adequate comprehension and informed decision making.[32] Yet, children in the juvenile justice system are too often handed complex orders written in tenth to eleventh grade levels, containing language that they may not understand or fully appreciate. This language and reading barrier may lead to non-compliance of probation conditions as a result of the child's poor or incomplete understanding of the full meaning of the required conditions, as opposed to willful disrespect. As such, it is essential for probation orders to be examined, reduced, and revised with simplified grammar and vocabulary.

Working Innovations

Juvenile justice advocates have worked together to reform juvenile probation orders in several jurisdictions to ensure that they are aligned with the original intent to help youth achieve positive development and that the conditions are fair and appropriate. Reform efforts have taken shape in a variety of ways, including litigation and direct revisions to juvenile probation orders. Examples of these reforms include:

Umatilla County, Oregon

The juvenile probation department in Umatilla County significantly limited the number of programmatic and behavioral requirements listed in its court order. In general, youth in Umatilla County are expected to obey the law, pay any assigned fees, keep in contact with probation, complete assessments, programs, or directives determined appropriate through the individualized case planning process, and complete community service, if applicable.[33] The order does not grant probation officers with any authority to search or seize youth, but rather is narrowly tailored to the unique attributes of each youth and the goal of helping youth achieve positive development.

Pennsylvania

In 2002, Pennsylvania state legislators passed an amendment to the Judicial Code, which outlined the powers and duties of juvenile probation officers. Under 42 Pa. Cons. Stat. Ann. § 6304, a probation officer generally may not search a youth or her property unless "there is reasonable suspicion to believe that the child possesses contraband or other evidence of violations of the conditions of supervision."[34] The statute further states that the standard for reasonable suspicion is based on constitutional search and seizure principles.[35] This provision was intended to ensure that the powers and duties of probation officers were consistent with the aims of the juvenile court. Commenting on the amendment, the Joint State Government Commission stated, "[t]he primary role of the probation officer is the care and protection of the child, and in delinquency cases, his treatment and rehabilitation as well. Incompatible roles . . . have been excluded [from the statute]."[36]

Washington

The Washington State Judicial Colloquies Project developed a guide to achieve developmentally appropriate dialogues in juvenile court. In recognizing that the majority of youth in juvenile court do not comprehend the lengthy list of rules for probation, often leading to noncompliance, the Project developed and piloted model colloquies and accompanying forms outlining conditions of release and probation in a developmentally and age-appropriate manner. The pilot sites that implemented the colloquies and accompanying forms found that communication between the court and the youth significantly improved.[37] In one court, youth interviewed understood 90% of the conditions ordered by the judge, compared to 33% of the conditions that were understood prior to the Project.[38] By ensuring that probation conditions are written and explained in a developmentally and age-appropriate way, youth will more likely understand what is expected from them, leading to a greater likelihood of success.

Recommendations for Reform

Lengthy and difficult-to-understand probation orders requiring youth to follow unfair conditions are inconsistent with the goals of juvenile probation and impede positive youth development, as it erodes the youth's trust in the probation officer and the system, often leading to worse outcomes for the youth and hindering efforts to achieve community safety. Juvenile probation orders should be structured to foster growth and development and should clearly outline the expectations of youth in developmentally appropriate language. In order to better align juvenile probation orders with the overall aim to achieve successful youth development, NJDC recommends:

- Juvenile court jurisdictions should revise probation orders to ensure they are developmentally and age-appropriate and consistent with the aims of juvenile probation by limiting the number of conditions, revising the language used, and removing unfair search and seizure, electronic monitoring, and association conditions;
- Legislators should eliminate the use of electronic monitoring, unrestricted search and seizure conditions, and broad association conditions as part of standard juvenile probation orders;
- Juvenile probation departments should clarify the duties of probation officers in accordance with their role in influencing positive behavior and promoting youth development;
- Bar associations and other professional organizations should issue official statements against unfair juvenile probation conditions; and
- Juvenile defenders should actively litigate and fight against unfair juvenile probation practices, such as the ineffectiveness of electronic monitoring, unintended consequences of association conditions, and constitutionality of search conditions.[39]

CONCLUSION

The number, type, and language of juvenile probation conditions should be rooted in a developmental framework based on the foundation of the juvenile justice system to achieve success for youth and promote community safety. As juvenile probation officers carry out their duty to ensure community safety by promoting positive youth development, it is vital for probation officers to build trust and legitimacy with youth, as this affects compliance and future outcomes. Ensuring a reasonable number of conditions that are developmentally appropriate and thoughtfully related, explained, and implemented will provide youth with the proper supervision and guidance that will enable them to make healthy choices and become successful and productive members of the community.

End Notes

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7. *Id.*
8. *See generally* Bonnie et al., *supra* note 4.
9. *See Position Statement: Juvenile Justice,* AM. PROB. AND PAROLE ASS'N, https://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IB_PositionStatement&wps_key=85432f61-443f-451a-bc59-29a37574f94e.
10. *See id.*
11. Katz v. United States, 389 U.S. 347, 357 (1967). Probation officers are subject to the limitations of the Fourth Amendment, because probation is a state operated and regulated industry. *See* Griffin v. Wisconsin, 483 U.S. 868, 876 (1987).
12. Schneckloth v. Bustamonte, 412 U.S. 218, 249-50 (1973).
13. *Id.*
14. Depending on the context of the search or seizure, the U.S. Supreme Court has identified a number of exceptions to the warrant requirement, such as exigent circumstances, which require probable cause but not a warrant, and school-based searches, which require reasonable suspicion that the student was violating the law or school rules. *See* Warden v. Hayden, 387 U.S. 298 (1967); New Jersey v. T.L.O., 469 U.S. 325 (1985).
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20. Weisburd, *supra* note 18.
21. *See* In re Justin S., 93 Cal. App. 4th 811 (2001) (holding that a probation condition prohibiting association with gang members violates the Constitution).
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25. *See, e.g.*, Community Connections for Youth, https://cc-fy.org/about-us/ (last visited Sept. 16, 2016); Preparing Leaders of Tomorrow (PLOT), http://www.plotforyouth.org/about/ (last visited Sept. 16, 2016); Silicon Valley De-Bug, http://www.siliconvalleydebug.org/about/ (last visited Sept. 16, 2016).
26. *See* Amy E. Lansing et al., *Cognitive and Academic Functioning of Juvenile Detainees: Implications for Correctional Populations and Public Health*, 20 J. CORRECTIONAL HEALTH CARE 18 (2014).
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30. The National Juvenile Defender Center consulted with Dr. Gwyneth Rost, Ph.D., who is a speech-language pathologist and professor of Communications Disorders at the University of Massachusetts, Amherst. Dr. Rost holds the Certificate of Clinical Competence (CCC-SLP) from the American Speech-Language-Hearing Association and board license to practice Speech-Language Pathology in Massachusetts.
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32. Securities and Exchange Commission requires disclosure materials to be written at a sixth- to eighth-grade level. *Id* at 38; *see also* John Aloysius Cogan Jr., *Readability, Contracts of Recurring Use, and the Problem of Ex Post Judicial Governance of Health Insurance Policies,* 15 ROGER WILLIAMS U. L. REV. 93 (2010).
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37. TEAMCHILD, WASHINGTON JUDICIAL COLLOQUIES PROJECT: A GUIDE FOR IMPROVING COMMUNICATION AND UNDERSTANDING IN JUVENILE COURT 10-11 (2012).
38. *Id.*
39. The constitutionality of search conditions on juvenile probation orders may be argued on Fourth Amendment grounds. The Fourth Amendment protects all individuals, including children, against unreasonable searches and seizures by government officials, unless certain exceptions apply. *Katz v. United States,* 389 U.S. 347, 357 (1967). Consent by the individual searched is a recognized exception; however, the state must prove that consent was voluntarily given, absent implied or express duress or coercion. *Schneckloth v. Bustamonte*, 412 U.S. 218, 249-50 (1973). The voluntariness of consent is a subjective inquiry that is determined based on the totality of circumstances, which include the individual characteristics of the person providing consent, the circumstances arising from the consent, and the manner in which the consent was sought. *Id.* Accordingly, it may be argued that a child's waiver of her Fourth Amendment rights as part of her probation agreement does not amount to voluntary consent, in light of the child's lack of experience and judgment, paired with her immaturity and susceptibility to pressure, as well as the nature of juvenile probation, specifically that a child is not free to reject probation as part of her disposition, because juvenile probation is not offered in exchange of harsher punishment, but rather as a component of the child's rehabilitation, as identified necessary by the juvenile court judge. *See In re* Ronnie P., 10 Cal. App. 4th 1079, 1089 (Cal. Ct. App. 1992).

NATIONAL JUVENILE DEFENDER CENTER

1350 Connecticut Avenue NW, Suite 304
Washington, DC 20036
202.452.0010 (p)
202.452.1205 (f)
www.njdc.info

The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. To learn more about NJDC, please visit www.njdc.info.

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Papers from the Executive Session on Community Corrections

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HARVARD Kennedy School
Program in Criminal Justice Policy and Management

Less Is More: How Reducing Probation Populations Can Improve Outcomes

Michael P. Jacobson, Vincent Schiraldi, Reagan Daly, and Emily Hotez

Executive Session on Community Corrections

This is one in a series of papers that will be published as a result of the Executive Session on Community Corrections.

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Introduction

This paper will argue that, similar to the growth in prisons that has resulted in our current state of mass incarceration, the tremendous growth in probation supervision in the United States over the past several decades should be reversed, and the entire system of probation significantly downsized. Specifically, we argue here that while the number of people on probation supervision in the U.S. has declined over the past several years (as have the number of people incarcerated and crime rates), that decline should not only be sustained but significantly increased, with a goal of reducing the number of people under probation supervision by 50 percent over 10 years. We then discuss New York City as an example of a jurisdiction that has successfully done this.

In many respects, the rationale for this argument mirrors the argument against mass incarceration. In most jurisdictions, probation is a punitive system that attempts to elicit compliance from individuals primarily through the imposition of conditions, fines, and fees that in many cases cannot be met (Corbett, 2015; Klingele, 2013). This is not only a poor use of scarce resources; it contributes to a revolving door in which

individuals who cannot meet those obligations cycle back and forth between probation and incarceration without necessarily improving public safety. In fact, the cycle of incarceration and supervision can actually threaten public safety, and it certainly has harmful and far-reaching consequences for those who are caught up in it, including job loss, disconnection from family, and housing instability (Council of Economic Advisers, 2015). Given this, along with national and local data and examples that clearly demonstrate that reducing "mass probation" can go hand in hand with a reduction in the number of people incarcerated and ongoing declines in national and local crime, it begs the question of why so many jurisdictions continue to promulgate this punitive approach.

Because probation is the most severely underfunded and the least politically powerful of all criminal justice agencies, there is no likelihood of any massive infusion of new resources into the field. Thus, the limited resources saved from this downsizing may be used to invest in community-based programs that provide employment, substance abuse, and mental health treatment to the remaining population — those that pose the highest public safety risk — as a way to significantly reduce that risk and avoid unnecessary monitoring and supervision. A portion of these savings should also substitute for the rampant use of probation fees used throughout the U.S. as a way to pay for a structurally underfunded system. These fees are unjust, counter-productive, and antithetical to the legitimacy of any system of justice (Martin, Smith, and Still, 2017).

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A Brief History

Over the past decade, America's experience with mass incarceration has become well known in both academic and popular literature and media, and has led to a number of social movements and political efforts to reverse what most now consider an unfair, unjust, and ineffective policy (Clear and Frost, 2013; Subramanian et al., 2015). Much less recognized is that America is also exceptional in terms of the numbers and rates of people under probation supervision.

From its inception at the hands of Boston shoemaker John Augustus in 1841, probation was conceived as an informal, individualized system that was heavily focused on rehabilitation (Klingele, 2013). In other words, it was established to provide "a plan of supervision and friendly personal guidance" (Chute, 1928:136). Despite these intentions, probation in the U.S. developed "very haphazardly and with no real thought" (Petersilia, 1997:156-157). Indeed, the structure looks very different across jurisdictions, with the more than 2,000 probation agencies varying in funding sources, services offered, and even the branch of government within which they are housed (Klingele, 2013). One consistency across jurisdictions, however, is that funding for probation has always been "woefully inadequate" (Petersilia, 1997:171-172). As criminal justice

system costs have increased in the past few decades, so too has the probation system's need for resources (Corbett, 2015).

Currently, a sentence to probation in which a person is supervised in the community in lieu of a prison or jail sentence is by far the most common formal punishment meted out in the American justice system. In 2014, 1.5 million people were in prison in the U.S. but almost three times as many (4 million) were serving probation sentences and another 850,000 were under parole supervision. Slightly more than half (56 percent) were on probation for a felony conviction and 42 percent were on probation for a misdemeanor conviction; the remaining 2 percent were on probation for other infractions (Kaeble et al., 2015; Kaeble, Maruschak, and Bonczar, 2015).

Thus, the overall rate for everyone on any form of probation is 1,500 per 100,000 persons. That rate is not only three times larger than our prison incarceration rate; it has increased substantially as our system of punishment has expanded geometrically over the past several decades. It is also about five times the European rate of approximately 300 per 100,000 persons.

Like incarceration, the use of probation varies widely by state. For example, Ohio's probation rate in 2014 was approximately 2,000 per 100,000, compared to New Hampshire's rate of 300 per 100,000 (Alper, Corda, and Reitz, 2016). Probation sentences also vary. The average time spent on probation is about two years (Kaeble, Maruschak, and Bonczar, 2015), but it reflects a mix of individuals on short probation sentences and others serving many years (sentences of 10 years on probation are not uncommon, with some states carrying lifetime probationary sentences for certain serious offenses). Probation sentences typically range from one to five years.

Probation Conditions

A sentence of probation requires the person under supervision to report (in person, electronically, or by mail) on a regular schedule and adhere to a number of conditions (e.g., being drug-free, being home by a certain hour, attending counselling sessions) that can differ greatly by jurisdiction. The average number of conditions is about 15 for a person on probation (Corbett, 2015). Violating any of these conditions can result in prison or jail time. Of course, the more conditions there are, the greater the likelihood that some will be violated. According to Dan Beto, a former Texas probation director (Corbett, 2015:1709):

It is [also] my sense that the imposition and enforcement of probation conditions has become more punitive in nature, and I think much of that may be attributed to the type of persons we are attracting to the probation profession. And, to a degree, to those occupying the bench. I'm afraid that many judges impose conditions of probation because of personal biases and because they want to be in vogue, and not because they are necessary or relate to offender risk factors or needs.

Cecelia Klingele (2013:1034) also comments on the current state of community supervision in the U.S.:

…courts have been known to impose a wide range of [special] conditions, ranging from the bizarre ([y]ou may never even sit in the front seat (of a car)) to the controversial (don't get pregnant) to the downright dangerous (put a bumper sticker on your car announcing you are a sex offender). Even when the conditions imposed are reasonable in themselves, the lack of robust legal limits on release conditions often results in a laundry list of conditions to which any given offender is bound.

The rise in the number of standard and special conditions of probation, as well as increasing requirements for people on probation to pay for their own supervision through mandatory fees, not surprisingly mirrors the punitive turn of punishment in the U.S. (Clear and Frost, 2013) over the past several decades. As more and more conditions are layered on a population that is very poor, with high levels of substance abuse and mental illness and low levels of formal education (Mumola and Bonczar, 1998; Rhodes et al., 2013), it is hardly surprising that technical violations of probation are common and failure rates are stubbornly high. As one public defender who participated in a recent study of community corrections describes it (Ruhland and Alper, 2016:4):

Our clients, they have so many obstacles in so many ways that too many requirements, they just get overwhelmed…I had a client recently that just said, "fine whatever send me to prison, come get me on a warrant." He was just too overwhelmed to even think about complying with the conditions of probation.

Probation Success Rates

Nationally, about 60 percent of those who exit probation complete it successfully. The 40 percent who fail are made up of those whose probation is revoked for either a technical violation of probation, the commission of a new crime, or absconding (Glaze, Bonczar, and Zhang, 2010; Kaeble, Maruschak, and Bonczar, 2015); the majority are composed of technical violations and/or the commission of new crimes (Austin, 2010; Burke, Gelb, and Horowitz, 2007). According to the Pew Center on the States, along with the large growth in the number of people on probation, the number of people on probation who are revoked and sent to jail (or prison) increased by 50 percent (220,000 to 330,000) from 1990 to 2004 (Burke, Gelb, and Horowitz, 2007). Such numbers show that probation is not simply an alternative to incarceration but a key driver of incarceration in the United States.

Probation Underfunding and the Use of Fees

Ironically, despite having such large numbers of people under supervision, probation has been and continues to be the most poorly funded of all the agencies in our criminal justice system. According to the Pew Center for the States (2009), the average cost per day for a person under probation supervision is $3.42, compared to $79 a day for a person in prison. Putting aside that disparity, it is illustrative to focus on the $3.42 a day, or $1,250 a year. For a population that is overwhelmingly poor, with high levels of substance abuse, low levels of employment, and —especially in urban areas — chronic homelessness, $1,250 a year is next to nothing.

This is especially true considering that most of that money is spent on probation officer salaries, with very little funding left to deal directly with any of those deep-seated problems. In fact, so many probation agencies are so poorly funded that many resort to the imposition of fees, paid by the person on probation, to fund the basic costs of probation, which include drug testing, monthly programming fees, and court costs (Lieber, 2016). As Dan Beto notes (Corbett, 2015:1712):

In most jurisdictions, in addition to restitution in appropriate instances, probationers are now required to pay probation supervision fees, court costs, urinalysis fees, electronic monitoring fees, DWI/DUI education class fees, anger-management class fees, counseling fees, and fines. For persons marginally employed or unemployed who are barely [eking] out an existence, all these financial obligations can seem quite onerous and create a sense of hopelessness. And with [the] introduction of these financial conditions of probation, the role of the probation officer changed; no longer are they agents of change, but rather they have assumed the job of collection agent.

Ron Corbett, a former Massachusetts probation director, puts a finer point on this from the point of view of those on probation (Corbett, 2015:1713):

As the financial penalties incurred by probationers grow, one wonders what those who impose them imagine the financial standing of probationers to be. If it were the case that the average probationer could afford to pay all the costs, fines, and fees that are imposed, there would not have been a crime in the first place, quite possibly. Of course, there are exceptions to this. Bernie Madoff didn't need the money, as one example, and a number of drunk drivers are financially comfortable. However, in most cases, if you're on probation in the large urban areas, where most probationers reside, you're often flat broke.

In a recent brief, the White House Council of Economic Advisers (2015:4) said of criminal fines and fees generally (of which probation fees are a large part):

Fines and fees create large financial and human costs, all of which are disproportionately borne by the poor. High fines and fee payments may force the indigent formerly incarcerated to make difficult trade-offs between paying court debt and other necessary purchases. Unsustainable debt coupled with the threat of incarceration may even encourage some formerly incarcerated individuals to return to criminal activity to pay off their debts, perversely increasing recidivism. Time spent in pre-trial detention as a punishment for failure to pay debts entails large costs in the form of personal freedom and sacrificed income, as well as increasing the likelihood of job loss.

The imposition of probation fees on a population that is already largely in poverty is terrible public policy, unjust, and — we would argue, almost by definition — completely ineffective (Albin-Lackey, 2014; Council of Economic Advisers, 2015). Many probation agencies find themselves in a structural position of relying on these fees, counterproductive as they are, simply to support their baseline annual expenditures, and there is an entire industry of private probation companies

whose main function is the enforcement and collection of probation fees (Albin-Lackey, 2014).

The Structural Results of Underfunding and Increasing Conditions of Probation

As the use of probation has grown over the past several decades and the numbers of conditions, both standard and special, have increased, so too have the numbers of people who violate the conditions of probation and are sent back to jail and prison (Durose, Cooper, and Snyder, 2014; Pew Center on the States, 2009). There are a number of reasons why this happens, but none more important than probation's slow move away from a "helping" or rehabilitation-focused profession to one that is far more oriented to monitoring, supervision, and the detection of violations. As Todd Clear notes (Childress, 2014):

When we built this large prison system, we bracketed it with enormous surveillance, community surveillance activities on each end. On the probation side, we built a surveillance and rule structure that almost really nobody could abide by satisfactorily 100 percent of the time. If I have 100 percent surveillance capacity, I'm going to find problems, and then I'm going to have to respond to them.

Even while being starved for meaningful resources, it has become easier to detect probation violations and respond punitively. The technological ability to test for drugs, nonpayment of fines and fees, and curfew checks is now widespread and inexpensive. Combined with the increasing number of conditions, a probation population that has both high levels of poverty and drug use, and the increasingly punitive turn among probation agencies, the trend of increasing technical probation violations should come as no surprise.[1] Also not surprising is that probation agencies are so severely underfunded that they simply do not have the resources to respond to technical violations in a graduated or nuanced way. Few probation agencies have the ability to "step up" people on probation who technically violate (or are at risk of violating) to drug treatment, cognitive behavioral therapy, or employment programs. As a result, probation officers with little to no resources, eager to manage risk and their large caseloads, default to the most available option they have — the most expensive and punitive option — the formal violation process which often results in jail or prison (Jacobson, 2005).

