

SERVING THE BEST INTEREST OF CALIFORNIA'S DUAL-JURISDICTION MINORS: THE NEED FOR A [RE]UNIFICATION OF THE JUVENILE COURT SYSTEM

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I. INTRODUCTION

“In every child who is born, under no matter what circumstances, and of no matter what parents, the potentiality of the human race is born again.”¹ In California, a “minor” and a “child” are both defined as an individual under the age of eighteen.² Although this age may be arbitrary, individuals under the age of eighteen are governed by a separate set of laws. California’s laws for minors fall under Division 2 of the Welfare and Institutions Code (“WIC”), which loosely follows the doctrine of *parens patriae*—that the state will act in the best interest of a child.³ *Parens patriae*

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¹ MICHAEL A. CORRIERO, JUDGING CHILDREN AS CHILDREN: A PROPOSAL FOR A JUVENILE JUSTICE SYSTEM 64 (2006) (QUOTING JAMES AGEE, LET US NOW PRAISE FAMOUS MEN (1941)).

² CAL. FAM. CODE §§ 6500, 3402(b) (West 2011). For purposes of this Note, the terms “minor” and “child” have the same meaning and will be used interchangeably. It is generally in the context of medical consent in which there may be a difference between who is considered a minor and who is considered a child. For example, federal regulations define a “child” as someone who has not attained the legal age of consent for certain medical procedures. 45 C.F.R. § 46.402(a) (2011). Thus, there are individuals under eighteen (minors) who can consent to certain medical procedures, and therefore they are not considered children for the purpose of medical consent. *Id.*

³ See Daniel B. Griffith, *The Best Interests Standard: A Comparison of the State's Parens Patriae Authority and Judicial Oversight in Best Interests Determinations for Children and Incompetent Patients*, 7 ISSUES L. & MED. 283, 290 (1991). *Parens patriae* literally means “parent of his or her country” and is defined as “the state in its capacity as provider of protection to those unable to care for themselves.” BLACK’S LAW DICTIONARY (9th ed. 2009). This doctrine

has long been an underlying principle of juvenile law and is centered on the idea that minors are not capable or mature enough to act in their own best interests.⁴ When necessary and appropriate, the state acts as a guardian through the court system and relevant state agencies, such as child welfare services.⁵ This *parens patriae* intention is codified in WIC section 202, which reads,

The purpose of this chapter [of the Juvenile Court Law] is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court. . . . Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment, and guidance consistent with their best interest and the best interest of the public.”⁶

Today, the WIC applies to juveniles when a parent is deemed an unfit caregiver or when a child acts in a manner that is potentially harmful to society.⁷ The WIC divides children who enter the system into two categories: dependents and wards.⁸ Dependents are children who have been abused or neglected, and wards are children who have committed delinquent acts.⁹ Early juvenile courts in California typically had one judge adjudicating juvenile trials, which fell under either dependency or delinquency jurisdiction.¹⁰ The proceedings were generally informal and judges tended to possess a familial relationship with the juveniles appearing before them.¹¹ However, as the juvenile court evolved, the two juvenile jurisdictions separated and remained that way in a majority of California juvenile court systems.¹² Judicial officers in dependency or delinquency courtrooms only adjudicated dependent or delinquent children, respective-

“emanates from the state’s traditional role as sovereign and guardian under legal disability.” Griffith, *supra*, at 288. See *id.* at 287–91, for a discussion of the history, development, and general overview of this doctrine.

⁴ Griffith, *supra* note 3, at 287–90.

⁵ *Id.* at 288.

⁶ CAL. WELF. & INST. CODE § 202(a)–(b) (West 2011).

⁷ *Id.* §§ 300, 601–02.

⁸ *Id.*

⁹ *Id.*

¹⁰ Diane Nunn & Christine Cleary, *From the Mexican California Frontier to Arnold-Kennick: Highlights in the Evolution of the California Juvenile Court, 1850-1961*, 5 J. CENTER FOR FAM., CHILD. & CTS. 3, 15 (2004).

¹¹ *Id.* at 19.

¹² Martha E. Bellinger, “Can We Talk?” *Facilitating Communication Between Dependency and Delinquency Courts*, 21 J. JUV. L. 1, 2 (2000).

ly.¹³ In 1992, Los Angeles County moved the dependency courthouse away from the criminal court buildings in an attempt to create a less frightening environment for children who were victimized.¹⁴ However this move created even more of a separation between juvenile dependency and delinquency matters.

Beginning in the 1980s, studies began to show that there are minors who fall under both the dependency and delinquency jurisdictions, generally referred to as crossover or dual-jurisdiction minors.¹⁵ While there is overlap between the two jurisdictions, entrance into one does not guarantee entrance into the other.¹⁶ Thus, dual-jurisdiction minors should be given special attention, especially if the state is committed to a *parens patriae* philosophy. This is especially true because these children generally need the most help.¹⁷

In an attempt to address this overlap, in 1989 California passed WIC section 241.1 to maintain separate juvenile systems, intending to avoid conflict and confusion between the two.¹⁸ According to the statute, one of the jurisdictions would ultimately better serve the best interests of the child.¹⁹ However, the statute was heavily criticized, and the legislature amended it several years later, adding a new subdivision to allow certain minors to be part of both systems.²⁰ The amended statute gives much discretion to California counties to choose whether to allow dual-jurisdiction minors, and to devise protocols on how to approach and implement the procedures of assessing and handling dual-jurisdiction cases.²¹ Approximately seven years after its passage, only nine counties, none of which are the most heavily populated in the state, had attempted to implement

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¹³ *Id.*

¹⁴ *Edmund D. Edelman Children's Court*, L.A. ALMANAC, <http://www.laalmanac.com/crim/cr57.htm> (last visited Dec. 23, 2011).

¹⁵ See discussion *infra* Part III.

¹⁶ *Id.*

¹⁷ Shay Bilchik & Michael Nash, *Child Welfare and Juvenile Justice—Two Sides of the Same Coin*, JUV. & FAM. JUST. TODAY, Fall 2008, at 16, 18 (“Crossover youths penetrate more deeply into systems, thereby increasing the costs of treatment and decreasing the odds of successful social reintegration.”).

¹⁸ CAL. WELF. & INST. CODE § 241.1 (West 2011).

¹⁹ *Id.*

²⁰ *Id.* § 241.1(e). See also *Dual Status Children: Protocols for Implementing Assembly Bill 129*, CALIFORNIA COURTS: THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/7989.htm> (last visited Mar. 15, 2012) [hereinafter *Dual Status Children*].

²¹ § 241.1(e).

the amended statute.²² Although the amended statute seems to have appeased the critics of the original version, there are still some underlying problems that the amended statute cannot fix.

While the existence of two separate jurisdictions is efficient in addressing different aspects of the juvenile system, the available research on dual-jurisdiction minors suggests that there should not be a complete divide between the two. The existence of dual-jurisdiction minors proves that the two jurisdictions are at times closely interlocked. It is not in the best interest of children to force them to terminate one jurisdiction, or to go through the procedures of two different jurisdictions. This practice also goes against the values of *parens patriae* because the best interest of a child should not be a matter of administrative convenience.

Because California's juvenile system is divided, the state lacks adequate legislation and procedures to handle dual-jurisdiction cases. Current legislation only requires dependent and delinquent agencies to share files and protocol assessments,²³ which does not offer a holistic assessment of each situation. Dual-jurisdiction minors need preventative, disciplinary, and rehabilitative measures so that they have the opportunity to grow into stable and productive citizens of the community. These goals can be achieved if the division is reunified, allowing dual-jurisdiction minors to receive the appropriate services from both systems. If only one adjudicator sits before a dual-jurisdiction minor, he or she will make decisions that are more timely and better informed—truly acting as a guardian to the child.

This Note advocates a one-court, one-judge approach in California's juvenile court system. Part II provides an introduction to the juvenile court, including a brief history of its evolution, as well as a description of the two juvenile systems that exist today. Part III discusses how California law has handled dual-jurisdiction or crossover minors. This Note will show that California's method of handling dual-jurisdiction minors is undesirable by examining two significant and often cited cases and the most recently passed statute, which is potentially inadequate to serve these minors. Part IV of this Note argues that the best way to deal with dual-jurisdiction minors, and perhaps all minors who go through the juvenile system, is to physically reunite the two jurisdictions. A one-court, one-judge system would be the best way to assess a child's case and imple-

²² *Dual Status Children*, *supra* note 20. Currently, the nine counties that have developed WIC § 241.1(e) protocols are Colusa County, Inyo County, Modoc County, Placer County, Riverside County, San Joaquin County, Siskiyou County, Sonoma County, and Stanislaus County. *Id.*

²³ See § 241.1(b).

ment prevention and rehabilitation measures, which would ultimately serve the best interest of the child.

