

Resource Brief

Navigating the Dual Status Terrain: Tips for Juvenile Defenders

This resource brief addresses the unique considerations associated with representing dual status youth and offers practice tips for juvenile defenders to help navigate the terrain. This resource brief also explores the growing reform trend of multi-system collaboration and coordination to improve outcomes for dual status youth and offers guidance in this arena as well.

In some communities, as many as 2/3 of youth referred to juvenile courts have had some level of involvement with the child welfare system.

“My single biggest issue is that child welfare information is viewed as a negative; the mere fact the child’s family is struggling is viewed as a strike against the child, rather than as mitigation.”
- Juvenile Defender

I. Understanding Dual Status Youth

Who are Dual Status Youth?

It comes as no surprise to those who work with youth in the delinquency system that a significant number have experienced some form of maltreatment¹ Of those, many have come in contact with the child protection/child welfare system as a result. **In some communities, as many as 2/3 of youth referred to juvenile courts have had some level of involvement with the child welfare system.**²

The timing and extent of child welfare and juvenile justice system involvement varies, but the term “dual status youth” is the umbrella term used to refer to all youth who touch both systems. The following terms offer greater precision in defining the different statuses dual status youth may occupy:

1. **Dually-identified youth:** Youth who are currently involved with the juvenile justice system and have a history in the child welfare system but no current involvement. This is a common pathway to becoming a dual status youth and can include circumstances such as cases in which there have been numerous referrals to child protection without resulting in an open case, or cases in which a child adopted from foster care at a younger age begins acting out in adolescence.
2. **Dually-involved youth:** Youth who have concurrent involvement with both the child welfare and juvenile justice systems. The extent of involvement in either system can vary widely. For example, the child’s family may only be under investigation with the child protection agency at the time the youth is

Case Example: Lloyd

Lloyd, a 12 year old boy who recently was detained in a juvenile facility, was arrested and charged with assault against his two younger siblings, ages 5 and 3. Lloyd’s mother, a drug abuser, frequently left Lloyd in charge of his siblings while she left the home to visit friends, or get high. When his siblings refused to listen to him, he sat them on a radiator as punishment, something that had been done to him many times, and something he had watched his mother do as well. As a result, the children sustained third degree burns. Despite the fact that the child welfare agency had conducted numerous investigations of Lloyd’s home for domestic violence and child neglect allegations, Lloyd was prosecuted and detained without consideration of the underlying facts, agency involvement, and the difficult situation in which he was surviving.

arrested. Alternatively, a youth may be in the custody of the child welfare system in a foster care placement or group home at the time he is accused of a delinquent act. Youth may also experience the “reverse flow” in which a delinquent youth on probation or in a correctional facility is discovered to have child protection issues necessitating referral to the child welfare system.

3. **Dually-adjudicated youth:** Youth who are concurrently adjudicated in both the child welfare and juvenile justice system. These are youth who are determined by the court to be both dependent and delinquent. In these cases the court will formally be involved in oversight and decision making within both cases.

The general definitions above can be helpful in framing the issue of dual status youth and recognizing their prevalence and characteristics, but it is the specific circumstances of each youth and the details of his or her alleged offense that impacts how a case is handled and decided in court. For example, there may be relevant context to consider if a foster youth is arrested at a group home rather than being arrested in the community. In another example, a youth arrested for an assault on his or her biological parents may be viewed differently if it is known that the family is being investigated for child abuse.

The Impact of Maltreatment

The experience of a youth as a victim of maltreatment and his or her experience within the child welfare system are often relevant to a delinquency case and its resolution. Delinquent behaviors may be linked to existing mental health and substance abuse disorders, cognitive disabilities, and social problems, each of which has been identified as a potential consequence of childhood victimization.³ Therefore, a juvenile defender must understand the youth’s maltreatment background as well as his or her relationship with and experiences within the child welfare system as part of competent and diligent representation.

Expressed Interests and Best Interests

Inherent in a case involving a “dual status youth” is the participation of many players – child welfare

agencies, probation departments, attorneys, and educators, to name a few. Yet, a juvenile defender plays a singular role in relation to dual status youth. It is the juvenile defender who represents the “expressed interests” of the client⁴ whereas other stakeholders have an obligation to meet the “best interests” of the child. While the expressed interests and best interests of a child sometimes align, this is not always the case. As the sole voice advocating for the youth’s expressed interest, the juvenile defender often stands alone amongst the collection of professionals and decision makers involved in the youth’s life. While this may be expected in the adversarial context of the delinquency court, it can become challenging in the context of multi-systemic efforts in dual status youth reform.

The Dual Status Youth Experience

Despite the nuances of each dual status youth case, there are some reliable statistics that reveal that dual status youth consistently experience disparate treatment while involved with the juvenile justice system and notably poorer outcomes following experience with both systems. For example, **studies have shown that dually-involved youth are more likely to be detained than youth without child welfare system involvement⁵, more likely to be formally processed⁶, and more likely to receive placement as a disposition.⁷** Research indicates that after exiting the juvenile justice system, youth with child welfare involvement are more likely to experience a jail stay and to receive treatment for serious mental illness in early adulthood.⁸

These findings are not to be viewed as foreordained outcomes for dual status youth, but instead illustrate the unique challenges these children, as well as those representing them, likely face. These findings also highlight the importance of effective advocacy on behalf of juveniles involved with multiple systems. Where appropriate and when desired by the youth, the juvenile defender can strongly advocate for the use of alternatives to the formal court process in order to keep the youth out of the juvenile justice system.⁹ This can turn the attention back to the interests of the child and may more effectively connect him or her to the supports necessary for positive long-term success, offering them opportunities to demonstrate their resilience and potential.