The result is that 15 percent of all persons who exit probation ultimately go to jail or prison (Herberman and Bonczar, 2014). This translates to 319,695 individuals of the roughly 2.1 million who left supervision in 2014, and almost 15 percent of the 2. 2 million people in jail and prison.[2] Perhaps ironically then, the largest alternative to incarceration in the United States is simultaneously one of the most significant drivers of mass incarceration.

Downsizing Probation

The national picture

Figure 1 shows the national trends in U.S. probation, prison, and jail populations since 1980. As noted earlier, the country's probation system has decreased. From 2007 to 2014, the

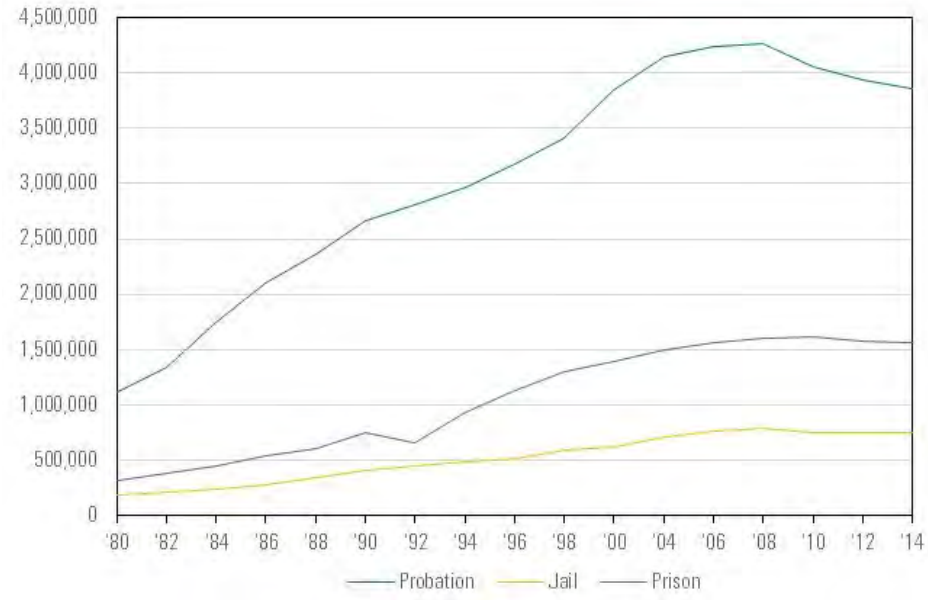
number of people on probation declined by 10 percent (Kaeble et al., 2015). Simultaneously, there was a 25-percent decline in the U.S. rate of violent victimization (from 27.2 per 1,000 households in 2007 to 20.1 per 1,000 households in 2014) (Truman and Langton, 2015). While the dynamics regarding the probation population and the violent crime rate are complicated and no causality is being argued here, it is clear from these two aggregate measures that it is possible to achieve significant reductions in crime as the total numbers of people under probation supervision decline. At a minimum, it disproves the notion that more people have to be under criminal justice control for crime to decline. Also, as crime is dropping much more precipitously than probation populations, it means that the "probationer-per-offense" rate is actually rising.

Simultaneous with the overall decline in those under probation supervision has been a decline in the total number and rate of people incarcerated in the United States. From 2007 to 2014, the total prison population declined by 2.2 percent while the overall incarceration rate actually declined by 7 percent (the rate is a larger decline because the total population in the United States continues to increase) (Carson, 2015). Again, this aggregate national trend runs counter to the argument that more people have to be placed on probation in order for the prison population to decrease. Both can decrease at the same time, as the past seven years have shown.

A local example of downsizing probation — the case of New York City

Perhaps more instructive than national probation and prison trends is a local example of a tremendous decline in the probation population, what has happened in terms of

Figure 1. **National trends in U.S. correctional populations (1980-2014)**

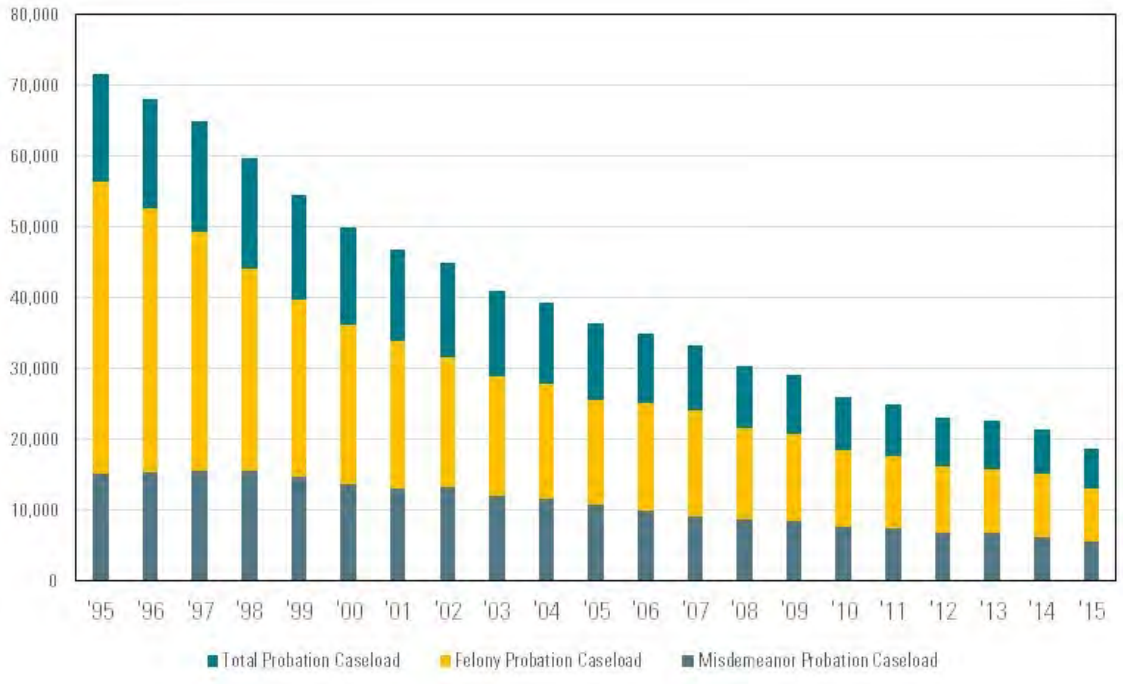


Source: Bureau of Justice Statistics. Correctional Populations in the U.S. Series (1980-2014). Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. Available online: https://www.bjs.gov/index.cfm?ty=pbse&sid=5. Note: Data are not available for 2002.

crime and incarceration during the same time period, and how it was achieved. Between 1996 and 2014, probation sentences for felony arrests in New York City declined by a staggering 60 percent (from 9,203 to 3,652) (New York State Division of Criminal Justice Services, n.d.). By 2014, only 4.3 percent of felony arrestees in New York City were sentenced to probation, compared to 25.8 percent who received conditional or unconditional discharges, fines, or other less formal sanctions.[3] As shown in figure 2, because of this steady decline, the adult probation population in New York City decreased from a total of more than 68,000 in 1996 to 34,982 in 2006 and to 21,379 in 2014 (New York State Division of Criminal Justice Services, Computerized Criminal History System, personal communication, September 20, 2016). These data indicate a nearly 50-percent decline over 10 years and as far as we can determine, the 69-percent decline over 18 years in the number of people under probation supervision is the largest local-level probation decline in the United States.[4]

While this decline was happening, did crime increase in New York City? Did the city's jail population increase? Did the state's prison population skyrocket under the assumption that if the use of probation as an alternative declines, the prison population will increase? The answer to all three of these questions is an emphatic no. From 1996 to 2014, the city's violent crime rate declined by 57 percent (New York State Division of Criminal Justice Services, n.d.), and its jail and prison incarceration rate declined by 55 percent (Holloway and Weinstein, 2013; Roche

Figure 2. Trends in New York City probation caseload (1995-2015)



Source: New York State Division of Criminal Justice Services Criminal History System, personal communication, September 20, 2016. Note: Caseloads were calculated based on the number and average length of court-imposed sentences. Convictions include both adults and youthful offender adjudications.

and Deacy, 1997; U.S. Census Bureau, 2000, 2014; see also Greene and Schiraldi, 2016).[5] At a high level then, we see the same trend in New York City (although longer lasting and steeper) that is occurring nationally — simultaneous and significant declines in probation population, crime, jail, and prison.

In addition, the nature of probation changed dramatically during this time. Beginning in 1996, New York City began to use electronic kiosk reporting in lieu of face-to-face reporting for low-risk probation clients. By 2003, approximately 70 percent of the probation population was reporting to a kiosk instead of a probation officer (Wilson, Naro, and Austin, 2007). The kiosk asks a number of questions about the individual's current activities and generates new appointments automatically (the New York City Department of Probation can regulate the frequency of kiosk reporting, depending on the current status and the person's behavior). Perhaps counter-intuitively, even with this lighter touch for low-risk individuals, the rearrest rate actually declined once the kiosks became operational — from a rate of 31 percent to 28 percent, according to an evaluation by the JFA Institute (Wilson, Naro, and Austin, 2007).

Additionally, since the savings from implementing the kiosks were used for a variety of cognitive behavioral interventions and greater levels of supervision for high-risk probation clients, the rearrest rate for this group declined as well — from 52 percent to 47 percent. The evaluation concludes by saying (Wilson, Naro, and Austin, 2007:17):

If kiosk reporting were a form of no supervision as some critics allege, one might speculate that increasing the use of the system to include a greater proportion of probationers would decrease the deterrent function of probation and lead to increased criminal behavior. Our analysis of the data indicates that expanding the kiosk system to include all probationers identified as low-risk was associated with a small reduction in subsequent criminal behavior. More importantly, the more intensive supervision provided to higher-risk probation tracks was associated with a significant decrease in two-year rearrest rates.

In a further effort to minimize unnecessarily long probation terms for many of those who had demonstrated years of compliance (until last year, all felony probation sentences in New York City were five years), in 2010 the New York City Department of Probation started to aggressively recommend early discharge for those who met the criteria the department had developed. Whereas only 3 percent of all people discharged from probation were recipients of early releases in 2007, by 2012 this proportion had risen to 17 percent (New York City Department of Probation, 2013). Moreover, the early release of individuals who met the compliance criteria did not compromise public safety — in fact, the one-year felony rearrest rate for those discharged early from probation in 2010 was lower than the comparable rate for individuals who continued on probation until their maximum expiration date (3 percent vs. 4.3 percent) (New York City Department of Probation, 2013).

Further, in 2014, New York State law was amended to allow judges to sentence most persons receiving felony probation to three, four, or five years of probation (instead of five years only) and persons convicted of the highest level misdemeanors to two or three years (instead of three years only) (Porter, 2015). During the first year the law was implemented, 16 percent of persons sentenced to probation for felonies in New York City received a sentence of less than five years, compared to only 3 percent in the rest of the state; for misdemeanors, these numbers were 11 percent and 4 percent, respectively (New York State Division of Criminal Justice Services, Office of Justice Research and Performance, 2015).

Finally, despite focusing its supervisory resources on higher-risk clients by supervising more than two-thirds of people on probation via kiosks, and supervising clients for shorter time periods through shorter terms imposed by judges and the increasing use of early discharge, the New York City Department of Probation has made far lower use of violations than its counterparts in the rest of New York State. In 2012, only 3.1 percent of those on probation in New York City were violated, compared to an average of 11 percent in the rest of New York State. This represented a 45-percent reduction in violations from 2009 (New York City Department of Probation, 2013).

On a macro-level, several large-scale changes happened over two decades in the New York City Department of Probation. First, the number of individuals on probation decreased dramatically since the mid-1990s (by about two-thirds) and simultaneously there were large declines in the use of jail and prison and in the city's crime rate. Second, among those on supervision, all individuals assessed as low-risk were moved to electronic kiosk reporting — effectively ending traditional face-to-face supervision for this group — and there was a successful push to recommend early discharge for those on probation who had met the department's criteria for successful compliance for at least 18 months. Third, and most recently, persons placed on probation in New York City began receiving probation sentences lower than the maximum at rates several times higher than persons sentenced to probation in the rest of the state. Fourth, the violation rate for those on probation in the city fell to 3.1 percent, a fraction of the state average. Finally, probation resources that became available because of the use of kiosks, early discharge, and shorter probation terms were diverted to supervising and providing supports for higher risk individuals.

The final part of this story is that the per capita budget for those remaining on probation increased dramatically despite a significant overall decrease to the budget for the New York City Department of Probation. In 2002, the total budget was $96.8 million for a total caseload of 75,000 clients, or a bottom line average of $1,290 per person on probation.[6] By 2016, the total budget for probation had declined significantly, to $73 million, due to the declining numbers of those on probation. However, for the remaining 21,000 probation clients, the per capita spending was $3,476 — almost three times the level in 2002. Even if we discount for inflation over that time period, the cost per person on probation is

now $2,642 — twice what it was in 2002.[7] This has allowed the department to fund a variety of programmatic initiatives, including the NeON (Neighborhood Opportunity Network) Centers, a series of decentralized neighborhood probation offices that offer a variety of employment and education programs. From 2010 to 2014, the department increased the number of contracts for community-based nonprofit services (from two to 54) while reducing its staffing by 19 percent (from 1,215 to 979).

Conclusion

Clearly, the most recent national numbers, as well as the example of one of the largest probation departments in the U.S., demonstrate that it is possible to downsize probation while simultaneously decreasing incarceration and increasing public safety. New York City provides an example of how this can be done and how other jurisdictions can achieve similarly substantial decreases in the range of 50 percent over 10 years.

As discussed in this paper, there are a number of ways to accomplish this downsizing — from police departments doing more street-level diversion, to courts making more use of "light-touch" alternatives to formal probation, to legislatures passing laws to reduce probation terms and/or allow for early discharge from probation. Any mix of these strategies can greatly reduce the number of people under active probation supervision.

Additionally, given the amount of research that shows the great majority of failures on community supervision occur within the first year of supervision (Austin, 2010; Klingele, 2013), there is rarely a reason to continue keeping an individual on supervision for five to 10 years, as many probation departments do. For some groups, such as high-risk sex offenders, longer terms in fact make sense (Petersilia, 2007). In general, though, probation terms should be eliminated for certain low-risk individuals in favor of conditional discharges or informal, unsupervised probation, an option that already exists in many states and should be created where it does not exist. For those who are sentenced to active probation, terms should be significantly shortened or, at a minimum, courts should have the option of a range instead of prescribed terms.

Finally, similar to what New York City has done over the past several years, probation departments should (1) place lower-risk clients onto banked caseloads monitored by light-touch mechanisms such as kiosks or computerized reporting, and (2) aggressively pursue early discharge for clients with a demonstrated record of success and compliance. These efforts are currently underway across the country. For example, 38 states have some form of "earned discharge" that allows people on probation or parole to shorten their sentences. In Missouri, three years of data demonstrate that a policy of earned compliance credits has successfully reduced the state's supervised population without jeopardizing public safety (The Crime Report Staff, 2016; Zafft et al., 2016).

One incentive that might mitigate against these reforms is that some departments "make a living"

off the fines and fees they charge probationers. Thus, the fewer people under supervision and/or the more people whose length of stay on probation is shortened, the less money these departments will collect. Indeed, there is a double disincentive to discharging people from probation who are performing well early because, ironically, they are often the most likely to both pay their fees and inflate the department's success rate. As we have argued, these fees constitute terrible public policy and work against the public safety interests of communities, but we understand the fiscal stress that makes these policies attractive to local departments and counties in general. This is why we argue that probation departments should be allowed to reinvest the savings from downsizing back into the delivery of services to those who are, in fact, the highest-risk population under supervision. It would also allow for an end to the system of probation fines and fees because these departments would essentially have a revenue source from downsizing.

There is no extant scenario, other than decreasing the probation population, that will adequately fund the important work probation is charged to do with those under supervision who pose the highest public safety risk. Probation directors have argued for decades that, given large and growing caseloads and a segment of a truly high-risk population, probation as a field needs a massive infusion of funding. Those arguments have never been successful. The substance of that argument aside, probation agencies and directors simply do not have the public and political support that their colleagues in corrections, policing, and the judiciary have — and that is not going to change in the near future. It is foolhardy, then, to keep reaching for that political and fiscal moment when new resources will pour into the field. It will not happen.

The way for probation to be better resourced is to downsize — as in the case of New York City, which reaped financial benefits from downsizing, as did its probation department. Probation can now spend twice as much per client as it could 14 years ago — the equivalent of doubling the department's budget — something that could not have happened under any other circumstances. Also, we do not see any other way for this to happen in other probation agencies.

In addition to the financial benefits of downsizing, this kind of significant reduction can remove the lowest-risk population from probation and divert them into other, more appropriate light-touch alternatives. More than that, it can push those with demonstrated success and compliance into mainstream society more quickly, eliminate unfair and unjust fines and fees, greatly reduce the numbers of those who are violated and sent back to prison, and allow probation departments to focus programs and services on those who most need them and pose the greatest public safety risk. Finally, and most important, if evidence shows that depriving millions of people, even partially, of their liberty by placing them on probation is not effective at promoting public safety or reducing incarceration, it is contrary to the basic American principle that abhors unwarranted government intrusion into individual liberty to continue to do so.

Unlike (for the most part, failed) strategies that revolve around convincing legislatures, county managers and mayors, budget directors, and governors to pour massive new funding into the field, probation directors can actually take the lead in downsizing and retaining the savings. They will need the assistance of some of these stakeholders and will need to forge key partnerships with them, but they are now being presented with a much more attractive public safety and fiscal strategy that does not require any large-scale investment but produces large-scale results in terms of public safety and reduced incarceration. The strategy and implementation will look different in every county and state but the benefits will be the same — a smaller, more just and efficient probation system that will be integral to both delivering better public safety and reducing mass incarceration.

Endnotes

1. We are not saying that there have been no attempts to reduce technical violations or the use of long jail and prison sentences as a response to those violations.

2. Note that 15 percent is not the actual percentage of the jail and prison population composed of probation violators on a given day — this number is intended to illustrate the magnitude of the problem. The number of people who exit probation each year and who are eventually incarcerated is almost one-fifth of the nation's incarcerated population.

3. For misdemeanors in New York City in 2014, the comparable percentages were as follows: 0.3 percent of those arrested for misdemeanors were sentenced to probation, compared to 27.6 percent who received conditional/unconditional discharges, fines, and other informal sanctions (New York State Division of Criminal Justice Services, n.d.).

4. The reasons for this decline are complicated and multifaceted; for the purposes of this paper, the most important factor is that it happened. For a longer discussion of the decline in crime and incarceration in New York City during this time period, see Greene and Schiraldi (2016).

5. This incarceration rate is the number of New York City residents in prison and jail divided by the city's population.

6. This does not mean that $1,290 was actually spent on each person under supervision. The number includes all fixed costs (along with other expenses such as funding for pre-sentence investigations) and funding is not distributed equally among all those on probation, but it gives a sense of the resources available to the department.

7. The National Consumer Price Index inflation rate from 2002 to 2016 was 34 percent (U.S. Department of Labor, Bureau of Labor Statistics, 2016).

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Author Note

Michael P. Jacobson is the Director of the Institute for State and Local Governance and Professor of Sociology at City University of New York, and former Commissioner of New York City Probation.

Vincent Schiraldi is Senior Research Fellow directing the Program in Criminal Justice Policy and Management at Harvard Kennedy School, and former Commissioner of New York City Probation.

Reagan Daly is the Research Director of the Institute for State and Local Governance at City University of New York.

Emily Hotez is a Research Associate at the Institute for State and Local Governance at City University of New York.

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EAST BAY COMMUNITY LAW CENTER

Updated November 7, 2017

CHEAT SHEET TO SEALING JUVENILE RECORDS IN CALIFORNIA

Which applies to you?*

I'm currently on juvenile probation.

Talk to your lawyer about record sealing. You may be eligible to have your record automatically sealed on the same day you get off probation. *See* W & I Code § 786.

My record was not sealed.

What can I do now?

You may still be eligible this way:

My case was dismissed before trial. I never was on probation.

You can get your court, police and related records sealed. *See* W & I Code § 786 (This law is effective Jan. 1, 2018 per AB 529).