II. HISTORY AND OVERVIEW OF CALIFORNIA'S JUVENILE COURT SYSTEM

A. EVOLUTION OF THE JUVENILE COURT SYSTEM

The policy to protect children in California began in the 1850s, when the first orphanage opened in San Francisco.²⁴ The San Francisco Industrial School was established for “children under eighteen ‘leading an idle or immoral life.’”²⁵ Then in 1874 the Boys and Girls Aid Society of San Francisco was established to house and care for abused and neglected children.²⁶ The Society also protected delinquent minors by lobbying for legislation that prohibited putting children under sixteen in jail and provided probation for juvenile offences.²⁷ That same year, in New York, the founder of the Society for the Prevention of Cruelty to Animals (“SPCA”), also an attorney, successfully “secured a writ of habeas corpus on behalf of a child who was severely beaten by her stepmother,” prompting similar action in California’s SPCA and eventually leading to legislation that protected abused children.²⁸

In 1903, the legislature passed California’s very first juvenile court law, which applied to both dependent and delinquent children under the age of sixteen.²⁹ This statute, similar to juvenile court statutes of other states at the time, followed the *parens patriae* model, allowing the judicial officer to rule in the best interest of the child: “care, custody, and discipline of a child shall be approximately as nearly as may be that which should given by parents.”³⁰ In addition, delinquents were not to be deemed criminals,³¹ and courts “viewed youths involved in crime first and fore-

²⁴ Nunn & Cleary, *supra* note 10, at 4. The growing number of children whose parents died during the long journey to the West prompted the openings. *Id.*

²⁵ *Id.* at 6. Before the establishment of the Industrial School, these children were typically jailed with adult criminals. *Id.* at 7.

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.* at 5–6.

²⁹ *Id.* at 12.

³⁰ *Id.* at 13.

³¹ *Id.* at 11.

most as children.”³² During the first half of the century, the Law went through various amendments and revisions, but generally, dependent children and delinquent children were treated similarly and heard in the same courtroom.³³ Proceedings were informal, and courts embraced the *parens patriae* doctrine.³⁴

However, the second half of the twentieth century saw a rise in youth crime rates,³⁵ and soon the paternalistic approach to rehabilitating delinquent youth “seemed to bear little relation to the reality of youth crime.”³⁶ The prevailing attitude toward delinquent youth as “first and foremost . . . children” declined, and some minors were even tried as adults in the adult criminal system.³⁷ The divide between dependency and delinquency became more obvious as the juvenile court physically kept delinquent minors away from the dependants outside the courtroom.³⁸ As treatment of delinquents began to resemble treatment of adult criminals, the informal *parens patriae* approach to delinquency made the process seem arbitrary, with no well-defined procedures and a lack of due process.³⁹ In response to growing criticism, in 1957 the Governor appointed a Special Study Commission on Juvenile Justice to explore the problems in the juvenile court system and make recommendations for revisions.⁴⁰

In the Commission’s final report, one of the most important recommendations was to separate the juvenile court into three jurisdictions: dependents and two separate categories of delinquents.⁴¹ By then juvenile courts were already separating jurisdictions, as dependent and delinquent cases were handled differently, and dependency minors were segregated

³² Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *FUTURE CHILD* 15, 16 (2008).

³³ Nunn & Cleary, *supra* note 10, at 15–17.

³⁴ *Id.* at 12–21.

³⁵ Scott & Steinberg, *supra* note 32, at 17. The reasoning behind the rising rates is generally attributed to easier youth access to firearms, which ultimately causes more fatalities. *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ REPORT OF THE GOVERNOR’S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE, PART I: RECOMMENDATIONS FOR CHANGES IN CALIFORNIA’S JUVENILE COURT LAW 19 (1960) [hereinafter 1960 REPORT].

³⁹ Nunn & Cleary, *supra* note 10, at 23–24.

⁴⁰ *Id.*

⁴¹ 1960 REPORT, *supra* note 38, at 18. The recommendation describes the three categories as (1) minors who are dependent, neglected, or abandoned by their parents; (2) minors whose behavior clearly implies a tendency towards delinquency; and (3) minors who violate state, local, or federal criminal laws, or who violate lawful orders of the juvenile court.

from delinquent minors in detention facilities.⁴² The Commission felt that it was necessary to clearly articulate the separation through a statute, and to set forth a clear basis for determining each type of jurisdiction.⁴³ They also emphasized the different purposes in serving dependent and delinquent children.⁴⁴ For dependent children it was necessary to “expand facilities for normal development,” whereas for delinquents there needed to be “some element of restraint.”⁴⁵ The *parens patriae* doctrine was no longer the sole determining factor for the Commission’s recommendations; rather the Commission prioritized clear guidelines over a single judge’s discretion in handling cases in each of the juvenile jurisdictions.⁴⁶

In response to the thirty-one recommendations published in the Commission’s Final Report, Senate Bill 332 was introduced to the Legislature in 1961.⁴⁷ This bill was initially met with hostility because of the potential implementation costs and the possibility that it would cause juveniles to develop “adult attitudes towards crimes.”⁴⁸ The bill’s committee, comprised of former prosecutors and a former juvenile court judge, was not keen on radically changing the juvenile court system and believed the *parens patriae* informalities of the current juvenile court would be sufficient.⁴⁹

To prove the need for major changes in the juvenile system, the Commission offered testimony from a juvenile court judge, who discussed just how informal he was with his juvenile cases.⁵⁰ Judge Richard Eaton from Shasta County revealed what he believed to be “his methods for the character-building of youth.”⁵¹ First, he expected juveniles to admit to their charges; otherwise, he would detain them until “they were ready to make the necessary admissions.”⁵² If a juvenile admitted to misconduct, he believed that the juvenile “should be detained on the spot and not discharged until he satisfies the judge of at least his present desire to do bet-

⁴² *Id.* at 19.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 20–21.

⁴⁷ Nunn & Cleary, *supra* note 10, at 25.

⁴⁸ EDWIN M. LEMERT, SOCIAL ACTION AND LEGAL CHANGE: REVOLUTION WITHIN THE JUVENILE COURT 152–53 (1970).

⁴⁹ *Id.* at 151–52.

⁵⁰ *Id.* at 153–54.

⁵¹ *Id.* at 154.

⁵² *Id.*

ter.”⁵³ He also testified that he believed the presumption of innocence for juveniles was absurd.⁵⁴ The Legislature was shocked by Judge Eaton’s testimony,⁵⁵ and quickly passed a bill the same year.⁵⁶ The set of WIC statutes following the Commission’s recommendations became known as the Arnold-Kennick Juvenile Court Law.⁵⁷

The Arnold-Kennick Juvenile Court Law set up today’s WIC sections 300, 601, and 602, prescribing a more detailed explanation of what constitutes a dependent, a status offender, and a delinquent.⁵⁸ Since then, the dependency and delinquency jurisdictions have remained separated, with distinct dependency and delinquency judicial officers.⁵⁹ This separation is exemplified in the densely populated County of Los Angeles, where in 1992, officials opened the Edmund D. Edelman Children’s Court, which only holds dependency-related hearings.⁶⁰ While cases previously took place in formal courtrooms, seen as intimidating to victimized children, the new dependency courthouse was designed to be child-friendly, with smaller and brighter courtrooms and play areas.⁶¹ But the creation of the Dependency Court marked a clear segregation of the juvenile dependency and delinquency systems and juvenile courts across the state have continued to operate as such.⁶²

B. OVERVIEW OF THE JUVENILE DEPENDENCY SYSTEM

Today, minors are declared dependents of the court and fall within the dependency system if they are victims or suspected victims of neglect, abandonment, or any kind of abuse described in WIC section 300.⁶³ Section 300.2 reiterates the *parens patriae* spirit, and states that the purpose of creating a dependency system is to ensure that a minor is provided with

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* Regarding the testimony, one senator said, “We talked about nothing else for four days, and still couldn’t believe it!” *Id.*

⁵⁶ Nunn & Cleary, *supra* note 10, at 25.

⁵⁷ *Id.*

⁵⁸ CAL. WELF. & INST. CODE § 300 (West 2011).

