

What Can Public Defenders Do to Reduce Placement Delay/Placement Failure?

1. In cases where you think placement is a likely outcome, let the probation officer know you'd like to be informed of placement options as the social study report is being prepared.
2. Make sure you share information pertinent to your client's special needs with the probation officer to assure an appropriate placement match.
3. Start early in trying to prevent placement by calling for services that would enable the minor to remain at home pending adjudication of the case, pursuant to Welfare & Institutions Code section 636(d) provisions.
4. 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.
5. At the time of disposition (or at subsequent reviews), request that your client be held in a non-secure setting, or even at home with intensive supervision.
6. Keep placement files open until the minor is placed, and then keep them in a "tickler file" to check on progress every few months.
7. Calendar the 15-day placement reviews under Welfare and Institutions Code section 737 as appearance hearings, and put the probation officer on the stand to inquire into "the action taken by the probation department to carry out its order, the reasons for the delay, and the effect of the delay on the minor" (§ 737(b)).
8. Don't wait until your client has been sitting for 2 or three months to step up the inquiry. Any amount of unnecessary incarceration is too much.
9. In case of extended delay, despite your best efforts, file a change of circumstances motion under Welfare and Institutions Code section 778, and present an alternative plan, e.g., for release to wrap-around services.
10. 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(4th Cir. 1997).
 - For clients with mental disabilities, violation of the Americans with Disabilities Act (ADA). Olmstead v. L.C., ___U.S.___, 119 S.Ct. 2176 (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 California statutory protections against being held in a more restrictive setting than is needed, generally in Welfare and Institutions Code section 202, and in the new reasonable efforts provisions of sections 706.6, 727.2, etc. (A.B. 1696).
11. Use your “tickler system” to check on your placement kids every few months to head off problems before they happen.
 12. When you are asked to stand in on placement failures, do a little investigation to see if problems may be resolved without re-placement or a 777 petition. In some cases it may be appropriate to ask that the minor be returned home either by terminating the placement order, or changing the order to provide wrap-around services.
 13. 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.
 14. Educate yourself about placements and funding opportunities for community-based services through Medicaid, the special education system, and SB 163 or Title IV-E wrap-around, which could prevent the need for placement.
 15. View placement delay issues as a regular part of your job, and work to set up tracking systems in your office that facilitate advocacy on these issues.