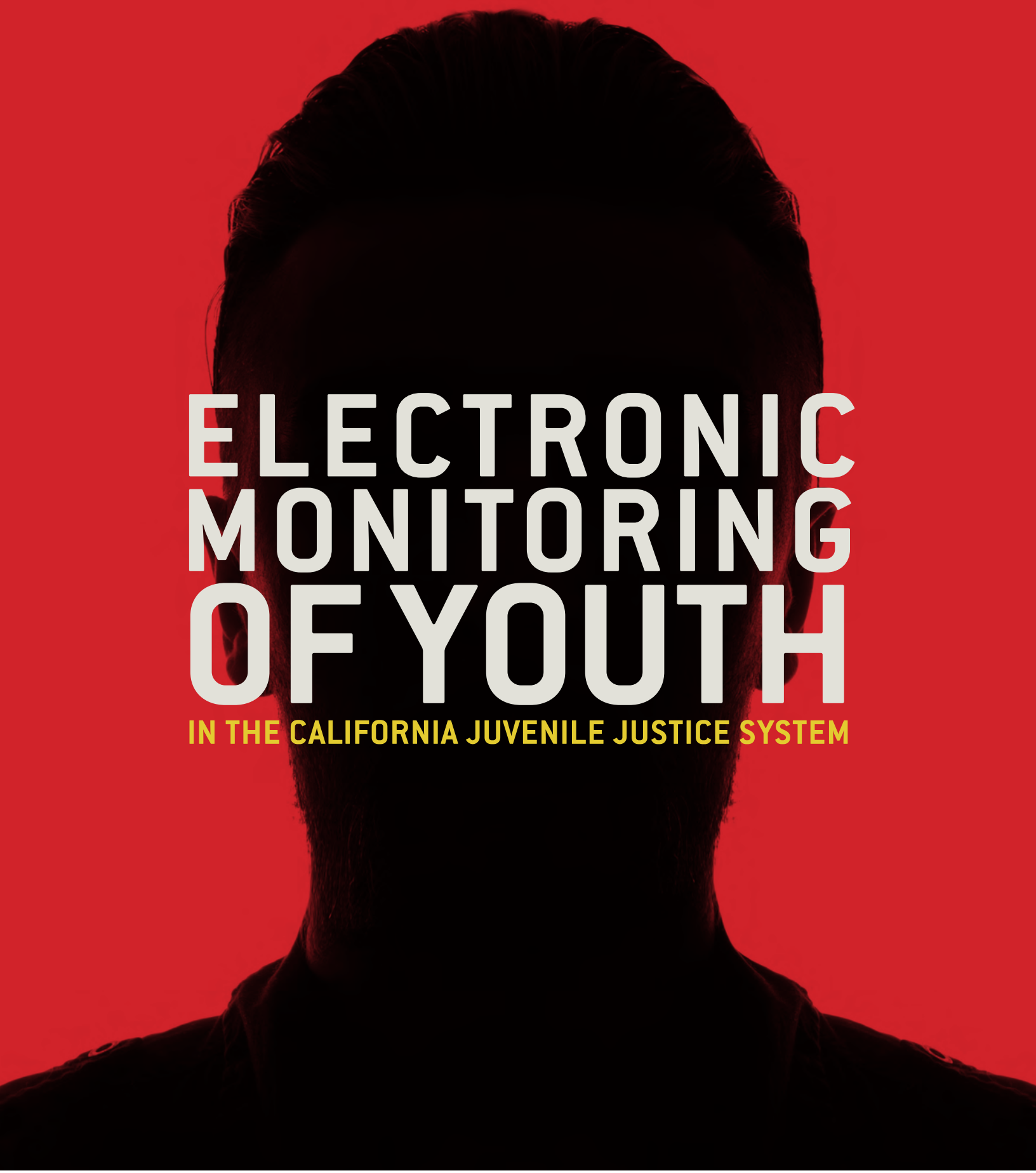
I got off juvenile probation before Jan. 1, 2015
OR
My record was ineligible for sealing under W & I § 786

BASIC CRITERIA FOR RECORD SEALING:
-Currently age 18 or older *or* 5 years since case ended;
-No adult convictions for felony or misdemeanors involving moral turpitude;
-Not on adult probation; and
-Proof of rehabilitation (i.e., letter to court explaining progress). *See* W & I Code § 781.

How to do it:
(1) You must apply for sealing in the last county where you had a juvenile case.
(2) Complete an application for sealing. You can get an application by calling the probation department in the county where you were last on probation, **OR** you can complete the California Judicial Council form, entitled "JV 590", available here: http://www.courts.ca.gov/forms.htm
(3) Follow application process. It's ok if you don't know the name of every agency. Complete the application as best you can and then submit it.

If you are under 26 years old it is free to get your record sealed. If you are over 26 and cannot afford the fee, ask for a waiver.

*New laws allow for selective sealing of very serious offenses that appear on the W & I Code § 707(b) list. Talk to your lawyer about whether you are eligible. *See* In re David T., 13 Cal. App. 5th 866 (2017); W & I Code § 781 & § 786.



ELECTRONIC MONITORING OF YOUTH

IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM

EAST BAY COMMUNITY LAW CENTER

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Samuelson Law, Technology & Public Policy Clinic

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ELECTRONIC MONITORING OF YOUTH IN THE CALIFORNIA JUVENILE JUSTICE SYSTEM

CONTENTS

I.

OVERVIEW

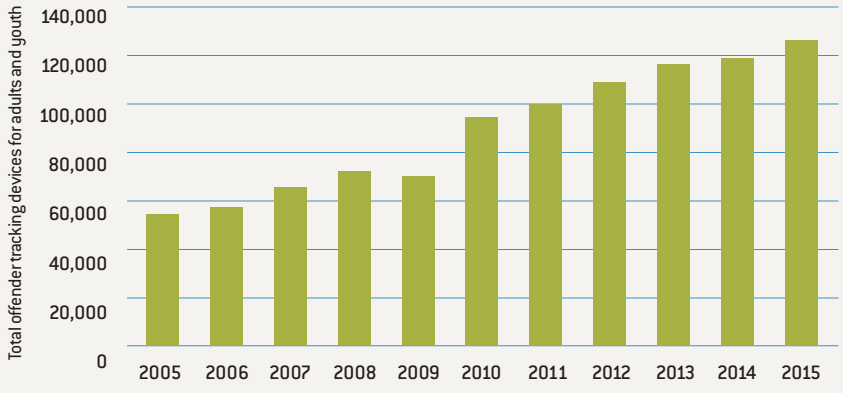
One of the most significant changes in the juvenile justice system in recent decades has been the proliferation of electronic monitoring of youth.[1] Every state except New Hampshire has some form of juvenile electronic monitoring.[2] Electronic monitoring is used in a variety of contexts, including as a condition of pretrial release or probation.[3] Yet despite the rapid proliferation of electronic monitoring of youth, there is little research about how this technology is used, whether it is effective, and how it affects the youth who are tracked. While electronic monitoring may be preferable to incarceration, juvenile electronic monitoring programs are still burdensome and should be utilized fairly and responsibly.

This report is the first comprehensive review of juvenile electronic monitoring program rules across an entire state.

In an effort to better understand how juvenile electronic monitoring programs operate in California, the Samuelson Law, Technology & Public Policy Clinic, in partnership with the East Bay Community Law Center, sought information from all 58 California counties about the terms and conditions youth must comply with while being monitored electronically.[4] We are releasing the documents we obtained to the public, together with this analysis.[5]

This collection of documents and this report are a product of our collaboration with the East Bay Community Law Center, East Bay Children's Law Offices, and the

Use of Electronic Offender-Tracking Devices



Note: This survey counted the number of all accused and convicted criminal offenders who were monitored with ankle bracelets and other electronic tracking devices in the United States from 2005 to 2015. The survey did not distinguish between youth and adults, nor did it break results down by state. Pew Charitable Trusts, Use of Electronic Offender-Tracking Devices Expands Sharply (2016).

Credit: 2016 The Pew Charitable Trust

Alameda County Public Defender's Office. These offices defend youth in Alameda County juvenile court. Attorneys and advocates at these organizations expressed concern that juvenile electronic monitoring requirements are unrealistically onerous, disproportionally impact youth of color, and undermine the rehabilitative purpose of the juvenile justice system.[6] In response, the Clinic investigated electronic monitoring conditions throughout California. This report offers a high-level overview of the terms and conditions commonly used in California. It also highlights written rules and policies that seem particularly burdensome on their face. Our inquiry is currently limited to the information available in the records we obtained, and does not explore how these programs operate in practice. We hope to move beyond the paper record to explore questions of implementation and practice in future work. We also hope that other scholars, practitioners, and advocates will do so as well.

We are releasing all of the documents we obtained to the public to facilitate a better understanding of how juvenile electronic monitoring programs are formally structured. This is the first time anyone has comprehensively canvassed juvenile electronic monitoring program rules across an entire state. These documents will allow those working in the field of juvenile justice in California to see how their county's written program rules line up against those in effect elsewhere. All of these programs impose burdens upon youth and their families—no one county has created a model approach. Yet some rules in some counties impose program requirements that are substantially less restrictive and allow youth comparatively greater freedom and flexibility.

There is a pressing need for research to evaluate whether electronic monitoring is effective in reducing recidivism rates or improving other outcomes for youth—and, if so, under what circumstances.[7] There is a growing consensus that courts should rely on evidence-based practices when making decisions and formulating policy,[8] and yet there is little evidence thus far demonstrating the effectiveness of juvenile electronic monitoring programs. California's juvenile justice system is expressly intended to promote the correction and rehabilitation of youths.[9] But without access to evidence-based program data, judges and policy-makers are unable to evaluate whether there are rehabilitative effects to these programs or whether these programs are excessively punitive.

Moreover, these rules disproportionately affect families of color. Youth of color are overrepresented at every stage of the juvenile justice system.[10] And once involved in the system, they are punished more harshly, and for longer, than other comparable youth.[11] As a result, research about the specific ways that electronic monitoring programs disproportionately affect youth of color is urgently needed.

We hope these records will assist researchers, juvenile court judges, attorneys, community organizations, and policymakers, and initiate a broader discussion about how these electronic monitoring programs can be more fairly, effectively, and efficiently used.

ELECTRONIC MONITORING TYPES

There are two main types of electronic monitoring devices used to track an individual's movements.

GPS DEVICES

GPS devices usually rely on satellites and cellular towers to continually track a person's movements.

RADIO FREQUENCY

Radio frequency devices, which usually rely on battery-powered transmitters and a home-based receiver, can tell whether a person is home but cannot track movements outside the home.

II.

TERMS AND CONDITIONS AND POLICY DOCUMENTS

We sought information from all 58 California counties about their use of electronic monitoring on youth. We were particularly interested in the terms and conditions youth must comply with while subject to electronic monitoring,[12] as well as the policies and guidelines the counties have implemented to administer electronic monitoring programs. We received responses from all 58 counties, although some counties provided more comprehensive records and information than others, and seven counties indicated that they do not currently have juvenile electronic monitoring programs in place.[13]

Many counties limit where youth can go and require youth to obtain permission for schedule changes, but in some counties these restrictions are more burdensome than in others.

The counties that do have juvenile electronic monitoring programs often impose similar requirements. For example, most counties limit the movement of youth enrolled in an electronic monitoring program to a few specific destinations, require youth to give advance notice or obtain prior approval of schedule changes, and require youth to keep their electronic monitoring devices charged. Yet there is often substantial variation in how these conditions operate.[14]

For example:

RESTRICTIONS ON MOVEMENT: At least 43 counties prohibit youth assigned to electronic monitoring from leaving their home except to attend school, work, court, religious services, or some other preapproved activity.[15] But a few counties depart from this model, allowing certain youth assigned to electronic monitoring greater flexibility in their movements.[16] For example, Santa Barbara County uses GPS to exclude some youth from entering a predetermined "exclusion zone," but otherwise allows them free range of movement.[17]

RULES FOR CHANGES IN SCHEDULE: For the counties that require preapproval for all excursions except activities such as work or school, the amount of time that the youth must secure this approval in advance varies. For example, at least fifteen counties require that the youth either ask permission or obtain approval to deviate from their schedule 24 hours in advance.[18] By comparison, at least seven counties require that the youth seek or obtain approval 48 hours in advance[19]; at least one county requires that the youth seek approval 72 hours in advance[20]; at least one county requires that the youth

seek approval the Wednesday prior to the schedule change;[21] and at least four counties require that the youth seek or obtain approval a full week in advance.[22] The remaining counties either do not have electronic monitoring programs in place for youth or do not specify when approval for a schedule change must be sought or obtained.

RULES FOR CHARGING DEVICES: Many counties require youth to charge and maintain their electronic monitoring devices. But the rigidity of these requirements varies. At least two counties require that youth charge their devices within specific hours during the day.[23] And at least six counties require that youth charge the devices once in the morning and once in the evening.[24] The remaining counties appear to provide more flexibility, allowing youth to choose when in the day to recharge the monitoring equipment.[25]

NUMBER OF RULES: The number of rules contained in these electronic monitoring agreements also varies. Some counties have enacted extensive program requirements that are reflected in dozens of rules that youth must follow. For example, Lassen County imposes 56 rules upon youths.[26] In comparison, Solano County imposes only eight rules,[27] and San Francisco imposes only 10.[28] This is often in addition to separate probation conditions.

CONSEQUENCES FOR VIOLATING PROGRAM RULES: Counties provide varying levels of guidance as to how probation officers should respond to a violation of the electronic monitoring rules. Some counties provide little or no guidance.[29] Others, however, have created more specific policies that outline a graduated response to violations. For example, Glenn County provides a progressive discipline grid for youth who violate electronic monitoring rules, with consequences ranging from counseling or writing an essay to the arrest and detention of the youth. The County also provides that "the least restrictive consequences required to change the behavior should be employed."[30]

III.

POTENTIALLY BURDENSOME PROGRAM REQUIREMENTS

The rules and policy records we obtained offer insight into how counties administer their juvenile electronic monitoring programs. Below, we highlight the terms and conditions that we speculate may prove overly burdensome for youth and their families.[31] Our present inquiry is limited to the information available in the records we obtained. However, we hope that these records and this analysis will serve as the starting point for further research. In particular, we hope that researchers, juvenile justice experts, and youth advocates will examine how these terms and conditions are enforced. This information will allow for a more comprehensive, informed, and accurate understanding of how electronic monitoring affects youth and their families.

A. Some Terms and Conditions May Disproportionately Burden Low-Income Families

Because of the financial burdens imposed by electronic monitoring programs, poor youth may be forced to remain incarcerated while their wealthier peers are released on a monitor.

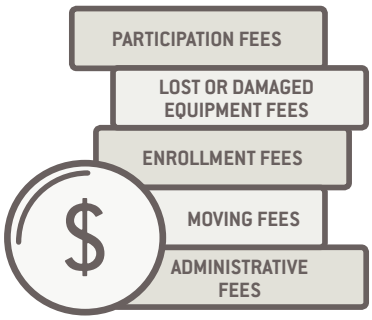
The first category of terms and conditions that we highlight are those that may impose an outsized burden on low-income families. These rules deserve particular scrutiny. Because of the financial burdens imposed by electronic monitoring programs, poor youth may be forced to remain incarcerated while their wealthier peers are released on a monitor.[32] Moreover, Black and Latino families are disproportionately low-income.[33]

We have identified different types of terms and conditions that may have a disproportionate impact on low-income families.

- Many counties require youth and their families to pay to participate in an electronic monitoring program. These counties **require that youth enrolled in electronic monitoring programs pay a daily, weekly, or monthly fee**.[34] Many counties also require that youth pay for any lost or damaged equipment, potentially burdening the family with thousands of dollars in costs.[35] Some counties also impose additional costs, such as initial enrollment fees,[36] administrative fees,[37] moving fees if the youth changes his or her residence,[38] or non-refundable application fees.[39] Moreover, counties may spend a substantial amount trying to recoup these fees from families. As a result, these counties may recover only a small portion of these electronic monitoring costs by charging fees to families.[40]

- Some counties may **make it overly difficult for a youth to demonstrate their inability to pay for their participation in an electronic monitoring program**. For example, one county—Madera—has contracted with BI Incorporated, one of the nation's largest providers of electronic monitoring technology and equipment,[41] to administer its electronic monitoring program.[42] The county produced a policy and procedure manual for case managers employed by BI Incorporated, and the manual appears to be an internal company document.[43] It contains a number of provisions and policies that may make it difficult for youth to demonstrate their inability to pay. For example, when a youth claims indigent status, the parent or guardian must complete a financial evaluation form. The manual notes, "It is anticipated that clients will not provide complete information, or neglect to submit supporting documents in a timely manner."[44] Moreover, it provides that when the BI employee and the family do not reach a fee agreement, the family must provide "sufficient proof of their income and monthly income for all working members of the family," as well as expense information. It notes that families "oftentimes neglect or fail to provide documentation in an expedient manner" and "leave information incomplete either innocently or intentionally." Such required documentation includes "verifiable receipts, pay stubs, rent receipts, water [sic] gas bills, child care costs, insurance receipts, etc."[45] The manual further states that if the youth and their family fail to provide documentation or to dispute the proposed daily rate, the youth is to be charged the higher "target rate" of $35 per week for a cell unit and $80.50 per week for a GPS unit until the issue is resolved.[46] This language leaves open the possibility that the families will incur unaffordable fees for an extended period due to stringent paperwork requirements.[47]
- Some counties **require that youth have or install a landline or cell phone**.[48] Certain counties permit the probation office to arrange access to a phone for a youth who does not have one,[49] or stipulate that a youth without access to a telephone may be released on home supervision without electronic monitoring.[50] Other counties, however, prohibit youth from participating in an electronic monitoring program if a parent or guardian cannot provide access to a telephone.[51] Many counties also require that families remove call waiting, call forwarding, blocks, voicemail, video or conference call, repeat dialing, call return, or dial-up internet, which may prove difficult for a parent or guardian who relies on a home phone for business purposes.[52] At least one county requires that youth and their families pay the toll costs of calls or change their number to a local area code.[53] And some counties explicitly specify that if either the electricity or telephone service is disconnected for failure to pay, the youth will be returned to custody.[54] This latter provision not only unfairly incarcerates youth for their families' inability to pay, but it may also strip a family of its ability to make difficult financial decisions—to choose, for example, to buy groceries or medicine rather than pay a phone or electricity bill.[55]

HOW COSTS CAN STACK UP



- Some counties have established rules and policies that **contain subjective criteria for releasing youth on electronic monitoring, which may result in poor youth and youth of color being excluded from electronic monitoring programs**.[56] For example, one county provides that probation officers should consider "the trustworthiness of the minor's parent(s)/guardian(s)/approved caregiver(s) to monitor and report the minor's behavior in the home" when deciding whether to assign a youth to electronic monitoring.[57] Another county instructs probation officers responding to an electronic monitoring violation to consider the "background of youth" when determining what sanction to impose.[58] These considerations are subjective and prone to racial bias.
- At least five counties **require parental or guardian supervision of the youth at all times that the youth is home**.[59] Again, low-income families may be unable to comply with this requirement. This rule will also have a disproportionate impact on single-income families. For these families, the requirement that a parent or guardian remain home with their child after school or during the weekend may be prohibitively burdensome.[60] And if a child has been suspended or expelled from school, this requirement is all the more burdensome. Even when the rules do not require constant supervision by guardians, guardians may still feel compelled to miss work, potentially putting their jobs in jeopardy, in order to care for a child who is on electronic monitoring and therefore cannot leave the house.
- Some terms and conditions **regulate the youth's means of transportation**. For example, one county requires that youth "agree not to change [their] agreed upon transportation method without written authorization from the program staff."[61] This type of requirement may prove difficult for families that do not have consistent or predicable access to transportation, including those that depend upon unreliable forms of public transportation.[62]
- Many of these electronic monitoring rules and policies **require families to plan their schedules far in advance**. Some counties require significant advance notice for any change in the youth's schedule[63] or require devices to be charged at very specific times.[64] Such advance planning can prove difficult, if not impossible, for low-income families. An estimated 17 percent of the workforce has an unstable work shift schedule, and roughly 40 percent of hourly workers do not know their schedule until a week or less in advance.[65] Moreover, the lowest-income workers face the most-irregular schedules.[66] These unpredictable work patterns will likely make it difficult for many low-income shift workers to comply with rules that require substantial advance planning.

B. Some Terms and Conditions May Raise Privacy Concerns

By their very nature, electronic monitoring devices collect an enormous amount of information about a youth's location, activity, and movement. The Supreme Court has emphasized in recent years the extent to which electronic tracking devices raise new and unique privacy concerns, noting that such devices provide an intimate, comprehensive, and accurate depiction of an individual's daily movements—all at a relatively low cost to the government.[67] But despite the scope and invasiveness of such data collection, few counties provided information about privacy protections for youth enrolled in electronic monitoring programs.[68] Without policies in place to govern the collection, use, and retention of this information, counties—and the private vendors they rely on for electronic monitoring services—may gather and retain data beyond what is necessary to meet the needs of the program.

- Some of the terms and conditions may **raise significant privacy concerns**. For example, Mariposa County's terms and conditions provide, "I understand that all movement will be tracked and stored as an official record."[69] San Francisco County's terms and conditions provide that "all information collected during [the youth's] participation on the program may be turned over to anyone with a legal right or need to know; this automatically includes all law enforcement agencies, courts and probation or parole agencies."[70] And Alameda County's contract with a private electronic monitoring company that provides GPS equipment and tracking services requires that the company implement "a method of archiving recorded calls and/or reports for a minimum of seven (7) years."[71] These provisions permit enormous amounts of data to be accessed by large numbers and categories of people. Given the sensitivity of location data, such data should be collected only to the extent necessary to comply with program goals and requirements; should be used only for probation-related purposes by individuals actively involved with a youth's case, or by researchers who have been granted access to responsibly anonymized data; and should be subject to reasonable deletion policies once the youth is no longer enrolled in an electronic monitoring program.
- Many of the county rules and policy documents **fail to address data privacy at all**. They contain little information about what data is collected, where and how the data is stored, who has access to the information, or how long the information is retained. Many counties also fail to provide sufficient information about the privacy procedures surrounding a youth's request to deviate from their schedule. Although it is possible that information about these privacy policies is enumerated in other county records, we saw little evidence in the records provided to us that youth are given adequate information about how the data is used, stored, and retained.

Electronic monitoring can generate enormous amounts of sensitive data and make it available to broad categories of people, but few counties provided information about privacy protections for youth.

DISPARITY IN NUMBER OF RULES

There is one county in California that requires youth to follow 56 electronic monitoring rules, while there is another county that requires youth to follow only 8 electronic monitoring rules.