⁵⁹ See *supra* text accompanying note 13.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ § 300. The ten subdivisions in WIC § 300 basically describe all the possible situations in which a child can be categorized as a dependent of the court. *Id.*

“maximum safety and protection.”⁶⁴ A minor can enter the dependency system as an infant and remain there until as late as twenty-one years old.⁶⁵

The dependency system is designed to aid children who are victims of abuse. Anyone, even those who wish to remain anonymous, can report suspected abuse of minors, and some professionals, such as teachers and doctors, are required by statute to report such abuse.⁶⁶ If the case proceeds to court, a social worker from Child Welfare Services drafts a petition for the court, listing the alleged facts regarding the suspected abuse.⁶⁷ During the initial dependency hearing, the court first determines by a preponderance of evidence whether the minor falls under one of the section 300 subdivisions,⁶⁸ then decides where to place the minor based on his or her best interests.⁶⁹ This hearing is also called the Detention and Arraignment hearing,⁷⁰ and takes place as soon as possible after the petition has been filed.⁷¹ If the child is declared a dependent of the court, future court dates are scheduled to determine placement, reunification, and status reviews.⁷²

The people involved with a minor’s dependency case are typically the minor’s attorney, a social worker from Child Welfare Services, counsel representing Child Welfare Services, and the presiding judicial officer.⁷³ When parental rights are at issue, parents’ attorneys are also involved in the court proceedings.⁷⁴ The minor’s attorney is appointed through a non-profit organization; in Los Angeles, the Children’s Law Center represents

⁶⁴ *Id.* § 300.2.

⁶⁵ *In re Gloria*, 233 Cal. Rptr. 690 (Ct. App. 1987) (stating in dicta that if a minor had reached the age of eighteen in between dependency hearings, the court could retain jurisdiction over the minor until age twenty-one).

⁶⁶ Amy M. Pellman, *The ABC’s of the Los Angeles Dependency Court System* 3 (Jan. 2010) (unpublished manuscript) (on file with author).

⁶⁷ *Id.* at 6–7.

⁶⁸ *Id.* at 7.

⁶⁹ *Id.* at 9–10.

⁷⁰ *Id.* at 10.

⁷¹ *Id.* See also CAL. WELF. & INST. CODE §§ 313, 315 (West 2011) (“DCFS [Department of Children and Family Services] must file a petition within 48 hours after a child is detained and a hearing must be scheduled as soon as possible or before the expiration of the next judicial day after the petition is filed. If a child has not been detained but a petition has been filed, the initial hearing must take place as soon as possible.”).

⁷² See generally Pellman, *supra* note 66, at 10–30 (noting general descriptions of the most common dependency hearings).

⁷³ *Id.* at 5–6.

⁷⁴ *Id.* at 5. Court appointed attorneys from the nonprofit Los Angeles Dependency Lawyers are available to represent parents. *Id.*

children in dependency matters.⁷⁵ The social worker manages the minor's file at Child Welfare Services by collecting information through visits and follow-up sessions in order to develop an appropriate case plan, monitor progress, and ensure that the child and the family are receiving the appropriate services.⁷⁶ Based on the social worker's interactions and observations, he or she will make recommendations or testify in dependency court.⁷⁷ Attorneys representing Child Welfare Services are analogous to prosecutors in that they usually have the burden of proof in dependency matters.⁷⁸

To support the system's purpose of assisting children in becoming productive members of society, there are a variety of programs available for minors in the dependency system. In nearly every dependency case, the most preferred plan is family reunification, and parents are offered counseling, classes, and other resources to assist them with reunification.⁷⁹ To ensure that a dependent minor is financially cared for, the dependency program offers financial assistance to caregivers and prospective adopting parents.⁸⁰ These monthly payments are based on the child's needs, and there is no income eligibility requirement.⁸¹ Dependent children in their teenage years are also provided with extra services to help them apply for college and transition into adulthood.⁸²

C. OVERVIEW OF THE JUVENILE DELINQUENCY SYSTEM

A minor is declared a ward of the court and falls within the jurisdiction of the delinquency system when the minor commits an act described in WIC sections 601 and 602.⁸³ These acts range in seriousness from the

⁷⁵ *Id.*

⁷⁶ DIANE REED & KATE KARPILOW, CAL. CTR. FOR RESEARCH ON WOMEN & FAMILIES, UNDERSTANDING THE CHILD WELFARE SYSTEM IN CALIFORNIA: A PRIMER FOR SERVICE PROVIDERS AND POLICYMAKERS 9 (2009), http://www.ccrwf.org/wpcontent/uploads/2009/03/final_web_pdf.pdf.

⁷⁷ *Id.* at 15.

⁷⁸ Pellman, *supra* note 66, at 5.

⁷⁹ *Id.* at 15–16. If reunification is impossible, then finding a permanent placement (adoption) is the next ideal goal. *See id.* at 20.

⁸⁰ *Id.* at 21.

⁸¹ *Id.* Children can qualify for higher rates based on their medical and mental health needs and the rates are generally based on the seriousness of their conditions. *Id.*

⁸² *Id.* at 34–35. The Independent Living Program assists dependent children with college applications, scholarships, and other life skills. *Id.*

⁸³ CAL. WELF. & INST. CODE §§ 601, 602 (West 2011).

non-criminal status offense of habitual truancy⁸⁴ to adult crimes, such as murder.⁸⁵ Because wards of the juvenile court have committed some sort of offense, it is believed that the main purpose of the delinquency system is to provide “punishment that is consistent with the rehabilitative objectives.”⁸⁶ However, unlike the sections of the WIC that address dependency, there is no codified intent of the ward system—no separate declaration that the purpose of the delinquency system is to ensure the general welfare of minors.

To initiate delinquency proceedings, an officer or prosecutor files a petition with the court. Probation officers file section 601 petitions while prosecutors usually file section 602 petitions.⁸⁷ Delinquency petitions list the alleged facts and relevant information pertaining to the delinquent act the minor has committed.⁸⁸ Probation officers have discretion to take section 601 petitions to court and prosecuting attorneys have similar discretion over section 602 petitions.⁸⁹

Juvenile delinquency proceedings are similar to adult criminal proceedings, and at times minors are even tried as adults in adult criminal court.⁹⁰ The first court appearance that a delinquent minor usually attends is similar to an adult criminal arraignment.⁹¹ In this initial proceeding, the minor is appointed an attorney if he or she cannot afford one, advised of the petition and the charges therein, and asked to admit or deny the

⁸⁴ *Id.* § 601(a). Status offenses are defined as “[a]cts that are considered illegal when committed by a child but not when committed by an adult (e.g. running away, school truancy, and failure to obey parents’ directions).” PRESTON ELROD & R. SCOTT RYDER, *JUVENILE JUSTICE: A SOCIAL, HISTORICAL, AND LEGAL PERSPECTIVE* 4 (3d ed. 2011).

⁸⁵ § 602(b)(1).

⁸⁶ CAL. WELF. & INST. CODE § 202(b) (West 2011).

⁸⁷ JUDICIAL COUNCIL OF CAL., *JUVENILE COURT INFORMATION FOR PARENTS* 4 (2006), <http://www.courtinfo.ca.gov/forms/documents/jv060.pdf>.

⁸⁸ *Id.*

⁸⁹ PAC. JUVENILE DEFENDER CTR., *CALIFORNIA JUVENILE COURT PROCESS FOR DELINQUENCY CASES* 1 (2009), <http://www.pjdc.org/wp/wp-content/uploads/2009/06/FactSheet-for-Upload-Juvenile-Court-Process.pdf>.

⁹⁰ For certain serious crimes, the prosecuting attorney may file what is called a fitness petition, asking the court to find the minor unfit for juvenile court. If a minor is deemed unfit, he or she will be transferred to adult criminal court to be tried and possibly punished as an adult. A minor’s fitness is based on a standard which considers the following factors: charges against the minor, age, delinquency record, criminal sophistication, possibility of rehabilitation in juvenile court, success of previous attempts at rehabilitation, and the circumstances and gravity of the offense. *Id.* at 1–2.

⁹¹ *Id.*

charges.⁹² Sometimes negotiations similar to plea-bargaining occur between the district attorney and the minor's attorney.⁹³ Depending on the seriousness of the offense, minors are sometimes detained until the case is resolved.⁹⁴ The proceedings following the initial proceeding mimic those of a criminal trial; both sides can make the same types of motions, the same rules of evidence apply, and the prosecutor has to prove the case beyond a reasonable doubt.⁹⁵ One major exception is that in juvenile trials (or adjudications, as they are oftentimes called) there is no jury, and the judicial officer decides the merits of the case alone.⁹⁶

The persons involved in a minor's delinquency case are the prosecutor, probation officer, judicial officer, and the minor's attorney, who is different from the minor's dependency attorney if the minor is also in the dependency system.⁹⁷ Like a social worker in a dependency case, a probation officer collects information on the case, monitors the child's progress, makes recommendations to the court, and finds an appropriate placement for the child if the child's home is not an option.⁹⁸ The minor's attorney, the prosecutor, and the judicial officer's roles are very similar to those performed in an adult criminal proceeding.⁹⁹

When a minor is found guilty or admits to the offenses alleged on a petition, a disposition hearing is held to determine the proper punishment.¹⁰⁰ Because there is a wide range of offenses that qualify a minor to become part of the delinquency system, there is also a wide range of programs to rehabilitate or punish the minor. Some minors who have committed lesser offenses are sometimes sent back home on probation;¹⁰¹ others are placed in foster care, group homes, and other facilities usually available to children in the dependency system.¹⁰² However for more serious offenses there are other types of punishments, including incarceration in ju-

⁹² *Id.*

⁹³ *Id.* at 3 ("In certain eligible cases, the minor may admit the offense, and receive 'deferred entry of judgment' in which the charges are dismissed upon successful completion of a service program . . .").

