

## What Defenders Can Do to Reduce Placement Delay/Placement Failure in Cases Involving Youth with Serious Mental Health Needs

- ❖ Move to dismiss in the interest of justice when the case involves relatively low-level misbehavior, is likely to result in protracted detention pending placement, and/or represents a “dump” into juvenile justice from mental health, child welfare, or special education.
- ❖ Use a joinder motion to bring in other agencies with obligations to serve the child, including mental health, special education, or child welfare agencies; use this in conjunction with a motion to dismiss or hold the case in abeyance pending fulfillment of such agencies’ obligations to the child. (See e.g., Calif. Welf. & Inst. Code § 727(a).)
- ❖ Advocate for “reasonable efforts” to prevent placement -- services that would enable the minor to remain at home pending adjudication of the case, pursuant to federal child welfare law, which protects the rights of delinquent children going into foster care/group homes. 42 U.S.C. § 671(a)(15). Child Welfare Manual §§ 8.3A.1, [http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy\\_dsp.jsp?citID=29](http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=29) (See e.g., Calif. Welf. & Inst. Code § 636(d).)
- ❖ In cases where a child is going into a foster home or group home, hold the probation department to its obligations under federal child welfare law to have a comprehensive case plan. (42 U.S.C. §§ 671(a)(16) & 675(1) & (5)(A).) In California, this plan must be in place before the disposition hearing. (Calif. Welf. & Inst. Code § 706.6.)
- ❖ In cases where placement is a likely outcome, let the probation officer know you want to be informed of placement options as the dispositional report is being prepared; share information pertinent to your client's special needs with the probation officer to assure an appropriate placement match.
- ❖ In cases where you anticipate a contested disposition, start early in exploring your own placement or community-based programs, to reduce the need for continuances. Demand that the court and probation develop truly individualized dispositional plans.
- ❖ At every stage of the proceedings, request that your client be held in a non-secure setting, or at home with intensive supervision.

- ❖ Keep placement files open until the minor is placed, and then keep them in a “tickler file” to check on how things are going every few months to head off problems before they happen.
- ❖ If the child is not promptly placed after disposition, calendar the case for review (some states have placement review statutes (e.g., Calif. Welf. & Inst. Code § 737), and put the probation officer on the stand to inquire into what efforts have been made to carry out the placement order, the reasons for the delay, and the effect of the delay on the minor. Don’t wait until your client has been sitting for 2 months to step up the inquiry.
- ❖ In case of extended delay, despite your best efforts, file a change of circumstances motion (e.g., Calif. Welf. & Inst. Code § 778), and present an alternative plan, e.g., for release to wrap-around services.
- ❖ In egregious circumstances, with extended delay, file a writ of habeas corpus. Depending on your facts, legal claims may include:
  - Violation of Due Process rights under the Fourteenth Amendment for unconstitutional deprivation of liberty, in the sense of continued incarceration despite an order that your client should be held in a non-secure setting. While Schall v. Martin, 467 U.S. 253 (1983), upheld the use of pretrial detention of children “strictly limited in time” (pp. 269-270), your facts may show lengthy incarceration with inadequate justification.
  - Violation of Due Process rights under the Fourteenth Amendment, in the sense of being held for the purpose of rehabilitation, but not receiving rehabilitative services. (Youngberg v. Romeo, 457 U.S. 307 (1982); Alexander S. v. Boyd, 876 F. Supp. 773 (D.S.C. 1995), affd. in part, revd. in part, 113 F.3d 1373 (4<sup>th</sup> Cir. 1997).
  - Violation of Due Process rights under the Fourteenth Amendment to be protected from harm, where the deliberate indifference of staff in failing to take appropriate steps to protect a child with behavioral and mental health problems from harm over a protracted period of detention. (Youngberg v. Romeo, 457 U.S. 307 (1982); A.M. v. Luzerne, 372 F.3d 572 (3d Cir. 2004.)
  - For clients with mental disabilities, violation of the Americans with Disabilities Act (ADA). Olmstead v. L.C., 527 U.S. 581 (1999), found that where it is clear that a person may be appropriately handled in a less restrictive setting, the ADA is violated by holding them in a more restrictive institutional setting.
  - Violation of state laws protecting against children being held in a more restrictive setting than is needed (e.g., Calif. Welf. & Inst. Code § 202, and 42 U.S.C. § 675(5)(A) if the child is in a foster care placement), and the “reasonable efforts” to prevent placement provisions of state and federal law. (42 U.S.C. § 671(a)(15), and e.g., Calif. Welf. & Inst. Code §§ 706.6, 727.2.)
- ❖ Consider bringing systemic litigation to address patterns of delay, looking using the ADA, Fourteenth Amendment, and violation of child welfare law arguments.

- ❖ Work with your Probation Department and the Court to improve documentation of placement delay/placement failure; identify and resolve problems with particular providers; develop ways to make the placement process as efficient as possible; and identify specific placement needs that are not being met. (See, “Difficult to Place”: Youth With Mental Health Needs in California Juvenile Justice, Youth Law Center (August 2005).)
  
- ❖ Advocate for strengthened procedural protections against placement delay through legislation or juvenile court rules.
  
- ❖ Educate yourself about placements and funding opportunities for community-based services through Medicaid, the special education system, and Title IV-E wrap-around, which could prevent the need for placement.
  
- ❖ Acquaint yourself with litigation on related issues, and use the holdings to bolster the need to address placement delay in your case(s):
  - Adult inmate litigation holding that inmates may bring suit when held for periods ranging from a day to two weeks beyond their release date, e.g., Green v. Baca, 306 F. Supp.2d 903 (C.D. Cal. 2004); Sullivan v. County of Los Angeles, 12 Cal.3d 710 (1974); Berry v. Baca, 379 F.3d 765 (9<sup>th</sup> Cir. 2004); Fowler v. Block, 2 F. Supp.2d 1268, 1275 (C.D. Cal), rev’d. on other grounds 185 F.3d 866 (9<sup>th</sup> Cir. 1999).
  
  - Cases involving various aspects of placement delay for other groups (e.g., Greg Krikorian, “Lawsuit Alleges County Detained Teens Illegally; Litigation: Two agencies are accused of repeatedly ignoring court orders to release youths from juvenile hall,” Los Angeles Times (Feb. 14, 2002, page B-4) – involving detention of child welfare youth whose delinquency cases had been dismissed).
  
- ❖ In every situation, adopt advocacy strategies that emphasize the harmfulness of detention, particularly for youth with serious mental health issues.
  
- ❖ Fight systemic lethargy. In every situation, adopt strategies that view any amount of placement delay as too much.