C. Some Terms and Conditions May Be Overly Rigid or Inadvertently Set Youth Up to Fail

Some terms and conditions may be too strict or inflexible, making it difficult for youth to comply with the rules, while at the same time failing to provide any clear benefit to the youth or to the public. Rules that are too stringent may result in a high number of technical violations,[72] resulting in the potential detention of youth and increasing the administrative and bureaucratic costs of the program.

- Some terms and conditions may be **too inflexible**, particularly if the same outcome could be achieved with more permissive requirements that would be easier for youth to follow. For example, rules requiring youth and their families to obtain approval every time the youth leaves the home, with the exception of only certain preapproved activities, significantly restrict the movement of both the youth and the family. These requirements are difficult for youth and their families to follow. Moreover, such rigid restrictions on movement increase **a youth's isolation**, which may negatively affect a youth's cognitive and social development.[73]

Other terms may violate basic notions of fair treatment and due process.

- Some counties **do not exempt the youth from responsibility when equipment is damaged through no fault of their own**. For example, Butte County provides that "[a]ny damages associated with wearing or tampering with the monitoring device is a result of [the youth's] own negligence."[74] A representative from Siskiyou County stated that while the county "give[s] minors the benefit of the doubt to a certain extent if damage appears to be beyond their control or accidental," the youth can still "be charged per the contract."[75]

D. Some Terms and Conditions Are Overly Vague or Difficult to Comprehend

Youth have difficulty complying with electronic monitoring rules that they do not understand. And many of the counties' terms and conditions documents contain requirements that are overly vague or difficult to comprehend. Youth with learning disabilities are far more likely than other youth to become involved in the juvenile justice system, making it even more critical that electronic monitoring rules are clear.[76]

- Difficulties with reading comprehension may make it more difficult for youth **to comply with a very large number of rules**, such as those imposed by Lassen County, which requires youth to follow 56 rules.[77]

- Some terms and conditions **contain advanced language** that youth may not understand. For example, according to the Flesch-Kinkaid test, Lassen County's terms and conditions require a college-level reading comprehension.[78] And yet children are expected to follow these rules, and run the risk of re-incarceration if they fail to comply with them. As a result, the county's terms and conditions are not only numerous, but are also very difficult to read.[79]
- Youth are often **required to follow rules governing electronic monitoring in addition to rules governing their probation**. It is difficult for youth and their families to adhere to two separate sets of rules, particularly when those rules overlap, are duplicative, are in conflict, or are very numerous.[80] These separate probation and electronic monitoring requirements often force youth and their families to comply with dozens of complex and overlapping rules simultaneously.
- Some terms and conditions documents **include words or phrases that are overly broad or so vague as to be unclear**. For example, Lassen County's terms and conditions records provide, "The discovery and presence of alcoholic beverages, illegal drugs or narcotics, firearms or dangerous devices constitute a violation of my Electronic Monitoring Program, which may result in my returning to Juvenile Hall/ Jail."[81] But the records do not define the geographical scope of the restriction, nor whether the provision prohibits all members of the household from possessing or consuming alcohol or drugs in the home.

Some counties' electronic monitoring rules require a college-level reading comprehension.

E. Some Terms and Conditions May Be Insufficiently Related to the Goals of Rehabilitation

A final category of terms and conditions that raise concerns are those that do not, on their face, seem sufficiently related to the stated goals of youth rehabilitation. Such provisions may be unfair and unnecessarily restrictive of a youth's individual liberties, while at the same time may fail to provide any clear benefits to the youth or to the public more broadly.

- Mariposa County requires that youth agree to **keep their "residence maintained in a clean and sanitary manner"** while they are on electronic monitoring, and the county warns that failure to maintain a clean home could result in removal from the program.[82]
- Ventura County requires that youth will "**not cut [their] hair below a #2 clip (including fades)**."[83]
- San Bernardino County provides that youth "**shall not alter [their] appearance including but not limited to a haircut, shave, tattoo, or piercing without court approval**."[84]

IV.

AREAS FOR ADDITIONAL STUDY

There are limits to how much information can be gleaned by reviewing terms and conditions contracts and policy documents alone. Not every contract is drafted clearly, making interpretation difficult. More important, understanding the burdens of electronic monitoring depends not only on the formal terms and conditions of monitoring, but also on how they are enforced. Additional research is necessary, and we urge scholars, advocates, and practitioners to continue these critical efforts. The express purpose of California's juvenile justice system is to promote the correction and rehabilitation of youth.[85] Yet without the benefit of evidence-based research, judges and policy-makers do not have the tools necessary to determine whether there are rehabilitative effects to these programs or whether, to the contrary, these programs are overly punitive. Such evidence-based research will lend weight to those advocating for the reform of juvenile electronic monitoring programs and the elimination of the least effective and most punitive rules.

Evidence-based research will allow judges and policy-makers to determine whether juvenile electronic monitoring programs are effective and fair.

In particular, we believe that qualitative research documenting and analyzing the experiences of youth and their families, along with the observations of judges, as well as juvenile probation officers charged with running electronic monitoring programs, will allow for a more thorough analysis of how best to tailor electronic monitoring programs to fit the needs of youth. We also urge additional quantitative research into the ways in which these programs are enforced, including who is placed on electronic monitoring[86]; how long youth are electronically monitored; how often a violation of the terms and restrictions results in punitive consequences; whether youth of color are punished more often or more severely for infractions as compared to their white peers; whether other groups such as LGBTQ youth or youth with disabilities are subjected to discriminatory treatment; and whether there is significant variation in enforcement patterns among different probation officers within a county or among different counties.[87]

We encourage scholars and advocates to continue this work. This research will allow for a more thorough and comprehensive analysis of the efficiency, effectiveness, and fairness of juvenile electronic monitoring programs.

ENDNOTES

[1] In the criminal justice system, electronic monitoring is used by the government to enforce the conditions and restrictions assigned to an individual by a court. Individuals assigned to electronic monitoring are usually required to wear a device that captures information about their whereabouts or actions and transmits that information to the government. There are two main types of electronic monitoring used to track an individual's movement. There are GPS devices, which rely on satellites and cellular towers to continually track a person's movement. And there are radio-frequency devices, which usually rely on battery-powered transmitters and a home-based receiver that communicates with the government using a landline telephone in the residence. Radio-frequency devices are used to track whether the individual is home or not, but cannot track the individual's movement outside the home. Different counties in California use different technologies, and some counties use both radio-frequency devices and GPS devices for youth. *See* Matthew DeMichele & Brian Payne, Offender Supervision With Electronic Technology: Community Corrections Resource 28-30 (2009), https://www.appa-net.org/eweb/docs/APPA/pubs/OSET_2.pdf; Pew Charitable Trusts, Use of Electronic Offender-Tracking Devices Expands Sharply (2016), http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/09/use-of-electronic-offender-tracking-devices-expands-sharply.

[2] Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 Iowa L. Rev. 297, 299 (2015). In 2011, the American Bar Association urged governments to adopt electronic monitoring as an alternative to detention for eligible juvenile offenders. Am. Bar Ass'n, Resolution 104D: Adopted by the House of Delegates (2011).

[3] Weisburd, *supra* note 2, at 312-13.

[4] We obtained this information largely through Public Records Act requests, although some counties provided records through informal channels.

[5] We are releasing these records to the public in three appendices. A comprehensive set of all of the records that we received from each county are compiled in the Complete Appendix. Because the records we received are quite voluminous, we also broke down key records into two smaller and more manageable appendices. The terms and conditions that youth enrolled in electronic monitoring must comply with in each county are compiled in the Terms and Conditions Appendix. And the policy and procedure records governing juvenile electronic monitoring programs in each county are compiled in the Policy Appendix. We are also releasing a sample of the Public Records Act requests that we submitted to the counties. Those three appendices and the sample Public Records Act request can be found here: https://www.law.berkeley.edu/experiential/clinics/samuelson-law-technology-public-policy-clinic/electronic-monitoring-youth-california-justice-system/.

[6] Specifically, these attorneys presented anecdotal evidence—drawn from their experiences representing and working with youth—that electronic monitoring programs were being applied to youth who would not have been incarcerated in its absence; that youth on probation were being placed back in juvenile hall for violating even minor technical requirements; that less-restrictive means could be used to achieve the purpose of rehabilitating youth; that electronic monitoring rules were being enforced inconsistently; and that the rules were being enforced in a way that was potentially discriminatory toward youth of color. For an explanation of why we collected terms and conditions and policy records, rather than other forms of data, *see* discussion *infra* note 7.

[7] In the course of this project, we made efforts to gather empirical data for Alameda County that would allow for an examination of how the county's electronic monitoring program is administered. We sought, for example, data about when electronic monitoring is used, how long youth are placed on electronic monitoring, and which violations of electronic monitoring contracts are most frequent and result in the most severe punishments. However, we encountered significant obstacles to gathering this data. The county itself does not always collect and retain this data. And to the extent such data exists, it is often contained in individual case files, making it difficult to analyze in the aggregate. More broadly, confidentiality governs many aspects of how the juvenile justice system operates. This serves the strong interest of youth in not having the details of their records disclosed, with some collateral consequences for the ability of researchers to better understand the operation of the system.

[8] *See, e.g.*, Evidence-Based Practice, Cal. Courts, http://www.courts.ca.gov/5285.htm (last visited Apr. 8, 2017) ("Perhaps the most important reform in state sentencing and corrections practice taking place today is the incorporation of principles of evidence-based practice into state sentencing and corrections policy and practice.").

ENDNOTES

[9] Cal. Welf. & Inst. Code § 1700 ("The purpose of this chapter is to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses.").

[10] U.C. Berkeley Law School, Policy Advocacy Clinic, High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California 8 (March 2016). For example, in Alameda County, California, Blacks make up 12 percent of the county population but represent roughly 70 percent of the youth population in Juvenile Hall and 50 percent of youth under probation supervision and on electronic monitoring. *Id.*

[11] This is true both nationally and in California. *See id.*; Melissa Sickmund & Charles Puzzanchera, Juvenile Offenders and Victims: 2014 National Report, Nat'l Ctr. for Juv. Just. 157, 163, 172 (2014), https://www.ojjdp.gov/ojstatbb/nr2014/downloads/NR2014.pdf (noting that across the United States in 2010, a disproportionate number of Black youth were involved with delinquency cases; the likelihood of detention was highest for Black youth for all offenses except public order offenses; and for most offenses, adjudicated cases involving Black youth were more likely to result in out-of-home placement than for cases involving youth of other races); Cal. Dept. of Just., Juvenile Justice in California 11 (2014), https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj14/preface.pdf (noting that in 2014, Black youth in California were more likely to be referred to probation rather than referred for counseling and release than youth of other races).

[12] These terms and conditions are typically contained in contracts probationers must sign to participate in electronic monitoring programs.

[13] All of the records that we obtained from the 58 counties in California are available in the Complete Appendix. We obtained terms and conditions documents from 48 counties, which are available in the Terms and Conditions Appendix. And we obtained policy documents from 44 counties, which are available in the Policy Appendix. For a description of these appendices, *see supra* note 5. Seven counties reported that they do not currently use electronic monitoring on youth on probation. *See* Alpine County, Complete Appendix at 194; Imperial County, Complete Appendix at 985; Mendocino County, Complete Appendix at 1,674; Riverside County, Complete Appendix at 2,276; Sutter County, Complete Appendix at 3,285; Tehama County, Complete Appendix at 3,287; and Yuba County, Complete Appendix at 3,412. Of the 51 counties that appear to use electronic monitoring on youth on probation, three counties did not provide terms and conditions documents. *See* Del Norte County, Complete Appendix at 670 (reporting that it did not have rules specific to youth); Shasta County, Complete Appendix at 2,951 (reporting that it has used electronic monitoring on only a single youth on probation, without providing the terms and conditions records); Modoc County, Complete Appendix at 1,710 (reporting that it was in the process of updating its contract). And seven counties did not provide policy documents. *See* Colusa County, Complete Appendix at 609-637 (responsive records do not include policy documents); Del Norte County, Complete Appendix at 670 (stating they do not have policies for youth on electronic monitoring); Modoc County, Complete Appendix at 1,710 (reporting that it was in the process of updating its contract); Orange County, Complete Appendix at 1,852 (reporting that it was withholding responsive documents under exemptions to the Public Records Act); Plumas County, Complete Appendix at 2,260 (reporting that it was in the process of creating new policies); Ventura County, Complete Appendix at 3,376 (reporting that it was withholding responsive documents under exemptions to the Public Records Act); and Yolo County, Complete Appendix at 3,403-10 (responsive records do not include policy documents).

[14] Some of the information contained in the documents we received may not be current. We received most of these documents in the spring of 2016, and some of these terms and conditions documents may have been updated. In addition, many of these documents are not dated, and some counties sent multiple versions of the terms and conditions requirements without specifying which document was most current.

[15] *See* Alameda County, Terms and Conditions at 2, Rule 10; Amador County, Terms and Conditions at 6, Rule 13; Butte County, Terms and Conditions at 9, Rule 5; Colusa County, Terms and Conditions at 20, Rule 3; Contra Costa County, Terms and Conditions at 25, Rule 1; El Dorado County, Terms and Conditions at 29, Rule 6; Fresno County, Terms and Conditions at 31, Rule 8; Glenn County, Terms and Conditions at 33, Rule 7; Humboldt County, Terms and Conditions at 37; Inyo County, Terms and Conditions at 44, Rule 6; Kern County, Terms and Conditions at 49, Rule 8; Kings County, Terms and Conditions at 52, Rule 1; Lake County, Terms and Conditions at 57; Lassen County, Terms and Conditions at 61, Rule 2; Los Angeles County, Terms and Conditions at 70, Rule 3; Madera County, Terms and Conditions at 75; Marin

County, Terms and Conditions at 79; Merced County, Terms and Conditions at 90, Rule 1; Mono County, Terms and Conditions at 97, Rule 8; Monterey County, Terms and Conditions at 103, Rule 8; Napa County, Terms and Conditions at 110, Rule 1; Nevada County, Terms and Conditions at 116, Rule 2; Placer County, Terms and Conditions at 124, Rule 12; Plumas County, Terms and Conditions at 126, Rule 3; Sacramento County, Terms and Conditions at 131; San Benito County, Terms and Conditions at 135, Rule 7; San Bernardino County, Terms and Conditions at 141, Rule 5; San Diego County, Terms and Conditions at 143; San Joaquin County, Terms and Conditions at 148, Rule 2; San Mateo County, Terms and Conditions at 155; Santa Barbara County, Terms and Conditions at 159, Rule 7; Santa Clara County, Terms and Conditions at 165, Rule 9; Santa Cruz County, Terms and Conditions at 168, Rule 2; Sierra County, Terms and Conditions at 174; Siskiyou County, Terms and Conditions at 177, Rule 2; Solano County, Terms and Conditions at 182, Rule 1; Sonoma County, Terms and Conditions at 184, Rule 1; Stanislaus County, Terms and Conditions at 186, Rule 1; Trinity County, Terms and Conditions at 192, Rule 13; Tulare County, Terms and Conditions at 194, Rule 1; Tuolumne County, Terms and Conditions at 201, Rule 9; Ventura County, Terms and Conditions at 204, Rule 4; Yolo County, Terms and Conditions at 207, Rule 23. These rules may not apply to all youth placed on electronic monitoring. For example, Santa Barbara allows some youth to move within preapproved inclusion or exclusion zones. *See infra* note 17. In addition, two counties' rules are somewhat ambiguous in terms of when youth are permitted to leave the home. *See* Calaveras County, Terms and Conditions at 15, Rule 9 (youth are required to stay within the home and/or areas approved by staff); Mariposa County, Terms and Conditions at 84, Rule 3 (youth are required to stay in place of confinement or within areas determined by program staff). And three counties do not appear to require that the youth remain home at all times outside of preapproved activities. *See* Orange County, Terms and Conditions at 120-21; San Francisco County, Terms and Conditions at 145-46; San Luis Obispo County, Terms and Conditions at 151-52.

[16] Santa Barbara is the only county for which we verified their use of GPS to create inclusion/exclusion zones. But at least 12 other counties reference the use of inclusion or exclusion zones in their terms and conditions or policy documents. *See* Alameda County, Policy Documents at 4; Contra Costa County, Policy Documents at 138; Humboldt County, Terms and Conditions at 40, Rule 16; Inyo County, Policy Documents at 197; Lake County, Policy Documents at 228; Mariposa County, Terms and Conditions at 86, Rule 4; Merced County, Terms and Conditions at 92, Rule 17; Orange County, Terms and Conditions at 120, Rule 6; San Francisco County, Terms and Conditions at 146; San Luis Obispo County, Policy Documents at 513; Sierra County, Policy Documents at 573; Sonoma County, Policy Documents at 595.

[17] Santa Barbara County, Terms and Conditions at 161, Rule 9. The county still relies on electronic monitoring to enforce the conditions of home detention for some youth. Santa Barbara County, Terms and Conditions at 159, Rule 7. But it also uses GPS to create inclusion/exclusion zones as an additional option.

[18] Fresno County, Terms and Conditions at 31, Rule 8; Lake County, Terms and Conditions at 57; Los Angeles County, Terms and Conditions at 70, Rule 3; Marin County, Terms and Conditions at 79; Mono County, Terms and Conditions at 97, Rule 8; Nevada County, Terms and Conditions at 116, Rule 8; Placer County, Terms and Conditions at 124, Rule 12; Santa Barbara County, Terms and Conditions at 159, Rule 7; Santa Clara County, Terms and Conditions at 165, Rule 9; Santa Cruz County, Terms and Conditions at 169, Rule 12; Siskiyou County, Terms and Conditions at 177, Rule 2; Stanislaus County, Terms and Conditions at 188, Rule 21; Tulare County, Terms and Conditions at 195, Rule 6; Tuolumne County, Terms and Conditions at 201, Rule 18; Ventura County, Terms and Conditions at 204, Rule 4.

[19] Alameda County, Terms and Conditions at 2, Rule 10; Butte County, Terms and Conditions at 9, Rule 6; Glenn County, Terms and Conditions at 34, Rule 24; Humboldt County, Terms and Conditions at 37; Monterey County, Terms and Conditions at 104; San Joaquin County, Terms and Conditions at 148, Rule 2; Sonoma County, Terms and Conditions at 184, Rule 3.

[20] Mariposa County, Terms and Conditions at 84, Rule 3.

[21] Solano County, Terms and Conditions at 182, Rule 1.

[22] Amador County, Terms and Conditions at 6, Rule 14; Calaveras County, Terms and Conditions at 16, Rule 16; Inyo County, Terms and Conditions at 45, Rule 13; Sierra County, Terms and Conditions at 174.

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[23] Alameda County, Terms and Conditions at 3, Rule 3 (requiring that the device is charged daily between 7pm and 9pm or "as instructed by Probation staff"); Amador County, Terms and Conditions at 6, Rule 16 (requiring that the device is charged for one hour between 6am and 8am and one hour between 6pm and 8pm).

[24] Colusa County, Terms and Conditions at 20, Rule 4; Inyo County, Terms and Conditions at 46, Rule 22; Kings County, Terms and Conditions at 53, Rule 21; Lake County, Terms and Conditions at 58; Mono County, Terms and Conditions at 99, Rule 22; Napa County, Terms and Conditions at 109, Rule 9.

[25] However, some counties still impose some additional requirements regarding how long the device must be charged in each charging session. *See, e.g.*, Mariposa County, Terms and Conditions at 85, Rule 16 (equipment must be charged twice daily for a minimum of 60 minutes each time); San Francisco County, Terms and Conditions at 145, Rule 5 (equipment must be charged for two consecutive hours within a 24 hour time-period); Ventura County, Terms and Conditions at 204, Rule 21 (youth must charge their electronic monitoring device daily).

[26] Lassen County, Terms and Conditions at 61-68. Some numbered rules contain more than one requirement.

[27] Solano County, Terms and Conditions at 182. Some numbered rules contain more than one requirement.

[28] San Francisco County, Terms and Conditions at 145-46. Some numbered rules contain more than one requirement.

[29] *See, e.g.*, Amador County, Policy Documents at 105 ("Drug testing, searches, referrals to community based programs and/or Amador County Health and Human Services and other graduated responses to offender behavior shall be completed at the Officer's discretion.").

[30] Glenn County, Policy Documents at 163-64. In some cases, it is the private electronic monitoring company the counties have contracted with that have established a response protocol. *See, e.g.*, Colusa County, Complete Appendix at 618-22 (outlining procedures that employees of the private electronic monitoring company Satellite Tracking of People should follow in the event of a program violation).

