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Re: Comments on Draft All County Information Notice
Implementation of AB 129 (Dual Status Children)

Dear Norma:

We have reviewed the draft All County Information Notice (ACIN) for implementation of AB 129 (Dual Status Children). While we realize that the statute allows a great deal of flexibility with respect to the handling of dual status, we are concerned that the draft ACIN focuses largely on governance issues, and could be immensely more helpful by setting forth specific issues counties need to address in deciding whether to develop a protocol or actually developing one.

One big concern is that protocols must include guidance on what to consider in deciding whether to invoke dual status at all. This concern is based on years of complaints to our office about children being thrust into the juvenile justice system from child welfare placements or shelters for "offenses" such as talking back to group home staff, having low level fights with other children, drinking alcohol, low level vandalism, or having consensual sex – behavior familiar to many homes with teenage children, but resulting in detained delinquency petitions for children foster care or group homes.

More recently, our research into children with mental health needs in juvenile halls, "*Difficult to Place: Youth With Mental Health Needs in California Juvenile Justice* (August 2005), has revealed that many came directly from group homes during a period of mental health crisis, and often for behavior directly related to that crisis. Without exception, the counties we surveyed expressed the view that the delinquency system is ill-equipped to deal with their needs, and that some of these children simply do not belong in juvenile justice. Thus, it is essential that protocols call for some inquiry into what services the players expect to be provided in juvenile justice that were not provided in child welfare, and further analysis whether those services are actually available in juvenile justice.

Until now, at least some of these cases were weeded out because a decision had to be made about which system should have the child, and on balance, at least some of the more minor offenders stayed in the 300 system. But dual jurisdiction, with the possibility of returning the child to 300 status, makes it seem more benign to invoke delinquency jurisdiction. Without protocols calling for stringent front door scrutiny, dual jurisdiction presents a danger of gathering in



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many more low level offenders and mentally ill/emotionally disturbed children who will intrude further into the juvenile justice system as their low level misbehavior and “program failure” continue.

As a matter of policy, too, dual jurisdiction protocols need to consider gaps in the dependency system that may result in delinquency referrals. So for example, the protocols should encourage counties to consider whether crisis intervention services to the child and/or caregiver would alleviate the need for delinquency jurisdiction. They should also require some investigation into what services were actually provided to the child under dependency jurisdiction, and whether proper services would address the child’s needs without changing systems.

Finally, it is a great concern that children coming from the dependency system not be automatically held in secure confinement. Protocols should assure that the system has an array of non-secure placement options so dual jurisdiction youth may be subject to the same kind of risk assessment for detention applied to other children. Protocols must also assure that statutory timelines for case processing are adhered to, so those dual jurisdiction children who do need to be securely confined do not spend more time in custody than other children undergoing court proceedings.

Based on these principles, here are specific suggestions for guidance on what to consider in developing county protocols:

1. What protections exist to protect against children becoming dual status children for behavior that would not result in juvenile court action for children in the community? Is the authority to reject inappropriate cases clearly delineated?
2. What criteria will be used to determine whether dual jurisdiction is appropriate? What criteria will be used to determine whether dual jurisdiction is inappropriate? (For example, what is it that would be available in the juvenile justice system that is not already available in the dependency system?) Who will make the determination, and by what procedures?
3. What services were supposed to be provided in the dependency case, and were they actually provided? Is there a process for investigating whether problems at the foster care/group home (staff abuse, bullying by other residents, etc.), or the child’s trajectory in the system (multiple placements, long periods in shelter, poor reunification services, etc.) contributed to the delinquent behavior?
4. What rights does the child have in the determination whether dual jurisdiction will proceed? What rights do the child’s parents have? Caregivers in the dependency system? Who will receive notice of court proceedings?

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5. What protections exist to protect children from being detained in juvenile hall for offenses that would not result in secure confinement for children who were not in the dependency system? Specifically, what provisions are there for non-secure confinement before a petition is filed? Before the detention hearing? Pending adjudication and disposition of the case?
6. What protections are there against children being considered for or undergoing dual jurisdiction proceedings from being detained for longer than other children undergoing court proceedings?
7. What crisis and respite services are available to caregivers or providers that would alleviate the need to proceed with delinquency proceedings?
8. Should the system have alternatives to calling law enforcement in place to deal with problems in foster care/group homes?
9. Should the local mental health and/or education agencies be involved in the dual jurisdiction process, and if so, how should their involvement be structured?
10. Who will provide reasonable efforts and reunification services during dual jurisdiction, and how will this be coordinated with delinquency services? (The ACIN states that these services will be provided, but does not suggest how this may really happen. For example, will child welfare workers visit children in Department of Juvenile Justice facilities, sometimes hundreds of miles away from their families?)
11. What, if anything, will be done to address the child's needs resulting from abuse and neglect, while the child is in the delinquency system?
12. How will dual status impact data reporting for CWS/CMS (i.e., will going back to 300 status be counted as a re-entry into care within a certain period of time, etc.)?
13. What access will probation have to the CWS/CMS data system (as we understand it, access is available to probation for children in foster care/group homes)?
14. Do the data requirements assure that a meaningful evaluation of dual jurisdiction will be possible? Shouldn't counties be required to collect, at the very least, data on the nature of the offense, who requested the petition (i.e., law enforcement? caregiver?), immediate prior placement, placement history, mental health and service history, length of time each time in secure confinement, length of time in delinquent status, placements in delinquent status, services provided in

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- 15 delinquent status, and whether the child has been returned to dependent status? From a system's point of view, shouldn't counties also collect data on the costs to each system of services and placements?
16. Finally, shouldn't the ACIN should provide more direction to helpful materials? For example, the Vera Institute's Project Confirm has issued a series of reports on Project Confirm, an interagency effort to reduce detention bias toward foster youth in New York City. It would also be helpful to alert counties to non-tradition ways of serving dual jurisdiction youth. For example, Wraparound Milwaukee offers a comprehensive system of care that spans the mental health, child welfare, delinquency and child welfare system, and focuses on cost-effective community-based services.

While many of the suggested questions above come from a juvenile justice perspective, we also have serious concerns about how the ACIN provides adequate guidance to counties to assure compliance with federal child welfare legal requirements. Can CDSS simply defer to the counties to establish roles and responsibilities for dual status children? And irrespective of which agency takes the lead in providing reunification services, what oversight mechanisms have been put into place to assure that the services have been provided to dual jurisdiction youth? In simply stating that reunification timelines and protections will be adhered to, the draft ACIN does not provide practical guidance about how this how this could or would actually occur.

We realize that this guidance is on a fast track, but nonetheless will be happy to talk further with you and the Chief s about these issues, or provide further analysis of specific issues.

Sincerely,



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