⁹⁴ *Id.* at 2.

⁹⁵ *Id.* at 3.

⁹⁶ *Id.*

⁹⁷ *See id.* at 1-2.

⁹⁸ JUDICIAL COUNCIL OF CAL., *supra* note 87, at 5.

⁹⁹ *See* PAC. JUVENILE DEFENDER CTR., *supra* note 89, at 1-2.

¹⁰⁰ *Id.* at 3.

¹⁰¹ *Id.* at 3-4.

¹⁰² *Id.*

venile hall, camp, and other institutions that provide secure confinement.¹⁰³ Because of the broad range of programs available, the type of punishment given to a minor is up to the judicial officer's discretion.¹⁰⁴

As noted in the 1960 Commission report discussed above, dependent children need resources and guidance to develop normally and become productive and healthy members of society.¹⁰⁵ Thus, the focus is to provide whatever services are necessary and feasible to accomplish this goal. Dependent children are seen as victims because they enter the juvenile system through no fault of their own. In contrast, delinquents are viewed as having acted in a way that might be harmful to society, and thus need to be held accountable for their actions. Regardless of the underlying causes of a delinquent's acts, the priority is to protect the community from any future potential harm, usually by detaining the minor. Detention centers generally lack the needed resources to provide delinquents with appropriate services to help a minor's underlying issues. In addition, studies show that detaining children does not rehabilitate them, but rather worsens behavioral problems.¹⁰⁶ On the other hand, because the dependency system still has a stronger *parens patriae* mentality, children in that system are much better served.

III. DUAL-JURISDICTION MINORS IN THE JUVENILE SYSTEM

A minor can become a dual-jurisdiction minor through three different ways.¹⁰⁷ The first and most common avenue is when a dependent child commits a crime while already a dependent of the state.¹⁰⁸ This is not uncommon because children who are dependents are often victims of violence, and consequently use violence to channel anger.¹⁰⁹ A similar trend appears with children who have been sexually abused, who have a higher likelihood of sexually victimizing someone else.¹¹⁰

¹⁰³ *Id.* at 4.

¹⁰⁴ *Id.* at 3–4.

¹⁰⁵ See, e.g., 1960 REPORT, *supra* note 38, at 101.

¹⁰⁶ Maia Szalavitz, *Why Juvenile Detention Makes Teens Worse*, TIME MAG., Aug. 7, 2009.

¹⁰⁷ Katharine W. Scrivner, *Crossover Kids: The Dilemma of the Abused Delinquent*, 40 FAM. CT. REV. 135, 136 (2002).

¹⁰⁸ Andrea Khoury, *The Delinquency Factor in Permanency Planning for Adolescents*, 6 CHILD L. PRAC. 85, 95 n.5 (2004) ("Although there are many causes for juvenile delinquency (including poverty and peer pressure), dependent youth who commit delinquent acts are often acting out due to their abuse/neglect and instability in their lives.").

¹⁰⁹ ELROD & RYDER, *supra* note 84, at 62.

¹¹⁰ *Id.* at 63.

Second, children can become dual-jurisdiction minors when petitions for both the dependency and delinquency systems are filed at the same time.¹¹¹ This occurs because children who are abused and neglected often have not already entered the dependency system, as problems at home have not been acknowledged. This danger is pronounced in children who continually witness domestic violence, which can leave no physical indications of abuse, but can lead these minors to act out aggressively and commit crimes.¹¹² Through the interview process, the child reveals current or past abuse when talking with the police, social worker, attorney, or even the judicial officer.¹¹³ Only then does the state find cause to initiate a dependency action.

The third path to becoming a dual-jurisdiction minor is when an already delinquent minor falls within the jurisdiction of the dependency court.¹¹⁴ One common scenario is when a minor runs away, prompting a delinquency petition.¹¹⁵ Because the minor is not living at home, he or she is subsequently deemed a dependent, and the state, following *parens patriae*, must protect the minor.¹¹⁶ A child can also follow this path if he or she is a victim of physical abuse, perpetrated as punishment by their parents for committing bad acts and entering the delinquency system, which prompts a section 300 petition.¹¹⁷ This scenario can also occur before a delinquency case is about to terminate, when there is the potential of abuse or neglect at home.¹¹⁸ If there is no safe home for the child to return to, a dependency petition is filed to find a suitable placement for the child.¹¹⁹

Specialists agree that there is overlap between juvenile dependency and delinquency. A June 2005 fact sheet compiled by the Judicial Council of California summarizes studies conducted by various institutions throughout the United States.¹²⁰ While research methods differ, all of the

¹¹¹ Scrivner, *supra* note 107, at 137.

¹¹² ELROD & RYDER, *supra* note 84, at 62.

¹¹³ Scrivner, *supra* note 107, at 137.

¹¹⁴ *Id.*

¹¹⁵ Running away is considered a WIC § 601 offense. See ELROD & RYDER, *supra* note 84, at 4.

¹¹⁶ Scrivner, *supra* note 107, at 137.

¹¹⁷ *Id.*

¹¹⁸ Pellman, *supra* note 66, at 4.

¹¹⁹ *Id.*

¹²⁰ See JUDICIAL COUNCIL OF CAL., INTERSECTION BETWEEN JUVENILE DEPENDENCY AND DELINQUENCY: AVAILABLE RESEARCH 1 (2005), <http://www.courts.ca.gov/documents/Ab129-FactSheetMay05.pdf>.

studies concluded that there is “an increased risk that abused and neglected children will later commit or be further victims of violence.”¹²¹ The consensus suggests that this trend is prevalent throughout the entire nation.¹²²

In June 2004, the Office of Juvenile Justice and Delinquency Program (“OJJDP”) published their findings from three seventeen-year long studies on the causes and correlates of delinquency.¹²³ The OJJDP sponsored these long-term studies on youth in several states in order to gain “a firm, scientific understanding of the origins of delinquency.”¹²⁴ While the study concluded that there were many risk factors that can potentially lead to delinquency, the report focused on child maltreatment as one of the key factors.¹²⁵ Although the report did not specifically use the term *dependent*, it defined child maltreatment as “physical abuse, sexual abuse, [and] neglect,” all which fit the WIC definition of a dependent child.¹²⁶

The study showed that, generally, maltreated minors of all ages had a greater rate of delinquency or arrest than those who were not maltreated.¹²⁷ The discrepancies in percentages differed according to age group and frequency of maltreatment.¹²⁸ Minors who were maltreated during adolescence (age twelve or older) and minors who were persistently maltreated (at least once before and after adolescence) showed much higher rates of delinquency.¹²⁹

In 2003, John Tuell from the Juvenile Justice Division of the Child Welfare League of America summarized four other studies on dual-jurisdiction children.¹³⁰ In one study, the researchers analyzed and compared criminal records of abused or neglected children with those of non-

¹²¹ *Id.* at 2.

¹²² *See id.*

¹²³ Terence P. Thornberry et al., *The Causes and Correlates Studies: Findings and Policy Implications*, 9 J. OFF. JUV. JUST. & DELINQ. PREVENTION 3, 3 (2004).

¹²⁴ *Id.* at 3–4. The studies began in 1987, with over 4000 subjects ages 7 to 30 from the Denver, Pittsburg, and Rochester areas. *Id.*

¹²⁵ *Id.* at 8. The other key risk factor was gang membership. *Id.* at 9.

¹²⁶ *Id.*

¹²⁷ *Id.* at 8–9.

¹²⁸ *Id.*

¹²⁹ *Id.* For the adolescents-only group, 69.8% of the delinquents studied were maltreated. *Id.*

¹³⁰ JOHN A. TUELL, CHILD WELFARE LEAGUE OF AM., PROMOTING A COORDINATED AND INTEGRATED CHILD WELFARE AND JUVENILE JUSTICE SYSTEM: AN ACTION STRATEGY FOR IMPROVED OUTCOMES 3 (2003), <http://www.cwla.org/programs/juvenilejustice/jjintercord.pdf>.

abused, non-neglected children.¹³¹ The study found a 55% increased risk of arrest for abused or neglected children.¹³² More astonishingly, the increased risk of arrest for violent crimes was 96%.¹³³ The study also found that "abused and neglected children were first arrested about a year earlier than their non-abused and non-neglected peers, and they were more likely to become recidivists and chronic offenders."¹³⁴ Similar to the OJJDP report, the study emphasized, "these relationships are neither inevitable nor deterministic."¹³⁵ While there is some association between childhood abuse and neglect and future criminal behavior, abuse is not determinative of future criminal behavior.