[31] It can be difficult to distinguish between burdens that are the result of probation rules and burdens that are the result of electronic monitoring rules. In some counties, a judge will impose certain probation restrictions—for example, prohibiting the youth from leaving home except to attend work or school (often referred to as home detention or home supervision)—but not assign electronic monitoring to enforce these conditions. *See, e.g.*, El Dorado County, Policy Documents at 146 (noting that some youth may be assigned to home supervision but not electronic monitoring). In other counties, every youth released on home supervision is assigned to electronic monitoring, and there is no distinction between the rules for probation and the technology-specific rules for electronic monitoring. *See, e.g.*, Contra Costa County, Policy Documents at 140 (providing that all youth released on home supervision will be placed on electronic monitoring). As a result of the potential distinction between probation rules and electronic monitoring rules, however, some of the terms and conditions that we identify as potentially burdensome may be imposed as a condition of probation regardless of whether the youth is also assigned to electronic monitoring. We include these rules of general applicability in our analysis for a number of reasons. First, it is not always clear from the records which rules apply to all youth on probation, and which apply only to youth assigned to electronic monitoring. We did not ask counties to provide us with their probation contracts. Second, rules that may not appear connected to electronic monitoring technology could in fact apply only to youth assigned to electronic monitoring. For example, Butte County has separate probation and electronic monitoring rules. But the rule prohibiting youth from receiving visitors—a rule that does not, on its face, seem connected to electronic monitoring technology—appears only in the electronic monitoring contract, and not in the probation contract. *Compare* Butte County, Terms and Conditions at 9, Rule 7 (GPS monitoring contract prohibits youth from receiving visitors) *with* Butte County, Complete Appendix at 410-15 (general and specific probation rules do not prohibit youth from receiving visitors). Third, some counties assign all youth on home detention to electronic monitoring, and thus there is no distinction between these rules. *See, e.g.*, Contra Costa County, Policy Documents at 140. Fourth, data from at least one county suggests that youth are booked far more often for GPS failures than they are for home supervision failures, potentially increasing the burdensomeness of GPS rules in comparison with probation rules. *See* Alameda County, Policy Documents at 95 (noting that from July 1, 2012 to June 30, 2013, 120 youth were booked for GPS failures but only 24 youth were booked for home supervision failures). And finally, the burdens imposed by technology-specific rules most likely interact with and in some cases heighten the burdens imposed by rules that apply to all youth on probation.

[32] There are different ways in which poor youth may become or remain incarcerated for longer periods of time and with greater frequency than their wealthier peers. For example, failure to pay a telephone bill is grounds for removal from the program and re-incarceration in some counties. *See, e.g.*, Glenn County, Terms and Conditions at 33, Rule 6; Santa Clara County, Terms and Conditions at 165, Rule 3. To provide a second illustration, youth from low-income or single-income homes may not be released because their parents or guardians will be unable to provide adequate supervision. *See, e.g.*, Alameda County, Policy Documents at 32 (listing "[a]ssessment of parent's, guardian's, or responsible relatives ability/willingness to comply with and require minor's compliance with Home Supervision conditions" among the factors determining whether a youth will be released electronic monitoring). *See also* Jessica Feierman, et al., Debtor's Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System, Juv. L. Ctr. 7 (2016), http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf (explaining how poor youth end up or remain incarcerated for failure to pay juvenile justice fees).

[33] Working families of color are twice as likely to be low-income as non-Latino white working families nationwide. Deborah Povich, Brandon Roberts, & Mark Mather, Low-Income Working Families: The Racial/Ethnic Divide, The Working Poor Families Project 1 (Winter 2014-2015), http://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WPFP-2015-Report_Racial-Ethnic-Divide.pdf. And in California, poverty rates are much higher for African-Americans and Latinos than they are for other ethnic groups. Sarah Bohn & Caroline Danielson, *Poverty in California*, Pub. Pol'y Inst. of Cal. (Feb. 2017), http://www.ppic.org/content/pubs/jtf/JTF_PovertyJTF.pdf.

[34] *See, e.g.*, Inyo County, Terms and Conditions at 43, Rule 13; Plumas County, Terms and Conditions at 128, Rule 15. In 2016, Alameda County, Contra Costa County, and Santa Clara County voted to end the assessment and collection of fees charged to families with children in the juvenile justice system. Myles Bess, *Why Lawmakers Are Ending Court Fees for Kids*, Youth Radio (Nov. 15, 2016), https://youthradio.org/journalism/juvenile-justice/why-lawmakers-are-ending-court-fees-for-kids/. For a general discussion of the often crippling financial burdens imposed on families with children in the juvenile justice system, *see* Erik Eckholm, *Court Costs Entrap Nonwhite, Poor Juvenile Offenders*, N.Y. Times (Aug. 31, 2016), https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html?smprod=nytcore-iphone&smid=nytcore-iphone-share&_r=1.

[35] *See, e.g.*, Inyo County, Terms and Conditions at 44, Rule 2; Tuolumne County, Terms and Conditions at 200, Rule 2.

[36] *See, e.g.*, Madera County, Terms and Conditions at 74.

[37] *See, e.g.*, Marin County, Terms and Conditions at 81.

[38] *See, e.g.*, Madera County, Policy Documents at 295.

[39] *See, e.g.*, Mariposa County, Terms and Conditions at 87, Rule 1. These electronic monitoring costs may be charged in addition to restitution fees. *See* Cal. Welf. & Inst. Code § 729.5.

[40] *See* High Pain, No Gain, *supra* note 10, at 12-14 (finding that Alameda County made little net financial gain in its effort to collect administrative costs from families).

[41] BI Incorporated, About Us, https://bi.com/company/about-us/ (last visited Apr. 9, 2017).

[42] Madera County, Policy Documents at 294-304. At least fifty counties provided us with contracts or purchase orders from one or more private electronic monitoring companies. Those records are located in the Complete Appendix. All counties that monitor youth except for one county—Modoc—provided a contract or purchase order with at least one private electronic monitoring company. *See* Modoc County, Complete Appendix at 1,710 (stating that it has only two electronic monitoring devices and it has used a GPS device only once the prior year). However, the extent of the services provided by these companies varies. Moreover, some of these contracts may be out of date. The records indicate that counties tend to switch vendors over time. *See, e.g.*, Sonoma County, Complete Appendix at 3,085 (explaining that the county has had four electronic monitoring vendors in 25 years). The records also indicate that a private electronic monitoring provider may change when companies merge or are purchased. *See, e.g.*, San Diego County, Complete Appendix at 2,616 (county agreeing to allow G4S Justice Services to assign all its interests to Sentinel Offender Services).

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[43] The document does not explicitly state that it is an internal BI Incorporated document rather than a county document. However, the language of the document strongly suggests that it was produced by the company. It refers to county probation officers and technicians as "our customer." Madera County, Policy Documents at 299. And it refers employees exclusively to BI Incorporated contact persons rather than to county contacts. *Id.* at 299-300.

[44] Madera County, Policy Documents at 298.

[45] *Id.* at 296.

[46] *Id.* at 298. A higher rate of $85 for cell units and $130.50 for GPS units is charged for the first week of monitoring. *Id.*

[47] Moreover, given the substantial costs incurred by the counties in their efforts to recoup these fees, the counties may end up making very little net financial gain by imposing electronic monitoring program fees on families. *See supra* note 40.

[48] *See, e.g.*, Kings County, Terms and Conditions at 52, Rule 9 (requiring youth to maintain a reliable telephone or cellular phone service throughout the period of confinement); Lassen County, Terms and Conditions at 64, Rule 22 (requiring youth to maintain an operating telephone line into the residence and to pay all expenses related to the telephone and the electronic monitor).

[49] *See, e.g.*, Alameda County, Policy Documents at 6.

[50] *See, e.g.*, El Dorado County, Policy Documents at 146.

[51] *See, e.g.*, Humboldt County, Policy Documents at 171 (including access to a landline and/or adequate cellular service among the criteria for participation in the electronic monitoring program, although not specifying whether this criterion is dispositive); Fresno County, Complete Appendix at 905 (noting that youth will only be released on electronic monitoring prior to a detention hearing if the youth is able to provide proof of a landline telephone).

[52] *See, e.g.*, Alameda County, Policy Documents at 10; Fresno County, Terms and Conditions at 31, Rule 7.

[53] Alameda County, Policy Documents at 10.

[54] *See, e.g.*, Glenn County, Terms and Conditions at 33, Rule 6; Santa Clara County, Terms and Conditions at 165, Rule 3.

[55] *See* High Pain, No Gain, *supra note* 10, at 11 (noting that families with children involved in the juvenile justice system in Alameda County are disproportionately low-income, and as a result many families will be forced to choose between paying the county and meeting their basic needs).

[56] Critics of juvenile electronic monitoring programs are often careful to note that while electronic monitoring may be preferable to incarceration, electronic monitoring programs still impose burdens that should not be overlooked. *See, e.g.*, Weisburd, *supra* note 2, at 301-02 (noting that there "is little dispute that from the perspective of a defendant, a day in jail is worse than a day on electronic monitoring," but that "the conclusion that electronic monitoring is an effective alternative to incarceration fails to account for the problems and unintended consequences of the practice").

[57] El Dorado County, Policy Documents at 147. Other counties also consider the parent's "trustworthiness" as a factor. *See* Glenn County, Policy Documents at 161.

[58] San Joaquin County, Policy Documents at 505.

[59] Kings County, Terms and Conditions at 53, Rule 16; Lake County, Terms and Conditions at 58; Madera County, Terms and Conditions at 75; Marin County, Terms and Conditions at 80; Mono County, Terms and Conditions at 98, Rule 19. San Luis Obispo County requires that the youth be under the supervision of a parent or guardian or a responsible adult approved by the parent/guardian and probation officer. San Luis Obispo County, Terms and Conditions at 151. Contra Costa requires parental supervision at night. Contra Costa County, Terms and Conditions at 25, Rule 4.

[60] This requirement may also have negative consequences beyond a burdensome financial impact. For example, it may cause a parent to allow a youth to remain incarcerated because he or she cannot provide supervision. *See supra* note 32. It may also cause family tensions to escalate. *See* Weisburd, *supra* note 2, at 328-29.

[61] Mariposa County, Terms and Conditions at 85, Rule 9. *See also* Lassen County, Terms and Conditions at 66, Rule 39 (requiring that a youth specify their method of transportation to and from work, school, and other approved appointments, as well as the driver).

[62] *See* Gillian B. White, *Stranded: How America's Failing Public Transportation Increases Inequality*, The Atlantic (May 16, 2015) (chronicling the ways that poor people suffer from unreliable forms of public transportation).

[63] *See supra* note 22.

[64] *See supra* note 23.

[65] Econ. Pol. Inst., Briefing Paper #394: Irregular Work Scheduling and Its Consequences 1, 8 (Apr. 9, 2015), http://www.epi.org/files/pdf/82524.pdf.

[66] *Id.* at 1.

[67] *See, e.g.*, United States v. Jones, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring) (noting that "GPS monitoring—by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to track—may alter the relationship between citizen and government in a way that is inimical to democratic society") (internal quotation marks and citation omitted).

[68] Some counties do address the privacy concerns involved with electronic monitoring of youth in their terms and conditions and policy documents, although none does so comprehensively. For example, at least three counties' terms and conditions include the following or similar language: "The devices shall not be used to eavesdrop or record any conversations, except a conversation between me and the person supervising me which is to be used solely for the purpose of voice identification." Kings County, Terms and Conditions at 52, Rule 6; Los Angeles County, Terms and Conditions at 70, Rule 4; Napa County, Terms and Conditions at 110, Rule 3. Mariposa County's policy documents provide, "Only those persons designated by the Chief Probation Officer are authorized to have access to or use of information obtained through the use of continuous electronic monitoring." Mariposa County, Policy Documents at 312. And Alameda County's policy documents provide, "Reports and all other documents submitted to the Juvenile Court may be inspected only by Court personnel, the youth, the parents or guardian, their attorneys, and such other persons as may be designated by Court Order of the Judge of the Juvenile Court but only upon their filing of a petition therefor (Section 827 Welfare and Institutions Code). All other inquiries regarding a minor's record are to be referred to the assigned probation officer." Alameda County, Policy Documents at 44. They further provide, "Home Supervision staff may not discuss youth's criminal records with those who have no right to know per Special Matter Order (T.N.G. Order) regarding release of information by law enforcement agencies." *Id.* In addition, some of the counties' contracts with private electronic monitoring companies require that the companies establish privacy-protective policies. *See, e.g.*, Alameda County, Complete Appendix at 30 (requiring private electronic monitoring company to submit a quality control plan with a "method of ensuring that record confidentiality is maintained").

[69] Mariposa County, Terms and Conditions at 86, Rule 1.

[70] San Francisco County, Terms and Conditions at 145, Rule 1. San Francisco also provides a consent form allowing youth to authorize the release of confidential information to supervising law enforcement and probation agencies, attorneys, family and co-residents, teachers and school staff, and all service providers from whom the youth is currently receiving services. The form also states that the youth's consent expires automatically upon the completion of the home detention program. San Francisco County, Policy Documents at 465.

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[71] Alameda County, Complete Appendix at 30.

[72] The Supreme Court has emphasized that the unique nature of the adolescent brain makes it difficult for youth to exercise impulse control. The Court has noted that parts of the brain involved in behavior control are still developing throughout late adolescence. *See, e.g.*, Graham v. Florida, 560 U.S. 48, 68 (2010). It has also noted that adolescents may have difficulty weighing long-term consequences for their actions and are prone to immaturity and an undeveloped sense of responsibility that leads to reckless behavior. *See id.*; Roper v. Simmons, 543 U.S. 551, 569 (2005). The unique nature the adolescent brain suggests that youth, even more than adults, will likely have difficulty complying with very rigid rules.

[73] *See* Weisburd, *supra* note 2, at 327-28.

[74] Butte County, Policy Documents at 109.

[75] Siskiyou County, Policy Documents at 581.

[76] About nine percent of children ages 6-21 have a special education disability. In comparison, an estimated 28-43 percent of detained and incarcerated youth have an identified special education disability, the majority of which are learning disabilities. Christopher A. Mallett, Seven Things Juvenile Courts Should Know About Learning Disabilities, Nat'l Council of Juvenile and Family Court Judges, at 5 (2010), http://www.pacer.org/jj/pdf/LearningDisabilitiesAndLaw.pdf.

[77] Lassen County, Terms and Conditions at 61-68.

[78] *Id.*

[79] To provide another illustration of the complexity of some of these juvenile electronic monitoring rules, at least four counties provide that "the loss of a receiving signal or the receipt of a tamper signal by the monitoring device shall constitute prima facie evidence that [the youth] ha[s] violated" his or her schedule, curfew, or terms of probation. Youth most likely will not understand the meaning of the legal term "prima facie." *See* Calaveras County, Terms and Conditions at 17, Rule 22; Glenn County, Terms and Conditions at 35, Rule 31; Inyo County, Terms and Conditions at 45, Rule 19; and Sierra County, Terms and Conditions at 173, Rule 15.

[80] Weisburd, *supra* note 2, at 336.

[81] Lassen County, Terms and Conditions at 62, Rule 10.

[82] Mariposa County, Terms and Conditions at 84, Rule 4.

[83] Ventura County, Terms and Conditions at 204, Rule 15.

[84] San Bernardino County, Terms and Conditions at 141, Rule 15.

[85] Cal. Welf. & Inst. Code § 1700.

[86] Courts and parole officers appear to have broad discretion in determining whom to place on electronic monitoring. Some policy documents provide limited guidance by outlining the factors that should be considered when determining whether to place youth on electronic monitoring. *See, e.g.*, Calaveras County, Policy Documents at 116 (noting that the probation department uses the Ohio Risk Assessment System to determine eligibility for electronic monitoring). Other policy documents provide insight into when a violation of electronic monitoring rules leads to punishment. *See, e.g.*, San Joaquin County, Policy Documents at 503-09 (outlining a response grid matrix of graduated responses to both compliant and non-compliant behavior).

[87] We attempted to gather this data for Alameda County but encountered certain obstacles. For a discussion of these obstacles and of barriers to data collection more generally, *see supra* note 7.

DESIGN: CUTTRISS & HAMBLETON, BERKELEY

BerkeleyLaw
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Samuelson Law, Technology
& Public Policy Clinic

BerkeleyLaw
UNIVERSITY OF CALIFORNIA

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Youth on Probation:

Bringing a 20th Century Service Into a Developmentally Friendly 21st Century World

By Robert G. Schwartz

Visiting Fellow

Stoneleigh FOUNDATION

OVERVIEW

Principles of adolescent development have accelerated positive changes to the juvenile justice system. These changes have been most pronounced in reducing reliance on incarceration and in approaches to sentencing of youth tried as adults. While juvenile probation has made some developmentally friendly adjustments, it remains an area that is fertile for reform.

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Introduction

"A consensus is emerging that the correctional model of juvenile justice should be replaced by a developmentally oriented approach that keeps youth in their communities, avoids formal legal involvement unless necessary to ensure accountability or protect public safety, and provides whatever services and interventions are needed to support the prosocial development of youth whose cases are diverted from or referred to the juvenile justice system for formal processing."[1] Indeed, every state has seen a decline in youth confinement over the last 20 years.[2]

Even before the decline in incarceration, most youth in the juvenile justice system were on some form of probation. In 2013, an estimated 383,600 delinquency cases resulted in a term of probation—5% above the number of cases placed on probation in 1985. Adjudicated delinquents accounted for 54% (205,300) of all delinquency cases placed on probation in 2013. In the remaining delinquency cases, the youth agreed to some form of voluntary or informal probation.[3]

In Pennsylvania, for example, dispositions of Consent Decree Probation, Probation, and Informal Adjustment continued to represent over half (54.8%) of all dispositions, while placement resulting from new allegations of delinquency decreased slightly (7.5% to 7.0%) from 2014 to 2015.[4]

Although there are some jurisdictions in Pennsylvania and across the country that are experimenting with innovative forms of probation supervision, too many probation departments operate much as they have for the last century. The challenge for juvenile courts and probation departments is to create and implement—in the terms of the 2014 National Research Council report—a "developmentally oriented approach" to community-based supervision that ensures "accountability," promotes "public safety, and connects youth to services and interventions that are needed" to support probationers' "prosocial development."[5]

In most jurisdictions today, youth who are on probation must comply with boilerplate "conditions of probation." Some of the lists of conditions are developed by judges, some by probation officers. They are rarely correlated to assessments of a young person's risks and needs. They rarely vary by the age and developmental status of the youth. Probation officers infrequently probe to ensure that youth understand the conditions. Indeed, while some conditions are crystal clear to probation officers, they are often opaque to the youth they supervise. Ambiguous conditions can lead to probation officers or judges revoking probation and placing young people in residential facilities.

Consider the dilemma posed by Drexel University Professor of Psychology and Stoneleigh Fellow Naomi Goldstein, Ph.D. Imagine a young person who has missed more than a year of school. The court orders the youth to "attend school," which becomes a condition of probation. The youth then attends school three days a week. Is that compliance or non-compliance with the condition of probation? While the youth might see increased school attendance as progress, too often courts and probation officers see the weekly two days of absence as flouting the court order. Some probation officers will file a motion to revoke probation; some judges will grant the motion. The youth will perceive detention or incarceration for this "technical probation violation" as unfair.

There are many variations on this theme. Must a young person comply with each condition 100 percent of the time? How many misses count as a probation violation? Does the answer depend upon the juvenile probation officer? On the juvenile court judge? On the youth's prior history? On the youth's developmental capacity? On the youth's race or ethnicity?

Are all conditions of probation qualitatively the same? For example, drug and alcohol treatment programs expect some relapses over time. Do juvenile probation officers—who oversee a "drug free" condition of probation and take urine samples to test compliance—have similar expectations? Should a condition of not using drugs be treated the same as a condition to attend school?

Do juvenile probation officers have the skills to help youth succeed in meeting those conditions or others that they impose? As Dr. Goldstein has observed, probation officers identify many roles in their work with youth. They see themselves as monitor, enforcer, mentor/coach, parent, role model, change agent, case manager, therapist, and

court representative.[6] While some of these roles can be adapted to probation that is sensitive to adolescent development, these roles are often in conflict. Probation officers face the challenge not only of adopting a role or roles, depending on the circumstances, but on conveying his or her role to youth. This should be done transparently, so young people know when they can give an honest response ("Have you been using drugs?") in order for the juvenile probation officer to provide mentorship or case management. The young person must also know if the same response might lead to a return to court.

Incarceration is the ultimate sanction available to judges or probation officers when they interpret a young person's behavior as "non-compliant." Because judges cannot be seen as ignoring violations of orders, it is inevitable that at some point, for some youth, the judge will revoke probation. The result is a system in which juvenile probation officers may give less weight to their role as mentors who help youth overcome setbacks than they do to their role as monitors who compel compliance.

How Might We Think Differently?

In my last years at Juvenile Law Center, we, like many others, focused on "normalcy" for older *foster youth*.[7] Federal law[8] requires states to provide youth in substitute care the opportunity to experience age-appropriate activities and opportunities similar to their peers who are not in care. Juvenile Law Center in 2015 published a paper on this topic,[9] and is working to implement the federal law in Pennsylvania to create more opportunities for foster youth.[10]

The idea of "normalcy" for delinquent youth is different. Indeed, it's hard to imagine that incarcerated youth will have opportunities for class trips. Rather, normalcy is related to the movement to inform the justice system with principles of positive youth development (PYD) and, more recently, to align the system with what is known about adolescent development. Researchers in developmental psychology and neuroscience have shown the importance of treating youth differently, and of treating youth in developmentally appropriate ways as they grow older.

It is difficult, but not impossible, to bring developmental principles to bear on the lives of juvenile probationers. It is challenging, but not impossible, to help these youth lead "normal" lives when normalcy for too many of them has meant enduring trauma, poverty, and hostility. It is easier to advance developmental principles when juvenile probation officers have assessment tools that help them build on youths' strengths while helping youth navigate through a thicket of needs.

