



## Child Welfare and Juvenile Justice – Two Sides of the Same Coin, Part II

*By Judge Michael Nash and Shay Bilchik*

The link between child welfare and juvenile justice is well established. The National Council of Juvenile and Family Court Judges' landmark *Juvenile Delinquency Guidelines*, published in 2005, noted "The Child Welfare System has an important impact on the juvenile justice system. Research is clear that youth who have been abused and neglected are at heightened risk for early onset of delinquency."<sup>1</sup> This notion was also well documented in Part I of this series, published in the Fall 2008 issue of *Juvenile and Family Justice Today*.<sup>2</sup>

Given the established link between the child welfare and juvenile justice system, the question becomes how do these systems react when a youth crosses over from one system to the other? Do they coordinate their responses when a youth is involved simultaneously with both systems? Is there sufficient communication, coordination, and cooperation among courts, agencies, and attorneys involved with youths and their families?

More specifically, what happens when a youth under the jurisdiction of the Dependency Court is charged with a crime in the Delinquency Court? What happens when a youth under the jurisdiction of the Delinquency Court is abused while living at home? What happens when a youth with no dependency or child welfare involvement is charged with a crime in Delinquency Court and is also a victim of abuse or neglect? Do the systems act in concert when a youth under Delinquency Court jurisdiction who has been removed from the community does not have a safe home to return to after satisfying the terms and conditions of probation?

These scenarios do not represent all the situations where the systems potentially interact but certainly are some of the more basic ones. This article will discuss an approach to the interaction between these systems and demonstrate how Los Angeles County, California, has worked to incorporate this approach into practice.

## COURT PRACTICES

In their ground-breaking work, “When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases,”<sup>3</sup> Siegel and Lord noted five categories of court practices relevant to the handling of dual jurisdiction or crossover matters:

- Screening and assessment;
- Case assignment;
- Case flow management;
- Case planning and supervision; and
- Interagency collaboration.

For purposes of screening and assessment, the juvenile justice system must become aware of a youth’s involvement in an abuse and neglect matter when a delinquency referral is made and vice versa. When involvement in the other system becomes known, some mechanism must be in place to notify the other system of the youth’s new dual involvement. Further, there must be a process to assess the youth’s strengths, needs, and risks in order for the systems to ultimately determine how to allocate resources for the benefit of the youth and the community.

In the area of case assignment, it is important that the court, attorneys, and others who work in the courts and on cases involving crossover youths have knowledge and understanding of the youth, including family history and prior court history, as well as the dynamics of both child welfare and juvenile justice. Siegel and Lord recommended the use of one family/one judge courts, dedicated dockets, and specially trained attorneys to handle dual jurisdiction cases.

Case flow management should focus on efficient and timely court practices. Joint pre-hearing conferences, combined dependency/delinquency hearings, joint court reports, and court orders have been suggested along with mandated appearances by probation officers and social workers at court hearings.

Case planning and supervision may be the most important area because developing and implementing case plans may ultimately determine the fate of the involved youth. Consideration should be given to the use of specialized case management and supervision units, multidisciplinary teams in case planning, special training for

these units or teams, and reduced caseloads.

Finally, it is critical that the court exercises its leadership and oversight function to ensure that interagency collaboration occurs and translates into effective action on behalf of involved youths.

## CROSSOVER CASES IN LOS ANGELES

California law and its application in Los Angeles County provide an interesting example of the use of many of these notions and suggested practices for the handling of crossover cases. California law has at least since 1990 legislatively recognized the child welfare/juvenile justice relationship and has mandated a procedure for handling crossover cases.

California Welfare and Institutions Code (WIC) section 241.1 mandates that whenever a minor appears to fit the description of a dependent of the Dependency Court and a ward of the Delinquency Court, the county probation department and the county child protective services department must prepare a joint assessment of the youth and make a recommendation to the court on which status—dependency or delinquency—shall serve the best interests of the minor and the protection of society.<sup>4</sup> The court must then decide which status is appropriate since the law does not allow simultaneous jurisdiction by both systems.<sup>5</sup>

The joint assessment by both departments must include, but is not limited to, the nature of the referral, the age of the youth, the prior record of the youth’s parents for child abuse, the prior record of the youth for out-of-control or delinquent behavior, the parents’ cooperation with the youth’s school, the youth’s functioning at school, the nature of the youth’s home environment, and the records of other agencies which have been involved with the youth and his or her family.<sup>6</sup>

Prior to the implementation of WIC 241.1 in Los Angeles in 1997, a dependent youth who was charged with and found to have committed a crime was likely to be declared a ward of the Delinquency Court,<sup>7</sup> thereby resulting in the termination of dependency status. No coordination existed between the systems and the only formal communication occurred after the youth was declared a ward of the Delinquency Court in order to accomplish termination of Dependency Court jurisdiction.

It is also important to note that the juvenile court system in Los Angeles is bifurcated. There are 20 full-time Dependency Courts, 19 at one location, and 28 full-time Delinquency Courts at 10 locations around the county.<sup>8</sup> To the extent that inter-court communication and coordination existed then and exist today, it is through a coordinated approach rather than through a one judge/one family approach.