Even before this research, individuals working within the dependency system began to observe the correlation between dependency and delinquency.¹³⁶ Decades before official research was conducted, we were aware of the connection between abused and neglected children and delinquency: "With a few instructions, even census takers can provide the names and addresses of at least those children who have no parents, have been beaten or abused Professionals can find 90 percent of the children likely to become delinquent."¹³⁷ Michael Corriero, a former juvenile delinquency judge, noted from his years of experience that there are several repeated factors in minors' probation reports.¹³⁸ Many of the factors are strongly correlated with children in the dependency system, including absent parents (often with drug or alcohol related problems), entering the foster system at a very young age, lack of supervision, being subject to neglect, abuse and/or abandonment.¹³⁹

Race is also an "important predictor as to whether a youth will be-

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* The average age abused and neglected children were first arrested was 18.1 years, compared to 19.2 years for non-abused children. Abused and neglected children averaged 6.9 arrests, compared to 4.7 arrests for non-abused children. Further, 17.1% of the abused and neglected children were considered recidivists (defined as two to four arrests), compared to 12.7% of the non-abused children, and 19.8% of the abused and neglected children were considered chronic offenders (defined as five or more arrests), compared to 12.3% of non-abused children. See *id.* tbl. 2.

¹³⁵ *Id.*

¹³⁶ CORRIERO, *supra* note 1, at 73 ("After more than a dozen years studying the probation reports of these children, I can almost recite their contents without reading them.").

¹³⁷ *Id.* (quoting RAMSEY CLARK, CRIME IN AMERICA (1970)).

¹³⁸ *Id.* at 73-74.

¹³⁹ *Id.* at 74.

come known to multiple systems.”¹⁴⁰ In Los Angeles County there is “disproportionate minority contact in both systems,” especially for African Americans.¹⁴¹ Over half of dual-jurisdiction children in Los Angeles County that move from dependency to delinquency are African American.¹⁴² Approximately a third of dual-jurisdiction children are Latino.¹⁴³ In addition, dual-jurisdiction children have similar family histories, including one or more parents with mental health problems, criminal records, or substance abuse.¹⁴⁴

While specific numbers and statistics differ among the various studies, they strongly suggest that dependent minors are significantly more at risk for delinquency. This research, whether formally conducted or not, provides a telling sign that children who enter the juvenile court system one way or another might only be receiving attention and services that address half of their needs.

IV. IN RE *DONALD S.* AND THE PROBLEMS OF DUAL-JURISDICTION

As previously discussed, since the Arnold-Kennick Juvenile Court Law was passed, the two juvenile court systems have remained largely separate.¹⁴⁵ Communication between the two systems was minimal, and if a dependent minor ended up in the delinquency system, the dependency case was usually dropped.¹⁴⁶ This became the standard protocol for when-

¹⁴⁰ Bilchik & Nash, *supra* note 17, at 17.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ DENISE C. HERZ & JOSEPH P. RYAN, CTR. FOR FAMILIES, CHILDREN, AND THE COURTS, EXPLORING THE CHARACTERISTICS AND OUTCOMES OF 241.1 YOUTH CROSSING OVER FROM DEPENDENCY TO DELINQUENCY IN LOS ANGELES COUNTY 4 (2008), <http://www.courts.ca.gov/documents/AB129-ExploringResearchUpdate.pdf>.

¹⁴⁴ Bilchik & Nash, *supra* note 17, at 18 (“Seventy-two percent of crossover youths in Los Angeles County had at least one parent with a history of substance abuse, a quarter had at least one parent with mental health problems, and 36% had a family history of criminal behavior. These percentages are similar to studies and surveys of crossover youths performed in other jurisdictions.”).

¹⁴⁵ See *supra* note 57–62 and accompanying text.

¹⁴⁶ See Press Release, Children’s Law Ctr. of L.A., New Project to Aid Foster Youth at Risk for Delinquency [hereinafter Press Release, New Project] (Aug. 10, 2005), http://www.clcla.org/Images/pdfs/pdfs_whnew_press/CLC_PR_Equal_Justice_81105.pdf. (“Once foster children transition into the juvenile justice system, their past is often forgotten, and they move from being viewed as a victim to being labeled as an offender.” (quoting Children’s Law Center Executive Director Miriam Krinsky)).

ever a dependent crossed over to delinquency.¹⁴⁷

In 1986, the California Child Victim Witness Judicial Advisory Committee (the "Committee") was formed to make recommendations for victims of and witnesses to child abuse, a seemingly unrelated goal to the problem of dual-jurisdiction children.¹⁴⁸ One of the fifty-three recommendations noted the overlap between the two systems: "The juvenile courts often encounter situations in which dependent children commit delinquent acts or delinquent wards suffer abuse or neglect."¹⁴⁹ The Committee also recognized that having two separate systems may cause problems for minors trying to receive services from both: "the practice in many courts is to automatically dismiss one action or status," therefore terminating services from the dismissed status.¹⁵⁰ Ultimately, the Committee recommended that in such cases, both the dependency and delinquency status should be maintained so that the minor can be provided with "the maximum range of services appropriate."¹⁵¹

In the same year that the Committee published its recommendations, the California Court of Appeals addressed the issue of dual-jurisdiction minors through its decision in *Donald S.*¹⁵² In that case Donald entered the dependency system at birth when his biological mother abandoned him.¹⁵³ He was placed in various foster homes, was adopted when he was seven, re-entered the dependency system because his adoptive parents abused him, and at age eleven he was placed in a youth group home and prescribed ongoing therapy.¹⁵⁴ However, after two years in the group home, Donald was arrested and detained after his housemother reported that he admitted to attempting to poison her.¹⁵⁵ Donald was charged with assault with a deadly weapon, which is a WIC section 602 offense.¹⁵⁶ Per its usual practice, the Department of Child Services petitioned to terminate his dependency status in order to transfer Donald to the delinquency sys-

¹⁴⁷ See *id.*

¹⁴⁸ CAL. CHILD VICTIM WITNESS JUDICIAL ADVISORY COMM., FINAL REPORT iii (1988) [hereinafter CHILD VICTIM REPORT].

¹⁴⁹ *Id.* at 54.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *In re Donald S.*, 253 Cal. Rptr. 274 (Ct. App. 1988).

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 274-75.

¹⁵⁵ *Id.* at 275.

¹⁵⁶ *Id.*

tem so that the probation department could take over the case.¹⁵⁷

Instead, Donald's attorney requested that Donald have concurrent statuses under WIC sections 300 and 602.¹⁵⁸ However the court held that a child could not be both a dependent and a ward of the juvenile court.¹⁵⁹ The court's reasoning in their fairly short opinion was based on practicality and legislative intent. The court first looked at the codes that discussed placement options for both dependent and delinquent minors, and saw that section 602 minors were given the same options as section 300 and section 601 minors.¹⁶⁰ This led the court to conclude that a minor who changes status from dependent to delinquent "will automatically have the needs of his earlier designation cared for within the context of his subsequent designation and placement."¹⁶¹ To the court, it would seem impractical to offer duplicative services to a minor who is within both juvenile court systems. Also the possibility of "interagency conflict" between child welfare services and probation made it even more impractical to designate a minor to be within both systems.¹⁶²

The court drew a similar conclusion when analyzing the legislative intent of the three WIC sections. Because the language of WIC sections 653, 701, and 702 list sections 300, 601, and 602 as separate categories of minors, the court concluded that allowing dual-jurisdiction over a child "clearly contradicts an interpretation allowing a minor to be designated a person within the provisions of both section 300 and section 602."¹⁶³

The *Donald S.* holding has been criticized as fraught with "weak reasoning [and] legal arguments"¹⁶⁴ and "question-begging logic."¹⁶⁵ While the court appeared to rely on the *parens patriae* doctrine by citing WIC section 202 and stating the necessity of "custody, care and guidance"¹⁶⁶

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 276.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Shanna Connor, Comment, *The Best Interests of the Minor: Assessing California's Ban on Dual Jurisdiction in the Juvenile Courts*, 7 U.C. DAVIS J. JUV. L. & POL'Y 285, 299 (2003).

¹⁶⁵ Marc L. McCulloch, Comment, *Still Between a Rock and a Hard Place . . . Victim or Delinquent: Dual Status Minors in California—An Illusory Promise?*, 28 J. JUV. L. 118, 124 (2007).