The PYD movement emerged in the late 1990s, when some juvenile justice experts sought to introduce PYD to juvenile justice.[11] This meant emphasizing success, rather than failure. As I have written elsewhere,[12] PYD refers to attitudes about youth, to what youth do and achieve during and at the end of their route to adulthood, and to the informal and formal systems of support that help youth reach adulthood successfully. These overlapping operational definitions suggest why the formal juvenile justice system was not a fertile area for PYD. The formal system developed in the last century—which was supposed to prevent youth from re-offending after arrest—did not routinely think about children developmentally, rarely recognized youths' strengths, didn't believe in youths' abilities to succeed, and only spottily offered the kind of supports necessary for success.[13] Indeed, even systems that purported to rely on PYD too often failed to develop new expectations—and measures—for success.

The difficulties of promoting positive development suggest the questions raised by any effort to bring adolescent development and the advancement of "normalcy" to the lives of delinquent youth. In what ways are "normalcy" principles transferrable from the foster care to the justice system, which at bottom relies on a regimen of custody and control? Although there is a de-incarceration movement, there is still excessive incarceration, in particular of youth of color. Delinquent youth lack many of the rights of foster youth (e.g., stay-put provisions in home schools). They enter and exit delinquency placements at random times during the year that are not tied to the school calendar. When they are on probation (before or after placement), youth are restricted in the

kinds of activities they can participate in and with whom they can associate. Probation officers remain primarily concerned about preventing recidivism rather than advancing youth well-being. Thus, in these respects, "normalcy" for delinquent youth differs from "normalcy" for dependent youth.

Yet, Dr. Goldstein has emphasized how important it is for juvenile probation officers to promote a "normal" developmental trajectory:

> *The adolescent brain is developing rapidly, making adolescence a critical time for learning—and a great deal of behavioral learning takes place by repeatedly performing behaviors and receiving feedback (often naturalistic feedback). If we want youth to be able to live "normal" lives as teenagers and adults, they have to learn how to function in "normal" situations, with "normal" interactions and "normal" activities. If we deprive them of normal life experiences via incarceration or long-term, intensive restrictions (e.g., in-home detention), they don't have these "normal" experiences and lose the opportunities to learn about normal behavior—and we can't turn the clock back on the brain (there's a reason this is considered a critical period for learning). In contrast, allowing them to engage in normal behaviors—while being coached/mentored by a juvenile probation officer or treatment provider—can facilitate positive learning and promote positive behaviors in the very situations we want these youth to function in the future.*[14]

Although there are difficulties, more juvenile justice systems are asking how probation can be developmentally appropriate. Some probation systems are focusing on reducing harm caused by probation supervision that fails to attend to what is now known about adolescent development.[15] (Harm occurs, for example, when youth are incarcerated for technical probation violations. It occurs, too, when youth lose faith in the system because they believe they are treated unfairly or don't understand what is expected of them.) Juvenile probation should be like a parent who holds onto the seat of a child who is learning to ride a bicycle. The child isn't punished when she can't ride on her own. Rather, parents learn to take their hands off the seat gradually. There is a developmental equivalent when probation officers work with teens who are learning how to behave.

What Are Barriers to Introducing a Developmental Approach to Juvenile Probation?

There are some obvious barriers to introducing a more developmental approach to juvenile probation, let alone going to scale. Some of those barriers are mentioned above. Others include local culture and institutional traditions and the time it takes to retool a department. Experienced probation leaders must be early adopters if they expect new probation officers to think and act differently than their 20th century counterparts.

There are less obvious barriers.

Most jurisdictions haven't changed the job title and job description of juvenile probation officers in many years. Washington State is an exception, where probation officers have been called "probation counselors" for several years. Many duties of probation counselors are the same as those of probation officers, but the job title implies a different lens through which those duties are viewed.

When deinstitutionalization occurs, it rarely comes with a transfer (reinvestment) of corrections funds into community-based services such as probation. Pennsylvania, for example, directed $2 million to juvenile probation when it closed a youth development center in 2013. That reallocation has remained in the state budget ever since. The Pennsylvania experience is unusual, even for Pennsylvania. States that close institutions too often redirect savings to general operating budgets, rather than to probation or to efforts to divert youth from the system entirely.

Departments think of caseloads, rather than workloads. Caseload standards are routine in human services. Many experts have noted that "workload" is a better unit of measurement, since it incorporates the various tasks inherent in a human service job. Thus, as caseloads decline because fewer youth are entering the juvenile justice system, it is important to imagine how a department might implement a new version of juvenile probation. Leadership must: a) appreciate all that goes into the workload (from risk and needs assessment, to

helping youth and parents set expectations and goals, to helping a young person meet those expectations and goals); and b) have a budget and staff that allows those tasks to be accomplished. Neither effort is easy. Indeed, when policymakers design systems, they often imagine "ideal" scenarios where experienced workers with unlimited time and resources have a single case. Policymakers don't imagine a system that has gone to scale. Underfunded "ideal" systems usually end up with unmanageable workloads.

Probation is, at its heart, a risk-management system. Yes, an ideal version will help youth meet expectations and goals and maintain a normal developmental path. But if a young person is in the juvenile justice system, there's a public expectation that the youth will instantly and completely cease offending. Again, compare this to the field of addiction, where few expect users to change their behaviors all at once. The juvenile justice system doesn't see "progress" when youth offend less frequently or seriously. Thus, a bad lapse—and a simple newspaper headline—can threaten an entire program that is designed to allow for mistakes while helping youth learn from them. A wise parent can tolerate mistakes and help his or her child learn from them—that's part of normal adolescence—but even an enlightened juvenile probation department will be challenged to do the same.

There is rarely system-wide agreement on what counts as "success," not only for juvenile probationers, but for the juvenile probation department as a whole. In an enlightened Balanced and Restorative Justice (BARJ) state like Pennsylvania, it has been relatively easy to identify success as recidivism reduction and victim restoration through restitution or community service. It has been harder to measure "competency development"—an important BARJ component—in developmental terms. Probation departments, for the most part, look at whether a young person is in school or employed at case closing. Being in school and having a job are important, but they are static measures of a dynamic time of life. When it comes to competency development, every youth will have a different pathway to success. It is thus unsurprising that competency development has been hard to define and equally difficult to measure.

Many jurisdictions have an entrenched reliance on boilerplate conditions of probation. The biggest challenge will be securing the willingness of judges and senior juvenile probation officials to move from a system of court orders and conditions to helping a young person meet expectations and goals. "Conditions of probation" endure even in thoughtful Pennsylvania jurisdictions, where counties are emphasizing case planning more than conditions. Conditions just don't go away. There are many reasons for this. Some systems have judges who rotate through juvenile court; some have judges who have ruled their county juvenile justice systems for years. Some judges are knowledgeable in adolescent development; others are not. Courts are crucial to any juvenile justice transformation. For juvenile probation to succeed in delivering developmentally appropriate supervision, juvenile court judges must demonstrate flexibility and a willingness to try something that is new and developmentally sound.

Guiding Principles

Juvenile probation should build on research to help teens stride toward adulthood while holding them accountable in developmentally appropriate ways. Juvenile probation officers—or "counselors"—thus have opportunities to help parents or family caregivers as they nurture their children and support their children's ambitions and developmental pathways. What might those opportunities look like, and what are the principles that might underpin them?

Probation departments should be clear about their place in the juvenile justice system.

- **Probation departments should know what their purpose is.** There must not only be clarity on the purpose of juvenile probation, but that purpose must also be understood and internalized by a) everyone in the probation department, and b) the stakeholders, such as judges, who direct or work with probation. Why do they exist in general, and what is their purpose for a particular young person? The National Research Council suggests that a 21st century, developmentally grounded approach to juvenile justice is one that "manages risk" through

thoughtful assessments, case plans, and services.[16] The Center for Children's Law and Policy observes that "[y]outh are placed on probation because officials believe that they do not represent a public safety risk that warrants out-of-home placement, but may still need supervision as they participate in rehabilitative programming. Probation is not simply about identifying each occasion where a young person doesn't do what he or she is supposed to do."[17]

- **Probation departments should adopt clear goals.** The following are adapted from Dr. Naomi Goldstein's writings. A developmentally designed juvenile probation system should include a graduated response[18] system that will:

  a. Help youth improve decision making.

  b. Emphasize short-term, positive outcomes for probation-compliant behaviors.

  c. Be designed in such a way that enables youth to experience success almost immediately.

  d. Emphasize effort and improvement through a process of behavior change rather than expecting immediate, perfect compliance with probation requirements, goals, and expectations.

  e. Create expectations and goals that address fewer behaviors at a time, rather than emphasizing all probation requirements, goals, and expectations at once, while taking care to avoid unnecessarily extending the duration of probation.

  f. Utilize reinforcement (incentives, rewards, and positive feedback) to motivate youth to meet expectations and goals and to help youth learn from their positive behaviors.

  g. Fairly sanction misbehavior, incorporating elements of procedural justice.

  h. Provide youth with opportunities to take part in prosocial activities and engage with positive peers (e.g., playing in a sports league, taking art classes).[19]

- In the course of managing risk and encouraging life success, **juvenile probation should avoid doing harm.**[20] This is an oft-ignored axiom. Many youth who would otherwise grow out of their offending, or learn from their involvement with the system, are snared by net-widening conditions of probation that magnify the nature, intensity, or duration of their juvenile justice system involvement.[21] This leads to disruption of normal developmental pathways. Medicine calls this an iatrogenic effect, where the treatment does more harm than good. Some probation departments, like that of Lucas County, Ohio, avoid having probation conditions that widen the net by diverting more youth from the system in the first place.

- **While managing the risk of recidivism is an important goal of probation, it is not the only goal.** Youth should, for example, gain problem solving skills, improve academically, and gain employment skills. However, the period of time that a young person is supervised by probation—a duration aimed at reducing recidivism—should not be extended solely for the purpose of completing a program or activity.[22]

- **Probation officers must have workloads that are not too burdensome for them to be effective, thoughtful case managers.** As noted above, "workload" is different from "caseload." The latter is a number that can include youth with complex as well as straightforward needs. As the number of youth in the justice system declines, probation officers should be able to supervise fewer probationers. They should be able to spend the time necessary to develop thoughtful case plans and help youth succeed in meeting their goals and expectations.

Probation decisions must advance pro-social goals.

- **The decisions that judges and probation officers make about expectations and goals for a young person must make sense to that youth.** They must seem fair and have a transparent connection to the youth's misconduct or needs. Similarly, consequences (both positive and negative) do a better job of promoting learning if they are logically connected to the youth's behavior.[23] They should not seem arbitrary, boilerplate, or pointless. The literature on legal socialization and procedural justice has taught us that youth are likely to respond well to adult decisions that seem fair.[24]

- ***Individualized*** **juvenile probation services and conditions of probation require abandoning boilerplate conditions.** Probation officers must be thoughtful case managers who develop well-conceived case plans that include "proactive statements about what must occur in the near future to address youths' risk to community safety, their most pressing needs related to their delinquent behavior, and their accountability obligations."[25] In short, there should never be "conditions of probation," which lead too often to "technical" violations. Instead, probation officers should develop with families and youth individualized case plans that set expectations and goals. This approach will eliminate the Goldstein Dilemma, described earlier, which asks whether a young person is compliant or non-compliant with a condition of probation. Instead of forcing the probation officer to make that determination, the absence of conditions will turn the probation officer into someone who helps the youth find a way to meet the case plan's individualized expectations and goals. "Rather than viewing noncompliance or lack of progress as a defeat or a failure, a good probation officer seizes it as a teaching opportunity."[26]

- **Juvenile probation should help youth meet expectations and goals.** "Less than expected progress should not automatically be blamed on the youth; it may be the result of an inadequate plan, inadequate service delivery, or a misconceived strategy."[27] Juvenile court case plans should be individualized and include differential responses of sanctions and incentives.[28]

- **Juvenile probation should set developmental goals for adolescents on probation that include preparation for the exercise of rights and responsibilities that society assigns to adults.** This means involving youth in decision making about their futures, even if they make choices that seem inapt.[29] This approach replaces a "surveillance" model of supervision with one that focuses on positive behavioral change.[30]

- **Probation officers must recognize that not all needs are the same.** A young person may have many needs, but they are not equally important when it comes to reducing recidivism. It is important to "identify and address the key needs that are the primary causes of youth's delinquent behaviors."[31] The Council of State Governments (CSG) observes that principles of risk, need, and responsivity can help agencies improve outcomes and use resources more efficiently. A validated risk assessment identifies and focuses supervision and services on those youth most likely to reoffend. Not all youths represent the same risk. (CSG notes that supervising low-risk youth can make things worse.) The "responsivity" principle, a cousin of Positive Youth Development, matches "youth to services based on their strengths and how they respond to treatment."[32]

- **Probation officers should provide supervision that is as "parent-like" as possible.** By involving youth and parent(s) in the development of the case plan, probation officers come closer to acting like ordinary devoted parents.[33] A developmentally grounded case plan, with expectations and goals, gets closer to how an ordinary devoted parent would raise her child. This approach also fosters "legal socialization," as youth and parents experience the system as fair.[34]

What Might This Look Like in Practice?

The good news is that over the last 10 to 15 years, principles of adolescent development have been steadily diffused through the juvenile justice system. Principles of juvenile probation, grounded in PYD or adolescent development, are rooted in increasingly fertile ground.

Many of the principles set forth in this paper were recently endorsed by the National Council of Juvenile and Family Court Judges, which "supports and is committed to juvenile probation systems that conform to the latest knowledge of adolescent development and adolescent brain science," and which "recommends that courts cease imposing 'conditions of probation' and instead support probation departments' developing, with families and youth,

individualized case plans that set expectations and goals."[35]

Many jurisdictions have taken steps towards developmentally grounded juvenile justice systems.

Pennsylvania, for example, is a Balanced and Restorative Justice state that is ideally suited to revamp probation. Juvenile courts and juvenile probation officers must attend to a young person's "competency development" as well as public safety and victim restoration. While Pennsylvania currently measures whether a young person is in school or employed after completing probation, it is well poised to include competency-development measures when drafting expectations and goals with youth and family. Fleshing out "competency development" will enhance strong work that the state is already doing through its Juvenile Justice System Enhancement Strategy (JJSES). Indeed, the Pennsylvania Council of Chief Juvenile Probation Officers has recently emphasized adolescent development and graduated responses. JJSES has already led to developmentally based approaches in its use, for example, of validated assessment tools and motivational interviewing.

The Annie E. Casey Foundation is working with two Probation Transformation sites, Lucas County (Toledo), Ohio, and Pierce County (Tacoma), Washington to implement developmental approaches to juvenile probation.

Lucas County created a misdemeanor services unit and adopted a policy of diverting all misdemeanor cases, which comprise, on average, 70% of juvenile court referrals. This has reduced probation caseloads and enabled the probation department to revamp its approach to juvenile probation. There has been a reduction in probation violations for behaviors in which non- justice-involved teenagers often engage. Probation officers recognize that youth stumble, and that probation is an opportunity to teach problem-solving skills. Toledo has seen a significant reduction in placement and in probation violations. Indeed, the county has virtually eliminated placements because of "violations of probation."[36]

Pierce County (Tacoma), Washington, has instituted an Opportunity Based Probation program, an incentive-based system that rewards probationers for meeting goals. As youth accumulate points, they earn prizes and congratulations from the court, culminating in a graduation ceremony. The county has an incentive package that promotes PYD, and includes options such as YMCA memberships, internships, and early termination from probation.[37]

Utah recently established a risk-need-responsivity model, described above, as its guiding principles; instituted new policies to focus on hiring staff skilled at engaging youth and families in assessment conversations; required probation officers to become certified on the use of the state's assessment tool; established detailed performance criteria for conducting and using assessments; began storing assessment results in a permanent electronic case management system (CARE); and began regularly evaluating the fidelity of assessment and case-planning processes through the Quality Service Review (QSR) group.[38]

San Francisco's Juvenile Probation Department in 2012 endorsed a Probation Enrichment Program delivered by the Center for Juvenile and Criminal Justice. Selected youth avoid confinement for probation violations by attending two all-day Saturday workshops a month. The workshops, for families and youth, have an evidence-based curriculum.[39]

New York City's Department of Probation in 2016 adopted Youth Thrive, a positive youth development and resiliency framework that focuses on building protective and promotive factors shown through research to promote healthy development and well-being and reduce risk factors in youth. The Department is currently training all of its probation officers on youth development and what they can do to enhance the protective and promotive factors with the youth they serve. The Department has also adopted—and select staff are coaching the workforce in using—a new working service agreement with youth that encourages mutual goal setting, is transparent about expectations and consequences, and builds on youth strengths and interests.[40]

Many juvenile probation departments across the country are working with the RFK National Resource Center for Juvenile Justice. The Center has developed a superb quality control checklist for almost every aspect of juvenile probation.[41]

Where Might Jurisdictions Begin?

System improvement often involves a rule of simplicity. Efforts to take model programs to scale have often failed because the models have required extraordinary capabilities from service providers. Successful replication requires a model that is straightforward enough so that it can be implemented by newcomers and experienced workers alike. It makes no sense to write music that only a few musicians can play.

There is also a need to make clear to newcomers what they should expect when they become juvenile probation officers (or juvenile probation counselors). Jurisdictions must revise juvenile probation job descriptions to emphasize helping youth rather than merely monitoring them; assessing needs and strengths, rather than only focusing on weaknesses and risks; working with families, rather than demonizing them; and developing knowledge of other youth-serving systems. In jurisdictions that hire through civil service, exams must be revised to reflect the modern role that probation serves.

As Dr. Jeff Butts of John Jay College of Criminal Justice has noted, before the positive youth development model can become a standard approach for delivering services and supports in a youth justice context, researchers and practitioners must continue to test and refine the model. The youth justice field needs to reduce the multitude of developmental concepts t*o a workable set of core elements.* Having too many goals and principles is akin to having none. [42]

Conclusion

Except during times of crisis, systems tend to resist change. Change can happen with a clear vision, strong leadership, motivated workers, and useful data. Too often, however, line workers know that they will outlast political appointees who call for reform. Experienced workers may cynically advise new hires to follow the old ways of doing things. Sometimes the staff just doesn't believe in the values that change agents want them to adopt.

These risks will certainly be present when judges or probation chiefs initiate wide and deep changes that are grounded in principles of adolescent development. One of the greatest barriers to a paradigm shift will be how and when to address re-offending without incarceration. Traditionalists will not want to cede their ability to incarcerate youth for "non-compliance" with conditions of probation. There may be net-widening, as some borderline youth who might be placed on probation find themselves incarcerated, and as judges decline to place on probation those youth who seem unlikely to adapt easily to community supervision. Crimes committed by youth who have not met the expectations and goals of their case plans may erode public and system-wide trust in a new model.

The stakes, however, are high. There will be a ripple effect throughout the juvenile justice system if community-based juvenile probation becomes developmentally sound. Juvenile probation officers frequently supervise youth who return from institutions to their communities. There will be a tangible increase in the ability of a developmentally grounded juvenile probation department to change the course of a young person's life. Youth, families, schools and communities will be the beneficiaries.

ENDNOTES

[1] National Research Council. (2014). Implementing Juvenile Justice Reform: The Federal Role. Washington, DC: The National Academies Press. doi: 10.17226/18753, at page 11.

[2] Office of Juvenile Justice and Delinquency Prevention. (2017, June 1). Easy Access to the Census of Juveniles in Residential Placement. Statistical Briefing Book. Retrieved from https://www.ojjdp.gov/ojstatbb/ezacjrp/.

[3] Office of Juvenile Justice and Delinquency Prevention. (2017, March 27). Probation as a Court Disposition. Statistical Briefing Book. Retrieved from https://www.ojjdp.gov/ojstatbb/probation/qa07102.asp.

[4] Placement accounts for about 7% of dispositions, see: Juvenile Court Judges' Commission and Center for Juvenile Justice Training & Research. (2016) 2015 *Pennsylvania Juvenile Court Dispositions*. Commonwealth of Pennsylvania.

[5] National Research Council, supra, note 1.

[6] Naomi Goldstein is a researcher and full professor at Drexel University. Her case and observations are presented with permission via a note to Robert Schwartz on June 14, 2017.

[7] For an excellent overview of bringing developmental principles to older foster youth, see: Harper Browne, C. (2014). Youth Thrive: Advancing healthy adolescent development and well-being. *Retrieved from Center for the Study of Social Policy:* https://www.cssp.org/reform/child-welfare/youth-thrive/2014/Youth-Thrive_Advancing-Healthy-Adolescent-Development-and-Well-Being.pdf.

[8] Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. 113-183.

[9] Pokempner, J., Mordecai, K., Rosado, L., & Subrahmanyam, D. (2015). *Promoting Normalcy for Children and Youth in Foster Care.* Philadelphia, PA: Juvenile Law Center.

[10] Although many foster youth are also involved with the justice system, it is unclear how the federal law will affect "normalcy" opportunities for them.

[11] See generally the work of Jeffrey Butts, director of the Research & Evaluation Center at John Jay College of Criminal Justice.

[12] Schwartz, R. G. (2001). Juvenile justice and positive youth development. *Trends in Youth Development: Visions, Realities, and Challenges* (pp.231-267). New York, NY: Springer US.

[13] *Id.*

[14] *supra* note 6.

[15] See generally the work of Robert F. Kennedy National Resource Center for Juvenile Justice.

[16] *supra* note 1, at page 24.