Since implementation of WIC 241.1 in 1997, outcomes have remained remarkably consistent. Because of the filtering process created by the joint assessments and ultimate court decisions, only 25%-30% of dependent youths who were charged in Delinquency Court became wards of the Delinquency Court. Approximately 60% of dependent youths charged in Delinquency Court remained under formal Dependency Court jurisdiction but were placed on informal delinquency supervision.<sup>9</sup> These young people are commonly called “informal dual status youth.” Finally, WIC 241.1’s implementation did result in an institutionalized system of communication and coordination between child welfare and juvenile justice.

Unquestionably, WIC 241.1 had a positive impact on crossover issues in Los Angeles. Yet, weaknesses remained in the system, especially in joint assessment implementation. The departments did

a decent job of accumulating information about the youth, but a poor job of evaluating the information due to a lack of a consistent and meaningful method of evaluation.

Further, while communication and coordination existed through the assessment process, there was no meaningful process for coordination and cooperation between the departments following case disposition. The result was that many so-called informal dual status youths eventually re-offended and became formal delinquents because of a lack of a coordinated approach to service delivery by children's services and probation.

Finally, dependent youths who became formal wards of the Delinquency Court ended up losing their social workers, attorneys, and judges from the Dependency Court. There was also a discontinuation of existing services to the family as the burden shifted from social worker to probation officer. Wards of Delinquency Court in foster care often stayed in the delinquency system longer due to the ineffectiveness, perhaps due to inexperience, of the probation department in developing permanent plans for them. In addition, the probation department has traditionally been more focused on accountability rather than the kinds of holistic services normally provided or set up by social workers.

#### DUAL STATUS PILOT PROJECT

Recognizing some of the inherent weaknesses of the WIC 241.1 process, the California Legislature enacted Assembly Bill (AB) 129 in 2004 which made some significant amendments to WIC 241.1.<sup>10</sup>

AB 129 allows individual counties to experiment with the creation of a formal dual status system, that is, one in which a youth can simultaneously be under the formal jurisdiction of both the Dependency and Delinquency Courts. The potential benefits of a formal dual status system include continuity of services for youths and families, continuity of representation and relationships with social workers and judges, enhanced agency collaboration in case plan development and implementation, and potentially shorter stays under delinquency jurisdiction.

In order to have the opportunity to experiment with a formal dual status system, it is necessary for a county's Chief Probation Officer, Director of Children and Family Services, and Presiding

Judge of the Juvenile Court to agree. That has been the case in Los Angeles and at least seven other of California's 58 counties.

Pursuant to a process developed by the Child Welfare League of America (CWLA), Janet Wiig and John Tuell of CWLA<sup>11</sup> worked with systems stakeholders in Los Angeles County to create and implement an AB 129 Pilot Project at one of the Los Angeles Juvenile Court's ten Delinquency Court locations. This pilot project differs significantly from the WIC 241.1 process utilized elsewhere in Los Angeles. The first difference is that the joint assessment required by the statute has been significantly enhanced to include an assessment of each youth's strengths, needs, and risks posed to the community.

Perhaps more significantly, the assessment is conducted by a Multidisciplinary Team (MDT) consisting of a probation officer, social worker, clinician from the Department of Mental Health (DMH), and an education advocate. Once disposition has been completed, the MDT serves as case manager for implementation of the case plan ordered by the court, regardless of whether the youth becomes a formal dual status youth or an informal dual status youth. The MDT oversees and coordinates the efforts of everyone from both departments who is responsible for providing services to each youth.

The last element of the formal dual status process is that both the Dependency and Delinquency Courts keep open each formal dual status youth's case, with the Delinquency Court focusing on accountability issues and the Dependency Court continuing its focus on placement, services to the youth and family, and permanency.

There is no loss of attorneys or social workers, all of whom maintain their focus.

Thus far the process has worked well, but there have been three main challenges. The first is that it takes time for the members of the MDT, who are housed together, to function as a team. Time and regular meetings with the crossover oversight committee, chaired by the Presiding Judge of the Juvenile Court, have helped resolve many issues for the team.

The second issue relates to the assessment. It is difficult for youths to actually participate in the joint assessment process, particularly with the DMH clinician, because of the tension created



The Center for Juvenile Justice Reform (CJJR) at the Georgetown University Public Policy Institute is supporting the type of cross-systems work that has been highlighted in this two-part series authored by Judge Michael Nash and CJJR Director Shay Bilchik. The Center has just announced its 2009 Certificate Programs. Focused on cross-systems (child welfare and juvenile justice) change, these Certificate Programs provide the opportunity for short periods of intensive study for judges

and public agency leaders responsible for policy development and implementation that enhances their efforts toward systems integration and achieving better outcomes for this nation's youth. For more information and to apply for the Certificate Program for Individuals and/or the Certificate Program for Teams/Breakthrough Series Collaborative, please visit CJJR's Web site at <http://cjjr.georgetown.edu>.

by the need to interview the youth as part of the assessment process and the need to protect each youth's Fifth Amendment rights in the Delinquency Court. Legislation enacted by the California legislature that was designed to protect statements made by youths during the assessment process was vetoed by the Governor due to opposition from district attorneys.<sup>12</sup>

Los Angeles is currently participating in the Child Welfare/Juvenile Justice System Integration Initiative with the Center for Juvenile Justice Reform at Georgetown University. Through that initiative, Los Angeles has developed a small experiment within its pilot site to test a youth's participation in the mental health assessment part of the WIC 241.1 joint assessment by having the youth's attorney present during the assessment to help protect the youth from making incriminating statements during the assessment interview.