¹⁶⁶ *Donald S.*, 253 Cal. Rptr. at 276.

and “discipline and control,”¹⁶⁷ it failed to address the emotional and mental health needs of minors. In fact, the opinion later summarized that the section 300’s “basic needs” were “food, shelter, medical care, safety and behavior control,”¹⁶⁸ which completely ignores the “emotional well-being” provision of section 300.2.¹⁶⁹

V. CALIFORNIA’S FIRST ATTEMPT AT ADDRESSING DUAL-JURISDICTION MINORS

In re *Donald S.* was significant because it was decided while Senate Bill 220—legislation aimed at addressing the Committee’s recommendations—was developing in the state legislature. Senator Nicholas Petris introduced Senate Bill 220 in early 1989 as a response to the Committee’s recommendation to maintain both dependency and delinquency statuses.¹⁷⁰

Senate Bill 220 was initially drafted with the *parens patriae* spirit and was focused on providing minors with appropriate services, and not “preclud[ing] appropriate services simply because of the type of judicial proceeding” at hand.¹⁷¹ The text of the first draft did not prohibit a minor from being part of both juvenile court jurisdictions, and instead considered “whether being simultaneously both a ward and a dependent of the court would be in the best interest of the minor,” following the Committee’s recommendation.¹⁷² The state legislature was determined to allow minors to be in both jurisdictions because it believed that certain minors would benefit from the services of each.¹⁷³

However, the *Donald S.* decision steered the legislature in a completely different direction. Fixated on the potential problem of “interagency conflict,” as suggested by the court of appeal, the senate revised the bill to ban the possibility of dual-jurisdiction minors.¹⁷⁴ To further bolster the change, the Department of Social Services noted the potential problems

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ CAL. WELF. & INST. CODE § 300.2 (West 2011) (“The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child.”).

¹⁷⁰ Connor, *supra* note 164, at 291–92.

¹⁷¹ *Id.*

¹⁷² *Id.* at 291.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 292.

dual-jurisdiction could create, which included interagency conflict, confusion, duplication of services, and lack of accountability.¹⁷⁵ Despite these drastic changes, the bill received wide support from diverse groups throughout California, and was passed unanimously by both houses of the state legislature.¹⁷⁶

While the newly passed section 241.1 did not allow minors to be considered for dual-jurisdiction, it did not completely ignore the fact that there were minors who crossed over into both systems.¹⁷⁷ Section 241.1(b) mandated that each county's child welfare services and probation department develop a protocol to assess potential dual-jurisdiction minors and make recommendations regarding which status would be most appropriate and in the best interest of minors.¹⁷⁸ However, to emphasize the ban on dual-jurisdiction, section 241.1(d) specifically clarified that a minor could not be both a dependent and a ward of the court.¹⁷⁹ The code requires that departments consider certain factors,¹⁸⁰ but gives counties a great deal of flexibility and freedom on how to develop the protocols for how to decide dependency and delinquency.¹⁸¹

Within the section 241.1(b) protocols developed throughout the state, there is much variation among the protocols in terms of passive or proactive implementation, and in their breadth.¹⁸² The protocols also vary in the procedures used to determine which minors qualify for assessment under the section 241.1(b) process.¹⁸³ For example, Los Angeles's protocol is proactive and broad,¹⁸⁴ but more complicated because it contains many details and "involves more individual and governmental actors in its investigations and assessments than those which are called for in WIC."¹⁸⁵ Los Angeles attempts to assess as many possible minors that may fall under the county's section 241.1 definition, and also attempts to provide the best

¹⁷⁵ Becca Dunlap, *Dependents Who Become Delinquents: Implementing Dual Jurisdiction in California Under Assembly Bill 129*, 5 Whittier J. Child & Fam. Advoc. 507, 515 (2006).

¹⁷⁶ Bellinger, *supra* note 12, at 6.

¹⁷⁷ CAL. WELF. & INST. CODE § 241.1 (West 2011).

¹⁷⁸ *Id.* § 241.1(a)–(b).

¹⁷⁹ *Id.* § 241.1(d).

¹⁸⁰ *Id.* § 241.1(b).

¹⁸¹ *Id.*

¹⁸² See Connor, *supra* note 164, at 312–13.

¹⁸³ *Id.* at 314.

¹⁸⁴ *Id.* at 312, 314–15, 319, 327.

¹⁸⁵ *Id.* at 318.

and most appropriate services for the child.¹⁸⁶ On the other hand, the San Francisco protocol is “much less complicated” than the Los Angeles counterpart, and is “well-organized.”¹⁸⁷ However, the protocols’ scope is much more limited and does not assess nearly as many minors for section 241.1 issues as does the Los Angeles protocol.¹⁸⁸

A. FAILURES OF WIC SECTION 241.1

While implementation of WIC section 241.1 effected some positive changes—mostly the improved communication between the systems, as the protocols mandated communication between the two¹⁸⁹—the protocols were at times unsuccessful and even burdensome. Not allowing a child to be simultaneously a dependent and a ward of the juvenile court “presented the court with significant challenges in serving certain youth and families.”¹⁹⁰ As a result, attorneys and officers sometimes pushed the limits of the code to attain needed services for dual-jurisdiction minors.¹⁹¹ Problems that arose in working with the protocols included, “[r]eturning children from probation to the dependency system; [c]ontinuity of services for the [child]; [c]ontinuity of services for the family; [l]ack of communication among the court, probation, and child welfare; and [l]ack of ongoing, coordinated case assessment.”¹⁹²

Another significant problem was that “the single-status requirement also was viewed as hampering the ability of the courts, probation, and child welfare to address family issues in a holistic manner,”¹⁹³ primarily because dual-jurisdiction minors truly needed the services of both jurisdictions. Because the dependency system offers children valuable services to help them become productive and stable members of society, a child is at

¹⁸⁶ *Id.* at 318–19.

¹⁸⁷ *Id.* at 319.

¹⁸⁸ *Id.* at 319–22.

¹⁸⁹ *Id.*

¹⁹⁰ DEANA A. PIAZZA, CTR. FOR FAMILIES, CHILDREN, AND THE COURTS, DUAL-STATUS CHILDREN: PROTOCOLS FOR IMPLEMENTING ASSEMBLY BILL 129 2 (2008), <http://www.courts.ca.gov/documents/AB129ResearchUpdate-Protocols.pdf>.

¹⁹¹ See Connor, *supra* note 164, at 322–24. Santa Barbara County allows services from both agencies to be provided on a “voluntary” and “informal” basis. *Id.* Los Angeles County has a similar “dual supervision” provision where a dependent minor may be placed on “informal probation.” *Id.* In these counties, the minors are technically not dual-jurisdiction minors and are in conformity with the law, even though both agencies monitor the minor’s case. *Id.*

¹⁹² PIAZZA, *supra* note 203, at 3 (percentage problem rates omitted).

¹⁹³ *Id.* at 2.

risk of losing these services by having a section 241.1 assessment. Dual-jurisdiction minors need services from both jurisdictions, and a dual-jurisdiction child's issues and problems "often exceed the ability of one system to deal with them."¹⁹⁴ Court officers in dependency were essentially unable to handle serious issues from delinquency and vice versa.

In *re Jaime M.*, decided in 2001 by the California Court of Appeal, illustrates the failures of section 241.1.¹⁹⁵ In this case, Jaime had been declared a dependent of the court at ten months old because she was born with phencyclidine or PCP in her system.¹⁹⁶ Jaime did not have a permanent placement plan, and by the time the case was decided, she was fifteen years old and had gone through seventeen residential placements, her last being at the Metropolitan State Hospital.¹⁹⁷ There, Jaime received psychiatric treatment for her behavioral problems.¹⁹⁸ However she tried to escape by attacking a hospital attendant and stealing the attendant's keys, which is a WIC section 602 act that initiated a delinquency petition.¹⁹⁹ Immediately following her attempt to escape, the probation department detained her at juvenile hall, and charged her with robbery and battery.²⁰⁰ The Department of Children and Family Services ("DCFS"), a Los Angeles child welfare service, attempted to place her in a more suitable location, but was unsuccessful because she was "highly volatile" and had a "major behavior management problem."²⁰¹ The probation department also noted that she belonged in a facility where trained professionals could help her.²⁰²

Without informing DCFS, the judicial officer for Jaime's delinquency case dismissed her section 602 petition until the mental health department could assess and evaluate her.²⁰³ The dismissal would have sent Jaime back to her pre-hospital dependency placement, MacLauren's Children's Center.²⁰⁴ However, because Jaime was now an alleged delinquent, DCFS moved to vacate the court's order, citing WIC section 206,

¹⁹⁴ *Id.* at 3.

¹⁹⁵ *In re Jaime M.*, 104 Cal. Rptr. 2d 425 (Ct. App. 2001).

¹⁹⁶ *Id.* at 426.

¹⁹⁷ *Id.* at 426–27.