[17] Center for Children's Law and Policy (2016). *Graduated Responses Toolkit: New Resources and Insights to help Youth Succeed on Probation.* Washington, DC: Author.

[18] *Id.*

[19] Goldstein, N. E., NeMoyer, A., Gale-Bentz, E., Levick, M., & Feierman, J. (2015). You're on the Right Track: Using Graduated Response Systems to Address Immaturity of Judgment and Enhance Youths' Capacities to Successfully Complete Probation. *Temple Law Review, 88,* 803-836.

[20] *supra* note 1, at page 23.

[21] This is one reason that many jurisdictions have diverted more youth from the system entirely. Recent diversion efforts are reminiscent of the effort to promote "benign nonintervention" in the 1960s and 1970s. Many juvenile justice experts believed that intervention, even probation, would do more harm than good for youth who would naturally age out of their "delinquent" behavior.

[22] Compare Torbet (2008), *supra* note 25, at page 19, arguing that length of stay in a juvenile justice facility should not be extended "solely for the purpose of completing the program's 'levels,' earning another credit, or finishing an activity, let alone the notion of wanting to keep the youth until he's 'fixed.'"

[23] *supra* note 19.

[24] See generally the works of Tom R. Tyler, department chair and university professor of psychology at New York University, for example: Fagan, J., & Tyler, T.R. (2005) Legal Socialization of Children and Adolescents. *Social Justice Research,* 18(3), 217-241. doi: 10.1007/s11211-005-6823-3.

[25] Thomas, D., Torbet, P., & Deal, T. (2011) Implementing Effective Case Management Strategies: A Guide for Probation Administrators. *Technical Assistance to the Juvenile Court Bulletin*. Office of Juvenile Justice and Delinquency Prevention, National Center for Juvenile Justice, and National Council of Juvenile and Family Court Judges.

[26] Torbet, P. (2008). *Building Pennsylvania's Comprehensive Aftercare Model. Probation Case Management Essentials for Youth in Placement.* Pittsburgh, PA: National Center for Juvenile Justice, at page 29.

[27] *Id.*

[28] *supra* note 17; supra note 19.

[29] Buss, E. (2016). Developmental Jurisprudence. Temple Law Review, 88, 741-768, at page 753.

[30] Robert F. Kennedy National Resource Center for Juvenile Justice/Council of State Governments Justice Center, unpublished power point, 2016.

[31] *Id.*

[32] *Id.w*

[33] The notion of Ordinary Devoted Parent was developed in the mid-1970s to address how courts should address the needs of children in the child welfare system (Goldstein et al., 1986). The key lesson was that "It is in the best interests of the child that these professionals [like juvenile probation officers] always keep in mind that they are not the child's parents. Even though each of them may assume one or more aspects of the parental task, neither alone nor together can they replace parents." Goldstein, J., Freud, A., Solnit, A.J., & Goldstein, S. (1986). *In the bests interests of the child.* New York, NY: Free Press.

[34] See, Fagan, J., & Tyler, T.R., *supra* note 24.

[35] National Council of Juvenile and Family Court Judges (2017) *Resolution Regarding Juvenile Probation and Adolescent Development.* Washington, DC: Author, found at https://www.ncjfcj.org/sites/default/files/Fnl_AdoptedProbationPolicyResolution_7-2017_1.pdf.

[36] Annie E. Casey Foundation, Juvenile Justice Strategy Group, *Probation Transformation* (unpublished power point, June 2017).

[37] *Id.*

[38] *supra* note 30.

[39] Center on Juvenile and Criminal Justice. (2017). *Probation Enrichment Program*. Retrieved from http://www.cjcj.org/Direct-services/Probation-Enrichment-Program.html.

[40] For more information on Youth Thrive, see: Center for the Study of Social Policy. *Youth Thrive.* Retrieved from https://www.cssp.org/reform/child-welfare/youththrive.

[41] Tuell, J. A., & Hapr, K. L. (2016). *Probation System Review Guidebook* (2nd ed.). Boston, MA: Robert F. Kennedy Children's Action Corps.

[42] John Jay College of Criminal Justice. *Positive Youth Justice*—Overview. Retrieved from https://johnjayrec.nyc/pyj/.

OUR MISSION

The Stoneleigh Foundation seeks to improve life outcomes for Greater Philadelphia's most vulnerable youth by advancing change in the systems that serve them, including juvenile justice, child welfare, education, and health. To meet our mission, we award fellowships to exceptional individuals who work within and alongside these systems to catalyze change.

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123 S. Broad Street, Suite 1630 · Philadelphia, PA 19109
Tel 215 735 7080 · ***Fax*** 215 735 7089
info@stoneleighfoundation.org
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PJDC
PACIFIC JUVENILE DEFENDER CENTER

Dispositional Advocacy and Funding

1

Advocacy for "Difficult" Cases at Disposition and Beyond

Brian Blalock, Esq., Tipping Point
bblalock@tippingpoint.org

This Module Addresses:

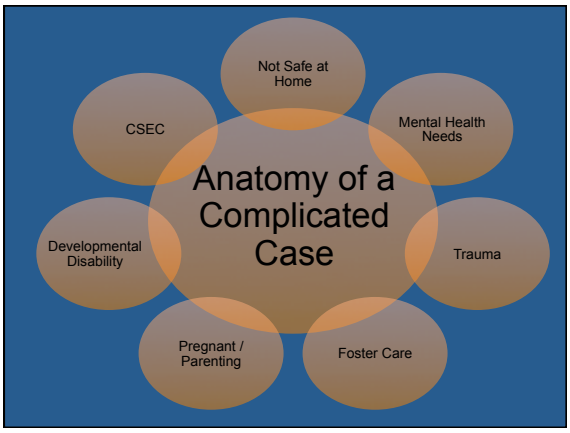
2

- Considerations in working with dispositional and post-dispositional youth
- Considerations for specific subpopulations of probation involved youth
- Legal entitlements and mandated processes based on subpopulation
- How and when to leverage other systems to improve outcomes, shorten probation time, and decrease recidivism
- Collateral Consequences

What is the Right Disposition?

3

- Keep in mind purpose of the juvenile system
- What is most appropriate for the individual circumstances of your case and your client
- Least restrictive settings
- Decisions at disposition can have long lasting consequences

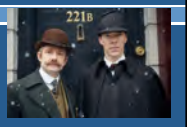


What challenges do probation youth face?

- **Histories of abuse**, neglect, abandonment, exploitation, DV
- **Unreliable family support**, limited family resources, poverty
- **Academic deficits** and little to **no work experience** or vocational training
- Behavioral and **mental health issues**, trauma
- **Lack of services** by responsible systems of care (e.g. child welfare, school system, etc.)

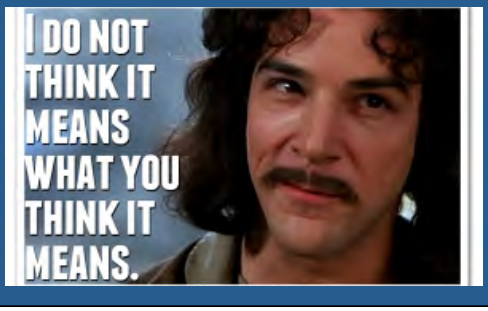
Rehabilitative goals and decreased contact with criminal justice system only achievable at scale if we do a better job facilitating connections to more appropriate systems of care in community

Delinquency Youth and the Case of the Missing System



- Healthcare
  - Mental Health and Trauma
- Dependency
  - 300 youth who slip into 600 system
  - 600 youth who are foster care youth
  - Youth fleeing abuse and neglect who become 600 youth
- School systems
  - Special education and school discipline cases and 600 involved youth
- Regional Center
  - Youth with certain developmental disabilities

Foster Youth



Delinquency Involved Foster Youth

- Many types of probation involved youth may be "foster youth" including:
  - Youth who are placed into foster care by the delinquency court
    - This does not mean they are previous or current dependents through WIC 300
  - Youth who are in foster care when they are made wards through WIC 600
    - This does not mean they maintain their foster care status
    - 18 counties in California have dual status.

3C Orders = 602 Foster Care*

- WIC 727(a)(3): "the court shall order the care, custody, and control of the minor or nonminor to be under the supervision of the probation officer who may place the minor or nonminor in any of the following:"
  - Placement may include approved relative or NREFM, licensed non-relative, FFA, group home, resource family, SILP, or transitional housing (WIC 727(a)(3)(A-F).
- * A 3C order to parent looks like a "family maintenance" case. This means services but none of the foster care resources we will discuss later.

Probation Foster Youth

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- Probation foster youth include:
  - 602 youth on 3C order with non-parent / non-legal guardian
  - 450 youth beginning at 17.5
- Non-minor dependents include:
  - Youth with suitable order for foster care placement on the 18th birthday and
    - Still on probation (602 non-minor dependent)
    - No longer on probation (450 non-minor dependent)
    - Never on probation (300 non-minor dependent)

How is CCR related to probation youth?

- Goals of the Continuum of Care Reform:
  - Ensure that youth in foster care have their day-to-day physical, mental, and emotional needs met; that they have the greatest chance to grow up in permanent and supportive homes; and that they have the opportunity to grow into self-sufficient, successful adults.
  - Move away from the use of long-term group home care by increasing youth placement in family settings and by transforming existing group home care into places where youth who are not ready to live with families can receive short term, intensive treatment – 35% of youth placed in group homes are probation youth!
  - Kinship families are the key to achieving the goals of CCR – and supporting these families is the only way to get there

Continuum of Care Reform

"[I]n order to serve those **probation youth whose needs can be appropriately met** safely in least restrictive, family-based settings, **sufficient capacity in home-based family care** must be developed."

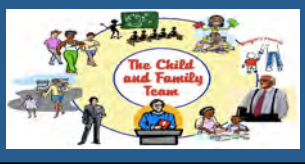
AB 403

Reducing congregate care in California will need to focus on delinquency as well as dependency foster youth

Increasing resource family placements with relatives, extended family, and FFA homes is an important component to reducing congregate care for 602 foster youth

Child and Family Team

- WIC 706.6 changed to include child and family teams
  - "The agency shall document the rationale for any inconsistencies between the case plan and the child and family team recommendations."



Child and Family Team

A CFT is...

*"A group of individuals who are **convened by the placing agency** and who are engaged through a variety of team-based processes **to identify the strengths and needs of the child or youth and his or her family**, and to help achieve positive outcomes for **safety, permanency, and well-being.**"*

(WIC 16501(a)(4)

CFTs are required for:

- All children and youth residing in a group home
- Children and youth who were placed in foster care after 1/1/17 (see ACL 16-84)

CFT input critical to HBFC rate determination

Probation Youth in Group Homes

35% of youth placed in group homes are probation youth

77% of all probation youth in foster care placement are in group homes

35% had been in group homes for more than one year

Community Based Placements for 602 Foster Youth

- Approved relative (3% of probation youth are currently with relatives)
- Non-Relative Extended Family Member (NREFM)
- Licensed Non-Relative (less than 1%)
- Foster Family Agency (FFA) (less than 1%)
- Transitional Housing (THPP) (less than 1%)
- For 18+ NMDs (602 NMDs or 450 NMDs)
  - Supervised Independent Living Placement (8% of placements)
  - Transitional Housing (THP+FC) (5% of placements)

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(WIC 727(a)(3)(A-F).

602 Placement and Least Restrictive Setting

- Delinquency placements "shall be based upon selection of a safe setting that is the least restrictive or most family like."
  - In order of priority: relatives, tribal members, foster family, group care, residential treatment. WIC 727.1(a)
- Once delinquency youth are at least 18, they are also eligible for THP+FC and SILPs. WIC 727(a)(4)(G).

Utilizing Existing Community Based Entitlements

- **Alternative Placements**
- **Funding:** Leveraging AFDC-FC or ARC to fund relative and NREFM placements.
- **Healthcare:** Leveraging community based mental health services through MediCal/EPSDT
- **Housing:** Leveraging transitional housing programs, including THPP and THP+FC, and SILPs when appropriate
- **Permanency:** focusing on permanency from the outset.

Placement Orders with Relatives

- Relatives are a natural resource for 602 youth
- Making the court order a placement order instead of a straight release order better leverages funding streams and resources to help prevent congregate care or to better support youth returning from congregate care.

602 Placement with Relatives– Why It Matters

- Funding
  - AFDC-FC is more than twice CalWORKs at minimum
- Healthcare
  - Medi-Cal until 26 regardless of income and assets?
- Housing
  - Transitional housing until 21 or 24 or 25
- Permanency
  - Focus on connecting to caring adult

Transitional Housing – the Other Less Restrictive Option

- Three different programs for 602 foster youth.
  - THPP for Minors – 16-18 years old
  - THPP for NMDs (THP+FC) – 18 to 21 years old
  - THP+ - 18 to 24 (or 25) years old with no current court case
    - **Not** a foster placement

THP-Plus vs. THPP-NMD (THP+FC)

- THP-PLUS
- No child welfare supervision
- Ages 18-24
- No participation conditions
- Up to 24 months
- Dependency or delinquency dismissed

- THP-NMD (THP+FC)
- Child welfare supervision
- Ages 18-21 (phase in)
- Must meet participation conditions
- No maximum time
- Remain under dependency, delinquency, or transition jurisdiction

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THPP-Minors vs. THPP-NMD

- THPP-Minors
- Probation or child welfare supervision
- Ages 16-18
- Must participate in ILSP
- Remain under dependency or delinquency jurisdiction as a foster youth
- IV-E dollars may be available

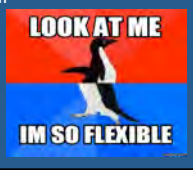
- THPP-NMD (THP+FC)
- Probation or child welfare supervision
- Ages 18-21
- Must meet participation conditions
- No maximum time
- Remain under dependency, delinquency, or transition jurisdiction
- IV-E dollars may be available.

Supervised Independent Living Placement (SILP)

- SILP funding is the basic rate (currently $923) with no specialized care increment or dual agency rate (ACL 17-75)
- Parenting NMDs are eligible to also receive an infant supplement ($900) plus an additional $200 with a Parenting Support Plan (PSP)
- Timing of SILP payment is the same as other AFDC-FC payments, which may make procuring an apartment in the private market difficult.

SILPs in Adult Treatment Facilities

- CDSS FAQ clarifies that NMDs may reside in "a substance abuse, mental health or other residential treatment facility" as a SILP placement.
- http://www.childsworld.ca.gov/res/pdf/SILP-ResidentialTreatmentFacility.pdf



Case Planning & Case Management for 602 Foster Youth

All Probation Foster Youth

- AFDC-FC application filed with eligibility
- Case Plan
  - Permanency Planning

Beginning at 16

- TILP and Credit Report Checks
- ILSP and Chafee Eligibility
- THPP Eligibility

Beginning at 16.5

- Screening for SSI eligibility per AB 1331

Beginning at 17.5

- Possible eligibility for 450 Transition Jurisdiction

Beginning at 18

- WIC 391 process (including documents and screening)
- THP+FC and SILP Eligibility
- Medi-Cal Eligibility (until 26)
- AB 12 EFC Eligibility (until 21)

602 Youth and Permanency

- Permanency planning hearing conducted within 12 months of placement order and continuing no less frequently than at 12 month intervals (WIC 727.3).
  - Reunification
  - Adoption
  - Guardianship (WIC 728c)
  - Foster care with relative
  - Planned Permanent Living Arrangement

Guardianships

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- WIC 728(c) If, at any time during the period a minor under the age of 18 years is a ward of the juvenile court, the probation officer supervising the minor recommends to the court that the court establish a guardianship of the person of the minor and appoint a specific adult to act as guardian, or on the motion of the minor's attorney, or on the order of the court that a guardianship shall be established as the minor's permanent plan pursuant to paragraph (4) of subdivision (b) of Section 727.3, the court shall set a hearing to consider the recommendation or motion and shall order the clerk to notice the minor's parents and relatives as required in Section 294.

Youth with Mental Health Needs

EPSDT

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- **E**arly and **P**eriodic **S**creening, **D**iagnostic, and **T**reatment Services
- Federally mandated Medicaid program for eligible youth under the age of 21

The Multiple Meanings of Medical Necessity

For a full outline of medical necessity criteria according to beneficiary demographic, see
9 CCR §1820.205 — Medical Necessity Criteria for Reimbursement of Psychiatric Inpatient Hospital Services;
9 CCR §1830.205 — Medical Necessity Criteria for MHP Reimbursement of Specialty Mental Health Services; and
9 CCR §1830.210 — Medical Necessity Criteria for MHP Reimbursement of Specialty Mental Health Services for Eligible Beneficiaries Under 21 Years of Age.

EPSDT

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- "Such other necessary health care, diagnostic services, treatment, and other measures … to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan." **42 U.S.C. § 1396d(r)**

OVERVIEW: EPSDT Specialty Mental Health Services Medical Necessity Criteria

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- Eligible for MHP services if he or she meets all of the following:
  - Has an included diagnosis
  - The services are necessary "to correct or ameliorate defects and physical and mental illnesses"
  - The focus of the proposed treatment is to address the impairments
  - The condition would not be responsive to physical health care-based treatment

Lawsuits affecting the provision of EPSDT specialty mental health services in California:

35

- TL v. Belshe, settled in 1995
  - resulted in California's implementation of an expanded EPSDT mental health services benefit. Counties assumed responsibility for providing these services.
- Emily Q. v. Belshe, settled in 2001, resulted in the creation of a new type of intensive EPSDT service called therapeutic behavioral services (TBS).
- Katie A. v. Bontà, settled in 2011, required statewide implementation of more intensive, individualized mental health services to youth in foster care.
  - Clarification by State that these services should be available to all youth with Medicaid/EPSDT who meet the criteria. See MHSUDS 16-004

Community Based Mental Health Services

- Katie A. / Pathways to Well Being
- Emily Q. / Therapeutic Behavioral Services (TBS)
- Multi-Systemic Therapy (MST)
- Intensive Case Management (ICM)
- Juvenile Mental Health Courts

Community Based Mental Health Services

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- Therapeutic Behavioral Services (TBS)
  - Short-term, intensive, and behaviorally focused
  - Focused on behaviors that increase risk of institutionalization
  - Time-limited
  - 1:1 intervention
  - Strength based
  - Emily Q.

Pathways to Well-Being

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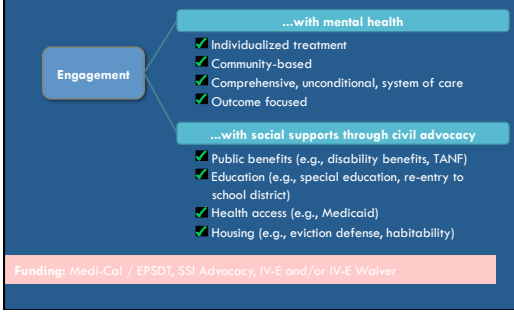
- Katie A. v Bonta
- Intensive home and community-based mental health services for children in foster care or at imminent risk of foster care* who has a mental illness and needs individualized mental health services to treat or ameliorate the condition.
  - Since expanded to all youth under 21 with Medicaid . See MHSUDS 16-004
- Individualized, driven by the needs of the individual youth, and directed by Child and Family Team (CFT)

Juvenile Mental Health Courts



Funding: Medi-Cal / EPSDT, SSI Advocacy, IV-E and/or IV-E Waiver

Alameda County Programs Developed for Probation Youth

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- All programs developed in collaboration with Probation Department
- Probation involved in developing the programs from RFP to roll-out of services
- Programs for youth at risk of Probation Involvement
  - Sheriff Dept. Youth Services
  - Truancy Courts
- Current programs for probation high needs/high risk youth
  - Wrap Around
  - Multi-Dimensional Family Therapy
  - Collaborative Court Intensive Case Management
  - Multi-Systemic Therapy
  - First three programs are Blended Funding programs

Alameda County Behavioral Health Care Services

Other Disability-Related Needs to Consider

Manifestations of Trauma

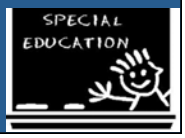
- Emotional numbing
- Avoidance
- Nightmares and night terrors
- Fears about death
- Anxiety
- Sadness
- Anger, irritability, mood swings
- Difficulty concentrating
- Inability to trust others

Rule 5.651

- Screening!
- The court must:
  - "consider and determine whether the … youth's education, physical, mental health, and developmental needs … are being met."
- Probation reports must include:
  - Educational, physical, mental health, or developmental needs and status of disability related services including special education

Special Education

- Under the IDEA, for youth with qualifying disabling condition + which adversely affects the student's educational performance + requires special education. § 1401(3)(A)-(B); 34 C.F.R. § 300.8; 5 C.C.R. § 3030
- Can provide **any** disability related service necessary for a student to benefit from her education including:
  - Speech and language therapy
  - Transportation
  - Mental health therapy
  - Occupational therapy
  - Audiology
  - Behavioral intervention plan



Other Disability Supports

It is important to connect youth to disability related services – especially as they approach 18.

- Transition planning is legal requirement for youth in formal care and/or with IEPs under the IDEA.
- Special programs for youth with developmental disabilities to assist with living in the community
  - E.g., Regional Centers through the Lanterman Act
- Mental health programs to assist with housing, medication management, and access to treatment post-EPSDT eligibility
  - E.g., Mental Health Services Act programs
- Transitional Medi-Cal under the Affordable Care Act
  - State option(!)