The third issue in the process is the difficulty in linking youths and families with the most appropriate services designed to meet their individual needs, an issue that permeates all of our systems. Time and experience will judge the extent to which the formal dual status pilot project addresses this shortcoming in relevant youth- and family-serving agencies.

## PRELIMINARY EVALUATION RESULTS

This pilot program is being evaluated by Professor Denise Herz, Ph.D., from the School of Criminal Justice and Criminalistics at California State University, Los Angeles. This University has had a partnership relationship with the Los Angeles Juvenile Court since the early 1990s. Preliminary results of the project have been positive.

Statistically, only 12% of dependent youths charged with crimes have become formal wards of the Delinquency Court. Further, each

of those young people have also remained under Dependency Court jurisdiction. This represents a significant decrease in the number of youths crossing over to formal Delinquency Court jurisdiction.

In addition to these statistics, the preliminary results also indicate that the MDT reports are more comprehensive than previous joint assessments, and the case plan recommendations are more comprehensive as well. The most interesting data suggest that recidivism by youths in the project is slightly lower than those involved in the old 241.1 joint assessment process. However, these data need additional study before a firm conclusion can be made.

## CONCLUSION

There is still much to be learned about the relationship between child welfare and juvenile justice, particularly the reasons why youths cross over and how to better serve them within the child welfare system to minimize their risk of juvenile justice system involvement. However, the increased focus on this issue by Los Angeles and many other jurisdictions, along with the work of institutions like the Center for Juvenile Justice Reform, hopefully bodes well for our youth and our communities.

## ABOUT THE AUTHORS

**Judge Michael Nash** is the Presiding Judge of the Juvenile Court in the Los Angeles (Calif.) Superior Court. He was elected Secretary of the National Council of Juvenile and Family Court Judges in July 2008.

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## END NOTES

<sup>1</sup> National Council of Juvenile and Family Court Judges. (2005). *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases*, p.21.

<sup>2</sup> Bilchik, S., & Nash, M. (2008, Fall). Child Welfare and Juvenile Justice, Two Sides of the Same Coin, *Juvenile and Family Justice Today*, Vol. 17, No. 4.

<sup>3</sup> Siegel, G., & Lord, R. (2004). *When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases*. Pittsburgh, PA: National Center for Juvenile Justice.

<sup>4</sup> California Welfare and Institutions Code (WIC) section 241.1(a) states: (a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child protective services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

<sup>5</sup> WIC 241.1 also states: (d) Nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.

<sup>6</sup> WIC 241.1 (b) states: (b) The probation department and the child protective services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the development of recommendations by these departments for consideration by the juvenile court. These protocols shall require, which requirements shall not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies which have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child

protective services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which a new petition should be filed to change the minor's status.

<sup>7</sup> A ward of the Delinquency Court is a youth who has been adjudicated and declared to be a delinquent youth under the full jurisdiction and supervision of the Delinquency Court. See California Welfare and Institutions Code section 602.

<sup>8</sup> The Delinquency Courts and Dependency Courts operate separately from each other except as discussed in the article.

<sup>9</sup> See California Welfare and Institutions Code sections 654.2, 725(a) and 790. Youths placed on informal delinquency supervision are not formal wards of the Delinquency Court with all of the consequences attached to formal status. They cannot be removed from the community or put in foster care placement while on informal status. They are subject to limited conditions of informal probation for limited periods of time. A violation of informal probation is heard in the Delinquency Court and could result in a youth being declared a ward of the Delinquency Court.

<sup>10</sup> California Welfare and Institutions Code sections 241.1(d) and (e) now state: (d) Except as provided in subdivision (e), nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court. (e) Notwithstanding subdivision (d), the probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county may create a jointly written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court. This protocol shall be signed by the chief probation officer, the director of the county social services agency, and the presiding judge of the juvenile court prior to its implementation. No juvenile court may order that a child is simultaneously a dependent child and a ward of the court pursuant to this subdivision unless and until the required protocol has been created and entered into.

<sup>11</sup> Janet K. Wiig, with John A. Tuell, authored the *Guidebook for Juvenile Justice and Child Welfare System Coordination and Integration, A Framework for Improved Outcomes* (2008). Washington, DC: Child Welfare League of America.

<sup>12</sup> California Assembly Bill 1405 (2008).