¹⁹⁸ *Id.* at 427.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

which prohibits placing delinquent minors with dependent minors in the same facility.²⁰⁵ DCFS also presented letters from the mental health unit, psychologists, and her public guardian, stating that MacLauren Children's Center was not an appropriate placement for a child like Jaime.²⁰⁶

The Second District held that because Jaime's section 602 petition was filed, she became a section 241.1 minor, and Los Angeles County section 241.1 protocol would have to apply.²⁰⁷ Thus the judicial officer could not determine Jaime's status until after a section 241.1 report and recommendation was submitted to the court.²⁰⁸ Even though a section 241.1 protocol was initiated, the records indicated that Jaime's social workers had not signed them, and an official determination of Jaime's status was never made.²⁰⁹ The court noted that determining Jaime's status was important and had to be made "clearly and carefully."²¹⁰ Relying on a prior case which held that a formal section 241.1 assessment of status determination must be made,²¹¹ Jaime was detained in April 1999,²¹² and the judicial officer's order to send her back to MacLauren was not issued until December 2000.²¹³ In the twenty-one months in between, Jaime was detained in juvenile hall and did not receive treatment.²¹⁴ The court noted that her condition was worsening.²¹⁵

Jaime's case illustrates several of the problems of section 241.1, notably miscommunication between agencies and the difficulty of getting appropriate services for minors only classified under one system. While there was an attempt to coordinate Jaime's case between the two systems, there was a lack of communication between DCFS and the probation department, leaving Jaime untreated for almost two years. Had a section 241.1 assessment been made in a timely manner, Jaime's case may have moved forward, and she may have received the proper treatment. However because one of her statuses would have been terminated, she may not have received adequate services or treatment.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 428-29.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 429.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.* at 427.

²¹³ *Id.* at 430.

²¹⁴ *Id.* at 429.

²¹⁵ *Id.*

This case also shows how conflict between the various codes can exacerbate already unstable conditions.²¹⁶ Because of section 206, DCFS could not properly place Jaime, and because of her serious behavioral problems, the probation department also did not know how to help her.²¹⁷ Each agency seemed to pass responsibility to the other, and neither took a proactive role in handling her case.²¹⁸ Ultimately neither jurisdiction was able to serve the best interests of the minor.²¹⁹

VI. THE NEW AND (SLIGHTLY) IMPROVED WIC SECTION 241.1(E)

WIC section 241.1(e) was passed in 2004 as a solution to the ban on dual-jurisdiction.²²⁰ This newly added subdivision began as Assembly Bill 129 and “was in part a response to increasing concerns about the termination of a crossover youth’s dependency status” after a child’s delinquency case was closed.²²¹ In most dual-jurisdiction cases, the dependency status, along with related services and placement, would be terminated when the delinquency case was filed, which meant that the child “could potentially remain in a probation department placement longer than necessary” when the delinquency status ended.²²² In addition, according to the Center for Families, Children, and the Courts, section 241.1(e) was passed to “improve the handling of cases in which delinquency and dependency intersect and to help increase access to appropriate resources and services for children in a holistic and timely manner.”²²³ Since a dual-jurisdiction status was not possible, there was no need to officially terminate one status; ideally, children would receive appropriate services from both systems.

Section 241.1(e) did not completely eliminate the language of section 241.1(d) that bans dual-jurisdiction.²²⁴ Rather, subdivision (d) was only

²¹⁶ *See id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *See Dual Status Children*, *supra* note 20. *See also* Press Release, New Project, *supra* note 146.

²²¹ HERZ & RYAN, *supra* note 143, at 9.

²²² *Id.*

²²³ *Crossover Projects*, CALIFORNIA COURTS, THE JUDICIAL BRANCH OF CALIFORNIA, <http://www.courts.ca.gov/3063.htm> (last visited Dec. 23, 2011).

²²⁴ The language of WIC § 241.1(d) currently reads, “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

slightly modified. In order for a child to be categorized as a dual-jurisdiction minor, the minor must first be in a county that has developed a dual-jurisdiction protocol.²²⁵ The section 241.1(e) dual-jurisdiction protocol is a product of the county's probation department, child welfare services department, and the presiding judge of the juvenile court, and must include five elements listed in the statute.²²⁶

The first two elements of the protocol require descriptions of the process and procedure to determine the minor's eligibility and necessity for dual-jurisdiction status.²²⁷ The two agencies must "ensure a seamless transition" when a minor crosses over.²²⁸ The third element explains how judges should communicate with each other when the dependency jurisdiction is suspended.²²⁹ The fourth element creates a method to collect and evaluate data and statistics.²³⁰ Lastly, counties have to choose whether to adopt an "on-hold" system or a "lead court/lead agency" system,²³¹ which will be discussed in more detail below.

Supporters of section 241.1(e) saw an ideal system: full coordination of both juvenile jurisdictions making decisions better informed and truly serving the best interest of a child.²³² On its face, the statute creates awareness of the special status of dual-jurisdiction minors because it offers more guidance on how to handle their cases and ensures that the proper services are provided to them²³³ from both jurisdictions. In addition, family members or foster parents could help with their child's delinquency case by providing familial support, and would simultaneously be able to work towards reunification or permanent placement while the delinquency case is still open.²³⁴ There would also be more placement options for dual-

and a ward of the court."

²²⁵ The language of WIC § 241.1(e) states that a county "may create a jointly written protocol," which means that counties are not required to do so, and depending on what county a child is in, there may not be any dual-jurisdiction programs available. In addition, § 241.1(e) reads, "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."

²²⁶ CAL. WELF. & INST. CODE § 241.1(e) (West 2011).

²²⁷ *Id.* § 241.1(e)(1)–(2).

²²⁸ *Id.* § (e)(2).

²²⁹ *Id.* § (3).

²³⁰ *Id.* § (4).

²³¹ *Id.* § (5).

²³² PIAZZA, *supra* note 203, at 6.

²³³ Scrivner, *supra* note 107, at 148.

²³⁴ Dunlap, *supra* note 175, at 543–44.

jurisdiction minors, as delinquents would have the opportunity to stay with a foster family instead of being detained, and dependents would not have to return to an abusive home.²³⁵

A. CRITIQUE OF WIC SECTION 241.1(E)

Even though supporters were confident in these improvements, WIC section 241.1(e) has not gone without criticism.²³⁶ One such concern is how information on a child's case would be handled and shared between child welfare services and probation.²³⁷ The lack of a shared information system and differences in department jargon could lead to disorganization and duplicative information gathering.²³⁸ Further, information sharing could lead to confidentiality problems.²³⁹ Potentially self-incriminating statements made to the social worker or during dependency-related services might be used against a minor in delinquency court.²⁴⁰ Overall, the sense is that section 241.1(e) was just a "patch" covering "problems inherent in the entire system."²⁴¹

The variation that section 241.1(e) may create among the counties is also a major concern. First, section 241.1(e) is not mandatory, given that the word "may" is used in reference to counties creating dual-jurisdiction protocols.²⁴² Counties are therefore not required to create dual-jurisdiction protocols, and can choose to uphold the ban on dual-jurisdiction as mandated by section 241.1(b).²⁴³ Even with the requirement of section 241.1(b), some counties never developed section 241.1(b) protocols,²⁴⁴ and some that have the protocols have tried to find ways around them.²⁴⁵ If 241.1(e) protocols are not mandatory, there will be even less uniformity across the state in handling dual-jurisdiction cases. Today, seven years af-

²³⁵ *Id.* at 544.

²³⁶ *See, e.g.,* McCulloch, *supra* note 165, at 132–43 (enumerating the author's concerns with the new section 241.1(e)).

²³⁷ *Id.* at 133–35, 139–40.

²³⁸ *Id.* at 139.

²³⁹ *Id.* at 133–34.

²⁴⁰ *Id.* at 134–35.

²⁴¹ *Id.* at 132–33.

²⁴² *See* CAL. WELF. & INST. CODE § 241.1(e) (West 2011).

²⁴³ The language of the non-dual-jurisdiction protocols, WIC § 241.1(b), uses the word "shall," meaning that counties must create these protocols.

²⁴⁴ Connor, *supra* note 164, at 310.

²⁴⁵ *Id.* at 322–24.

ter its passage, only nine counties have developed section 241.1(e) protocols.²⁴⁶ This lack of conformity could create problems if a minor enters different juvenile systems in different counties.

With section 241.1(b) protocols, counties have a great deal of discretion in developing and implementing the procedures. Likewise, more variation among counties may result from the flexible nature of section 241.1(e) protocols. Section 241.1(e)(5) gives counties the option of adopting either an “on-hold” system or a “lead court/lead agency” system.²⁴⁷ The on-hold system requires the county to put the minor’s dependency status on hold until the delinquency jurisdiction has been terminated.²⁴⁸ On the other hand, a county adopting the lead court/lead agency system must develop an alternate protocol to determine which court or agency will be the lead court/lead agency.²⁴⁹ The lead court or agency is then responsible for managing the minor’s case.²⁵⁰ Counties can also decide whether or not to hold joint dependency/delinquency hearings and require both agencies to attend these hearings.²⁵¹ The purpose of adopting one of these systems is to avoid “duplicative case management” and “conflicting orders.”²⁵² However, with all these choices, counties can create a protocol containing any combination of these options, potentially causing major variation throughout the state. Again, this may lead to potential problems for minors who enter the juvenile system in more than one county.