Regional Center and Youth

- Lanterman Act:
  - mental retardation, cerebral palsy, epilepsy, autism, and the "5th Category"
  - Comprehensive services for youth 0-3 and post special education (usually after 22)
  - List of services at WIC S 4512(b)
  - Most common for 3-22 year olds: respite, daycare, in-home behavioral support.
- **PRACTICE TIP:**
- Problems? Call Disability Rights CA Advocate
  - A full list of advocates is available here → http://www.disabilityrightsca.org/ocra/ocrabios.html

Regional Center Services

- Information and referral
- Assessment and diagnosis
- Counseling
- Lifelong individualized planning and service coordination
- Purchase of necessary services included in the individual program plan
- Assistance in finding and using community and other resources
- Advocacy for the protection of legal, civil and service rights
- Planning, placement, and monitoring for 24-hour out-of-home care

Transition Aged Youth Services

- Provides case management, housing, and/or other services to youth with Seriously Emotionally Disturbed or Seriously Mentally Ill diagnosis.
- Funded by Mental Health Services Act
- Examples in Alameda County include services at Fred Finch STAY Program, Youth Uprising, Westcoast, and Willow Rock.

Practice Tip - Joinder of Interested Parties

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- Per WIC 727 (b)(1), counsel can join in the juvenile court proceedings any agency that has failed to meet a legal obligation to provide services to a youth (these hearings can also be done pre-dispo)
  - Regional Center
  - Local School District

Youth Survivors of Sex Trafficking

New Laws!

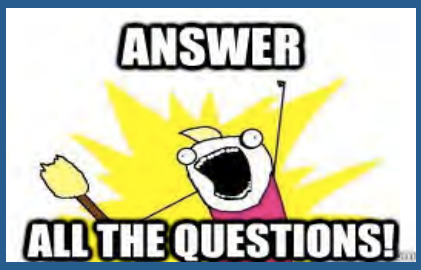
- **SB 855** (2014) - failure to protect a child from sexual exploitation is a type of neglect that may warrant foster care involvement.
- **SB 794** (2015) - requires all California child welfare and probation departments to implement specific policies and procedures for CSEC, including creating a protocol to identify foster youth who are victims of exploitation or at risk of becoming victims, and documenting these children in the agency records, determining appropriate services, and receiving relevant training.
  - Implements the federal Preventing Sex Trafficking and Strengthening Families Act of 2014 which required states to develop policies and procedures for identifying, documenting, and determining appropriate services for CSEC youth as part of their IV-E plan.

More new laws

- **SB 1322** (2016) makes misdemeanors related to prostitution, including solicitation and loitering with intent to commit prostitution, **inapplicable** to minors
  - a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children."
  - Clarified that parents or guardians were not entered into the Child Abuse Central Index (CACI) in cases involving sexually exploited children when the only substantiated allegation was "general neglect." See ACIN I-21-16.

More New Laws!

- AB 1762, also passed in 2016, empowers victims of human trafficking, including sex trafficking, with a process for vacating juvenile adjudications and adult convictions that were a "direct result of the applicant being a human trafficking victim" Penal Code § 236.24.
- AB 604, passed in 2017, allows non-minor dependents who vacate their juvenile adjudications to remain eligible for extended foster care and all of its entitlements and supports regardless of whether the underlying case was vacated



Questions?

UNDERSTANDING TRAUMA FOR DELINQUENCY PRACTITIONERS[1]

Recognizing Youth in Practice: Juvenile Delinquency Defense Beyond the Bench 24, San Diego, California (December 18, 2017)

I. TRAUMA DEFINED

Trauma is an experience that threatens a person's life, safety, or well-being, overwhelming the ability to cope.[2] Traumatic exposures, also called adverse childhood experiences, include being the victim of physical or sexual abuse, observing violence perpetrated against someone close, experiencing a deprivation of needs, abandonment, poverty, or parental incarceration, witnessing community violence, or even something as commonplace as being involved in a car accident. Trauma may result from a single event or from repeated exposures to multiple types of trauma.

II. SYMPTOMS OF TRAUMA EXPOSURE

Some common symptoms of trauma exposure are nightmares, flashbacks, the inability to cope, hyper-arousal, misinterpretation of cues, over-reaction, self-harm, fight or flight, and disassociation. Childhood exposures to trauma can cause changes in a child's brain and body, including the over-production of stress hormones, the impeding of neural pathway maturation, and the experience of traumatic or toxic stress on the body.[3]

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[1] Handout adapted from a law review article by Samantha Buckingham, Trauma Informed Juvenile Justice, 53 AM. CRIM. L. REV. (May 2016)

[2] KRISTINE BUFFINGTON, CARLY B. DIERKHISING & SHAWN C. MARSH, THE NAT'L CHILD TRAUMATIC STRESS NETWORK, TEN THINGS EVERY JUVENILE COURT JUDGE SHOULD KNOW ABOUT TRAUMA AND DELINQUENCY at 3 (2010), http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf.

[3] Childhood Trauma and Its Effect on Healthy Development, National Center Brief, Safe Schools Healthy Students, National Center for Mental Health Promotion and Youth Violence Prevention, (July 2012) at 3. JESSICA FEIERMAN & LAUREN FINE, JUVENILE LAW CENTER, TRAUMA & RESILIENCE: A NEW LOOK AT LEGAL ADVOCACY FOR YOUTH IN THE JUVENILE JUSTICE & CHILD WELFARE SYSTEMS at 3-4 (2014), http://www.jlc.org/resources/publications/trauma-and-resilience.

III. TRAUMATIC CONDITIONS EXPOSURE[4]

Trauma exposures may lead to the development of post-traumatic stress disorder ("PTSD"), chronic trauma, or complex trauma. PTSD sufferers may experience a lack of trust in authority figures as well as themselves, they may be avoidant, and they may be self-destructive, prone to self-harm and extreme risk-taking. PTSD sufferers experience clinically cognizable distress in their social relationships, work, and other areas of life resulting in an inability to cope. When provided with a traumatic reminder—"any person, situation, sensation, feeling or thing that reminds the [sufferer] of a traumatic event"—the sufferer may flashback to the same intense and disturbing feelings that characterized his or her original experience of the trauma.

Individuals suffering from trauma exposure present with symptoms associated with a number of psychiatric conditions, disorders, and syndromes that can co-exist with the trauma diagnosis itself. Amongst PTSD sufferers in juvenile detention, one study found that about four-fifths had at least one additional disorder.[5]

IV. PREVALENCE OF TRAUMA AND JUVENILE JUSTICE YOUTH[6]

Children in the juvenile justice system suffer from trauma at extremely high rates. A recent study found that ninety-three percent of youth in an urban detention facility had experienced at least one traumatic experience in the past year, and more than half of those youth reported "witnessing violence as the precipitating trauma." Overall, more than one in ten children held in detention had PTSD in the year prior to the study interview. Three times as many youth in the justice system experience chronic trauma in their childhood as compared to statistics for all youth in the general public.

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[4] KRISTINE BUFFINGTON, CARLY B. DIERKHISING & SHAWN C. MARSH, THE NAT'L CHILD TRAUMATIC STRESS NETWORK, TEN THINGS EVERY JUVENILE COURT JUDGE SHOULD KNOW ABOUT TRAUMA AND DELINQUENCY (2010), http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_1.pdf. NAT'L JUVENILE DEFENDER CENTER, WHAT JUVENILE DEFENDERS SHOULD KNOW ABOUT THE DSM-5 7 (2014), http://njdc.info/wp-content/uploads/2014/07/NJDC-DSM-5-FINAL.pdf.

[5] KAREN M. ABRAM ET AL., U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, PTSD, TRAUMA, AND COMORBID PSYCHIATRIC DISORDERS IN DETAINED YOUTH, 2 (2013), http://www.ojjdp.gov/pubs/239603.pdf.

[6] KAREN M. ABRAM ET AL., U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, PTSD, TRAUMA, AND COMORBID PSYCHIATRIC DISORDERS IN DETAINED YOUTH, 10–12 (2013), http://www.ojjdp.gov/pubs/239603.pdf.

As Eric Holder, former Attorney General and judge, said, "*When you recognize from the bench a lifetime of trauma in the delinquent acts of a teenager, you have become part of the solution*."[7]

V. INCARCERATION IS TRAUMATIC

Incarceration itself is a traumatic event and should be avoided.[8] Incarceration is not a developmentally appropriate disposition for youthful offenders because it is not responsive to developmental science, it does not promote rehabilitation, and it is costly.[9] Trauma-specific treatments and evidence-based practices are best delivered in the community, school, or at home, and not in a setting of incarceration.[10]

VI. SITUATING TRAUMA IN A DEVELOPMENTAL FRAMEWORK

Youth generally differ from adults in three respects—these are the mitigating factors of youth. First, youth are less mature than adults.[11] They are impetuous, impulsive, and fail to consider the consequences of their actions before they act.[12] Not only are youth

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[7] NELL BERNSTEIN, BURNING DOWN THE HOUSE 166 (2014) (quoting Eric Holder's comments at a task force for defending children in Baltimore in November 2011).

[8] *See generally* SUE BURRELL, THE NAT'L CHILD TRAUMATIC STRESS NETWORK, TRAUMA AND THE ENVIRONMENT OF CARE IN JUVENILE INSTITUTIONS (2013), http://www.njjn.org/uploads/digital-library/NCTSN_trauma-and-environment-of-juvenile-care-institutions_Sue-Burrell_September-2013.pdf.

[9] Samantha Buckingham, *Reducing Incarceration for Youthful Offenders with a Developmental Approach to Sentencing*, 46 LOY. L.A. L. REV. 801, 815 (2013)

[10] David R. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 STAN. L. & POL'Y REV. 13, 22 (2003) ("[V]irtually all effective evidence-based practices occur in the community and the home.") (emphasis omitted).

[11] Brief for the Am. Psychological Ass'n et al., as Amici Curiae Supporting Petitioners at 8–9, Graham v. Florida, 130 S. Ct. 2011 (2010) (No. 08-7412, No. 08-7621), 2009 WL 2236778; *see* Emily Buss*, Rethinking the Connection between Developmental Science and Juvenile Justice*, 76 U. CHI. L. REV. 493, 495 (2009) (reviewing ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE (2008) (stating that adolescents are psychosocially immature which makes them lack the ability to control their emotions and more likely to be attracted to risky behavior)).

[12] Brief for the Am. Med. Ass'n et al., as Amici Curiae in Support of Neither Party at 6–7, *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (No. 10-9646, No. 10-9647), 2012 WL 121237; Brief for the Am. Psychological Ass'n et al., as Amici Curiae Supporting Petitioners, *supra* note 120, at 11 (discussing a study showing adolescents weigh risks

impulsive generally, neuroscience has shown that for those youth who have suffered trauma, brain structures that regulate emotion, behavior, and impulsivity are less developed and function irregularly.[13]

Second, young people are particularly susceptible to pressure.[14] Youth are vulnerable to psychological harm and they do not have control over their environment.[15] When youthful susceptibility to pressure is understood in the context of trauma exposure, we see that trauma is just the type of psychological harm that the Supreme Court has described as mitigating the culpability of youthful offenders.[16] Children who have been victims of repeated trauma, chronic stress, toxic stress, abuse, and neglect may act out themselves to have a sense of control over the chaos and violence that they have come to expect will naturally occur.[17] Chronic traumatic stress causes youth to develop an oversensitive warning system which means that youth genuinely feel threatened and overreact in situations where they have misperceived threats.[18]

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and rewards differently than adults and therefore are more likely to engage in risky behavior); Spear, *supra* note 105, at 421–23 (arguing adolescents are greater risk takers and discussing studies supporting the theory); Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 343–44 (1992) (stating that reckless behavior is a normative part of adolescent actions).

[13] ANGELA WEIS, JOHN HOWARD INST., INCARCERATED YOUTH & CHILDHOOD TRAUMA at 1, http://www.thejha.org/trauma (last visited Mar. 22, 2016).

[14] Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEV. PSYCHOL. 625, 626–34 (2005) (discussing study finding that peer influence has a much greater effect on the risky behavior of adolescents and young adults than it does on mature adults).

[15] Roper v. Simmons, 543 U.S. 551, 569 (2005) ("[J]uveniles have less control, or less experience with control, over their own environment.").

[16] *Roper*, 543 U.S. at 570 ("Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.").

[17] *See* Henry R. Cellini, *Child Abuse, Neglect, and Delinquency: The Neurological Link*, 55 JUV. & FAM. CT. J. 1, 7 (2004) (describing how children who have been victims of chronic trauma in their lives, for instance growing up amidst abuse and violence, may seek to provoke violence so as to have some control over the chaos of their lives).

[18] ANGELA WEIS, JOHN HOWARD INST., INCARCERATED YOUTH & CHILDHOOD TRAUMA at 1, http://www.thejha.org/trauma.

Third, young people possess the potential to change and grow.[19] They have the capacity to learn from their mistakes.[20] Youth is a period of tremendous opportunity for learning, growth, and transformation. The brain's plasticity—its ability to change in response to experience—is at its peak during adolescence, a period that is currently defined as spanning from twelve through the mid-twenties.[21] As trauma sufferers, youth demonstrate resiliency—an ability to thrive in the face of adversities caused by traumatic events.[22] Youthful offenders' brains can heal and repair from the damage of trauma with appropriate and timely treatment.[23] The younger a sufferer is when trauma is identified and treated, the greater the brain's ability to recover.[24]

VII. THE EFFECTS OF TRAUMA ARE TREATABLE

Sometimes there may be a concern that if a child has experienced trauma they could be *more dangerous*, or that nothing can be done to resolve their experiences. Nothing could be further from the truth. Experts can often be helpful in explaining how trauma played a role in the underlying offense, and how it actually plays a mitigating role. Treatment for trauma is effective, and is now widely available. If properly treated in the community trauma should not be a risk factor for future offending. In cases where trauma is an issue, assuring that there is a plan for responding to and treating it should be a part of any dispositional plan.

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[19] *Roper v. Simmons*, 543 U.S. 551, 570 (2005); s*ee generally* FRANKLIN E. ZIMRING, THE CHANGING LEGAL WORLD OF ADOLESCENCE (1982) (proposing that the best response to juvenile crime is to let adolescents grow up and grow out of it).

[20] *See, e.g.*, *Miller v, Alabama*, 132 S. Ct. 2455, 2455(2012); *Graham v. Florida*, 130 S. Ct. 2011, 2011 (2010); *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

[21] LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE, 5, 8–11 (2014) (referring to adolescence as the period between ten to twenty-five years of age and explaining how adolescence rivals ages zero to three in peak neuroplasticity).

[22] BUFFINGTON, DIERKHISING & MARSH, at 11.

[23] Eva J. Klain and Amanda R. White, *Implementing Trauma-Informed Practices in Child Welfare*, from the ABA Center on Children and the Law (November 2013) at 3-5.

[24] Mary Johnson, *Is Providing Trauma-Informed Care for Kids as Easy as Changing the Lens?* (January 7, 2016),https://www.thenationalcouncil.org/conference-365/2016/01/07/is-providing-trauma-informed-care-for-kids-as-easy-as-changing-the-lens/ (discussing the importance of early intervention and the negative consequences of not addressing a child's trauma as early as possible).

VIII. TRAUMA AS MITIGATION

Traumatic exposures, undiagnosed traumatic conditions could be precursors to offending behavior that is really a cry for help. Those suffering from PTSD may be hypervigilant and may unconsciously over-react to a threatening cue or reminder of a previous traumatic event. Trauma sufferers may unconsciously attach significance even to an innocuous cue meaning that their hypervigilance may cause them to respond violently to a cue that to an outside observer is perceived as neutral or non-violent. Additionally, youth who have a weapon or join a gang may be trying to protect themselves from the violence they experience in their lives.[25] Further, trauma impacts school performance. When children are overstimulated by misperceived threats, feel overwhelmed by feelings of fear, they may not be able to focus on their schoolwork or on reasoned decision-making because of the distraction.

IX. BANK OF RESOURCES

The National Child Traumatic Stress Network: http://www.nctsn.org/

[25] MICHELLE EVANS-CHASE, ADDRESSING TRAUMA AND PSYCHOSOCIAL DEVELOPMENT IN JUVENILE JUSTICE-INVOLVED YOUTH: A SYNTHESIS OF THE DEVELOPMENTAL NEUROSCIENCE, JUVENILE JUSTICE, AND TRAUMA LITERATURE 747 (2014) (warning that "as a youth experiences repeated victimizations and/or exposures to violence," their chances of justice system involvement due to self-protective behavior increases "exponentially" and warning that "youth who feel that their family cannot keep them safe in their community or school are likely to join a gang or carry a weapon to feel safe"); *see also* BURRELL at 1.

FACT SHEET – Penal Code § 236.14

Vacating Arrests & Convictions for Victims of Human Trafficking

Background

On January 1, 2017, a new law went into effect, Penal Code section 236.14. This law was enacted pursuant to Senate Bill 823 (Block), a bill designed to give victims of human trafficking a fresh start by creating a pathway to erase any nonviolent arrests and convictions from their records.

What does P.C. § 236.14 do?

Under the new law, victims of human trafficking who have been arrested or convicted for a non-violent offense as a result of being a victim can petition the court to have the arrest or conviction vacated. When an arrest or conviction is vacated, the records are sealed and destroyed, and the individual may lawfully state that he or she has never been arrested, convicted, or adjudicated.

Who is eligible for relief under P.C. § 236.14?

This law applies to any person, adult or minor; however, seeking relief on behalf of minors raises issues that require special care.[1]

In order to be eligible for relief under this law, a person must meet the following requirements:

- **Must be a victim of human trafficking**, meaning the victim of a crime as described by Penal Code section 236.1(a)-(c), which defines the offense of trafficking as:
    - A person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services;
    - A person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518;
    - A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518.

- **Must have an arrest, conviction, or juvenile adjudication for a "*non-violent offense*"**, defined as an offense that is not listed in Penal Code section 667.5(c), which means that the following offenses are excluded from relief:
    - **(1)** Murder or voluntary manslaughter; **(2)** Mayhem; **(3)** Rape; **(4)** Sodomy; **(5)** Oral copulation; **(6)** Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288; **(7)** Any felony punishable by death or imprisonment in the state prison for life; **(8)** Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which it was charged and proved that the defendant used a firearm; **(9)** Robbery; **(10)** Arson; **(11)** Sexual penetration as defined in subdivision (a) or (j) of Section 289; **(12)** Attempted murder; **(13)** A violation of Section 18745, 18750, or 18755; **(14)** Kidnapping; **(15)** Assault with the intent to commit a specified felony, in violation of Section 220; **(16)** Continuous sexual abuse of a child; **(17)** Carjacking; **(18)** Rape in violation of Section 264.1; **(19)** Extortion; **(20)** Threats to victims or witnesses; **(21)** Any first degree burglary where another person was present in the residence; **(22)** Any violation of Section 12022.53; **(23)** A violation of subdivision (b) or (c) of Section 11418.[2]

[1] **Please consult with an attorney familiar with extended foster care (AB12) benefits and eligibility before filing a petition to vacate a juvenile adjudication if the petitioner is under age 21. Vacating adjudications for some of these individuals could result in a loss of AB12 benefits such as housing, case management, or health access.**

[2] See full text of Penal Code section 667.5(c) for complete statutory definitions.

FACT SHEET – Penal Code § 236.14

What has to be shown to be eligible for relief?

To be eligible for relief, a person must show that the non-violent offense:

- Was committed while the person was a victim of human trafficking; and
- Was the direct result of being a victim of human trafficking, as demonstrated by clear and convincing evidence.

In order to grant relief, the judge must also find that:*

- The victim is engaged in a good faith effort to distance him/herself from the trafficking; and
- It is in the best interest of the victim and the interests of justice to grant relief.

*Note – if the offense was adjudicated while the victim was a minor, there is a rebuttable presumption in favor of relief, if it is established that the arrest/adjudication was the direct result of being a victim.

What is the process for filing for relief?

- A petition must be submitted to the court under penalty of perjury;
- It should be filed within a "reasonable time" after the person ceased to be a victim or sought services for being a victim, whichever occurs later;
- The petition must be served on the prosecuting agency with jurisdiction over the case, which will have 45 days to file opposition;
- If no opposition is filed, the court must deem it unopposed and may grant the petition;
- If the petition is opposed, the court must schedule a hearing.

What happens at the hearing?

- A single hearing can be held for multiple convictions from different jurisdictions.
- The hearing may include:
    - Testimony by the petitioner,
    - Other evidence and supporting documentation in support of the petition, and
    - Any opposition evidence presented by the prosecutorial agencies involved.
- The court must consider the totality of the evidence, and if it finds that the standards for relief have been met, issue a vacatur order that:
    - Finds that the petitioner was a victim when he/she committed the offense;
    - Sets aside any conviction and dismisses the accusation;
    - Notifies the Department of Justice that relief has been ordered.

What happens if the petition is granted and vacatur is ordered?

- When an arrest or conviction is vacated, it is deemed not to have occurred.
- The conviction is set aside, but the petitioner is not relieved of the duty to pay restitution.
- The court will order sealing and destruction of the records by the California Department of Justice and law enforcement agencies:
    - The records will be sealed for three years from the date of the arrest, or one year from the date of the court order, whichever is later.
    - After that period, the records shall be destroyed.
- The petitioner can deny or refuse to acknowledge the arrest, conviction, or adjudication.
- The conviction shall not be distributed to any state licensing board.