Adding to problems created by varying dual-jurisdiction policies across the state, both the on-hold and lead court/lead agency systems essentially do not allow the dependency and delinquency systems to take an active role in the minor’s case. Moreover, there is still no guarantee that a minor will receive the necessary services from both court systems if only one jurisdiction controls each case. Social workers and probation officers often have huge caseloads, and if one of their many cases has been put on hold, or if the officers are determined to represent the non-lead agency, the effort spent on that case will be diminished. Although the case is not technically closed, less attention is given to it, which creates a risk that needed services will not be provided. In addition, other administrative problems

²⁴⁶ See *supra* note 22, for list of participating counties.

²⁴⁷ CAL. WELF. & INST. CODE § 241.1(e)(5) (West 2011).

²⁴⁸ *Id.* § 241.1(e)(5)(A).

²⁴⁹ *Id.* § 241.1(e)(5)(B).

²⁵⁰ *Id.*

²⁵¹ PIAZZA, *supra* note 203, at 4.

²⁵² § 241.1(e)(5).

may arise if one system is on hold: “[d]epending on which agency is assigned primary responsibility, a crossover youth may lose access to essential services due to the strict eligibility requirements of many funding streams.”²⁵³

Additionally, too few minors may be assessed for dual-jurisdiction if a county’s protocol has narrower qualifications. For the nine counties that have developed section 241.1(e) protocols so far, “county teams noted that they have been very careful not to recommend dual status just because it is an option; in general, they believe that dual status should be reserved for special or unique situations.”²⁵⁴ But this notion runs counter to the plethora of research showing that a strong correlation exists between dependency and delinquency, which indicates that a dual-jurisdiction designation should not just be for “special or unique situations.”²⁵⁵ Even though more minors will be better served in a dual-jurisdiction system, even more who are not so called special or unique enough to benefit from the duality will fail to see the benefits of the new regime. Thus, because of potential problems with over- and under-inclusiveness, the guidelines and procedures in handling dual-jurisdiction cases ought to be more specifically articulated.

VII. [RE]UNIFICATION OF THE JUVENILE COURT SYSTEM

Unification—or, in the present case, reunification—is an idea familiar to other areas of legal discourse. In The Honorable Donna Petre’s article, *Unified Family Court*, she argues for a unified family court in which all facets of family law are adjudicated in one location with one adjudicator.²⁵⁶ She provides compelling and common sense arguments against having a multi-jurisdictional court system. She argued that “conflicting orders, multiple appearances, uncoordinated treatment plans, unnecessary delays, repeated interviews, . . . lopsided resources, and incomplete information[,]” result in an inefficient system.²⁵⁷ It is this exact same motivation that animates the present push to unify the juvenile courts, so that one judge adjudicates all the juvenile issues of one child, with regard to both dependency and delinquency.

A one-court, one-judge system would make preventative and rehabi-

²⁵³ Bilchik & Nash, *supra* note 17, at 19.

²⁵⁴ PIAZZA, *supra* note 203, at 4.

²⁵⁵ *Id.*

²⁵⁶ Donna M. Petre, *Unified Family Court: A California Proposal Revisited*, 1 J. CENTER CHILD. & CTS. 161 (1999).

²⁵⁷ *Id.*

litative measures much easier to implement early in a troubled minor's time in the juvenile system. Having one adjudicator, experienced in and knowledgeable about both dependency and delinquency issues, would allow the adjudicator to take a holistic view of the child before the court. Addressing both dependency and delinquency issues in the same case may resolve a minor's problems more completely and efficiently, thus reducing a child's time in the system and increasing the odds for a more successful social reintegration,²⁵⁸ while being more cost effective.²⁵⁹

In a unified juvenile court system, the adjudicator would be able to take into consideration a child's existing plan while making decisions on the new case. When a dependent minor crosses over to delinquency, that minor would go before the same judicial officer of his or her dependency case. Because that judicial officer decided the dependency plan for the minor, the judicial officer would have a better understanding of the minor's situation, and would be able to order a more appropriate delinquency plan for the minor. Further, there are many children who qualify as dependents, but never enter the dependency system for various reasons, and end up committing a delinquent acts. In these cases, a single judge would be able to prescribe the dependency-related services necessary for that minor, without any complications due to suspension of jurisdiction in either system.

A one-court, one-judge approach would also resolve concerns about communication between the two systems. Communication between the two agencies was one of the major problems with regards to handling dual-jurisdiction cases.²⁶⁰ With a one-judge approach, all relevant representatives from both systems would appear in the same courtroom at the same time, providing for clear communication between probation and child welfare services. Case files could be shared easily, facilitating more frequent, efficient, and better-informed recommendations for a child's wellbeing. While both agencies may have different goals, collaboration is ideal since "long-term well-being requires multi-dimensional efforts."²⁶¹

While some academics have identified concerns regarding confidentiality and how shared information might be detrimentally used against the minor,²⁶² these concerns are overblown. The judicial officer, child welfare

²⁵⁸ Bilchik & Nash, *supra* note 17, at 18.

²⁵⁹ *Id.*

²⁶⁰ See *supra* Part IV.

²⁶¹ Bilchik & Nash, *supra* note 17, at 19.

²⁶² See *supra* note 239 and accompanying text.

services, and probation are all acting in the best interest of the child. Thus, more often than not, potentially self-incriminating statements would not be used to enhance punishment, but rather to develop a better treatment or rehabilitation plan for the minor. Through communication, the representatives can still hold the minor accountable for his or her delinquent actions while developing a treatment plan that can take into consideration any and all information learned and shared between the two agencies.

Moreover, a one-judge approach expedites decision making because it eliminates the need for a protocol assessment on how to handle a dual-jurisdiction case. Rather, a plan of action could be discussed and agreed upon as soon as possible. Initial juvenile hearings are generally held soon after a potential dependency or delinquency petition is filed, especially if the minor is removed from the home. With one judge, the court would be able to identify crossover minors more promptly, thereby avoiding any situations like Jaime M.'s, and preventing dual-jurisdiction children from getting lost in the shuffle due to technical errors. Moreover, "[j]udicial decisions can either contribute to or alleviate the systemic problems presented by crossover youths," and reducing the number of adjudicators to one avoids any problems associated with multiple—possibly conflicting—decisions from multiple voices.²⁶³

VIII. CONCLUSION

A one-court, one-judge approach would require a massive system change, but it is not entirely impossible. Juvenile dependency and delinquency are bound by one division of the Welfare and Institutions Code, and in comparison to other sets of California codes, this one is relatively manageable and finite. History shows that the juvenile courts were once unified,²⁶⁴ and while there were problems with the juvenile courts of the past, separating the dependency and delinquency systems has not proven to be any better.²⁶⁵ There would also be some major administrative hurdles to overcome, but with careful planning, better guidelines, and some code revisions, unifying the juvenile courts once again could be a long-term feasible goal to achieve.

The doctrine of *parens patriae* motivated the creation of the first ju-

²⁶³ See *id.*

²⁶⁴ See *supra* Part II.

²⁶⁵ See *supra* Parts II–III.

venile courts.²⁶⁶ Children were a special category of people who were incapable of acting in their own best interests and needed extra protection from the state. Today, dependent minors still receive this special attention, but delinquent minors are treated more and more like adult criminals, thereby creating a distinct divide between the two systems.²⁶⁷ And while studies have repeatedly shown a strong correlation between dependency and delinquency, little effort has been made to address this problem.²⁶⁸ The most recent statute that addresses dual-jurisdiction minors, section 241.1(e), is inadequate and unsuccessful. Rather, we should reform the juvenile system to better serve dual-jurisdiction minors, return to the *parens patriae* doctrine, and we should judge children so that courts, once again, “address the unique aspects of adolescent development.”²⁶⁹

²⁶⁶ Nunn & Cleary, *supra* note 10, at 11. Ben Lindsey, who started the first juvenile court in Illinois, had envisioned the juvenile court following the *parens patriae* philosophy: “Lindsey saw the possibility in that statutory language for the court, under the *parens patriae* mantle, to assert jurisdiction over children not as criminals but as wards of the state in need of correction.” *Id.*

²⁶⁷ See *supra* Part III.

²⁶⁸ See *supra* Part II.

²⁶⁹ Bilchik & Nash, *supra* note 17, at 1.