Studies have shown that dually-involved youth are more likely to be detained than youth without child welfare system involvement, more likely to be formally processed, and more likely to receive placement as a disposition.

“[The] delinquency attorney has to understand all the consequences of being a dependent youth.”

- Juvenile Defender

II. Representing Dual Status Youth on Delinquency Charges: What is Different?

While in many ways representing dual status youth requires the same skills as representing any youth charged with delinquency, inherent complexities demand special attention from juvenile defenders.

More records	<ul style="list-style-type: none">• Dually involved youth are likely to have a greater number of court contacts resulting in a greater number of court records than other youth. Records may also be located across multiple jurisdictions, agencies, schools, hospitals, and an array of service providers.
More people	<ul style="list-style-type: none">• Typically, there are more people who have intervened in the lives of dual status youth; lawyers, teachers, social workers, agency personnel, court appointed special advocates (CASA), and others.
The State is the parent	<ul style="list-style-type: none">• Some dual status youth are in the custody of the state or jurisdiction. Where family support is often critical in a delinquency case (for example, to support a youth staying out of detention or to some other positive disposition or placement) it may not be available in these cases.
The delinquency petition may stem from child welfare involvement	<ul style="list-style-type: none">• The foster care provider or its agents may be the accuser of the alleged delinquency and they may not want to continue caring for the child, making future placement a challenge. However, detention should not be a default because there is limited availability for other placements.¹⁰
Bias may exist against youth involved in the child welfare system	<ul style="list-style-type: none">• Child welfare histories can be seen as aggravating rather than mitigating factors in the delinquency context. Adolescents and young adults in the foster care system can be viewed in a negative light by agency workers and the court system. While dual status clients should receive services in the child welfare system, at times that system may advocate that services be provided through the juvenile justice system.
Information sharing is encouraged	<ul style="list-style-type: none">• Information sharing and waivers of confidentiality are encouraged in order for multiple systems to coordinate on behalf of dual status youth. Confidentiality, often held paramount in delinquency proceedings, can be perceived as a barrier to “best interest” goals in child welfare proceedings.¹¹
Child welfare professionals may have different ethical obligations	<ul style="list-style-type: none">• The role of the child’s attorney differs across jurisdictions in child welfare systems. Best interest advocacy is common and may be expected. Guardians ad litem (GALs), and Court Appointed Special Advocates (CASAs) are mandated to work under a best interest model of advocacy which may not be in line with the client’s expressed interests.
Parents’ rights	<ul style="list-style-type: none">• While children in dependency cases have confidentiality rights in most jurisdictions, it is important to also understand the confidentiality rights of parents in that system. Often parents in dependency matters are asked to share confidential information in dual status cases that will affect the juvenile client as well.

III. Practice Tips for Individual Representation

Given the unique complexities in representing dual status youth, the following list of practice tips is offered from existing standards and from interviews with front line defenders who are successfully advocating for youth facing dual jurisdiction.

Confidentiality, often held paramount in delinquency proceedings, can be perceived as a barrier to “best interest” goals in child welfare proceedings.

JUVENILE DEFENSE ETHICAL DUTIES REMAIN THE SAME.¹²



- o When representing dual status youth, defenders must act in accordance with their ethical obligations, zealously advocating for their client’s stated interests, as they would in any delinquency case.
- o While educating themselves about the child welfare system, juvenile defenders must continue to advocate for the client’s due process rights by effectively engaging youth in their defense and arguing against the use of child welfare information that works against their stated interests.
- o Maintain attorney-client privilege and confidentiality unless your client has competently consented and provided all necessary releases.
 - Juvenile defenders must carefully discuss with their youth client the implications of sharing information.
 - Specific conversations about sharing information, and clear and voluntary consent for sharing, must occur at each decision point.
 - Counsel should advise clients in developmentally appropriate language about all implications of waiving any rights to confidentiality.¹³

“The youth’s need for services in the child welfare system does not absolve state and local jurisdictions of their obligation to comport with due process and fundamental fairness in all hearings that seek to resolve allegations of delinquency.”

ENGAGE IN PRE-PETITION ADVOCACY.



- o Advocate for alternatives to prosecution with intake officers and prosecutors. Structured decision-making tools that objectively identify risk level will likely be used with dual status youth to reduce foster care bias in decision making. This can greatly benefit the youth’s case but also raises concern about self-incrimination, making the defender’s advisement particularly important.
- o Advocate strongly that the child welfare system should continue to address the client’s needs by ascertaining and implementing additional or modified programming within that system, without reliance on the juvenile justice system.
- o Track down what may be extensive records held by a variety of agencies in order to identify community supports as early as possible (education, placement, etc.).
- o Work toward securing appointment of counsel as early as possible in the process.

- Proposed, American Bar Association Standards Relating to Crossover, Dual-Jurisdiction and Multi-System Youth, ABA Task Force on Juvenile Justice, DRAFT September 2015, Part 1 General Principles, 3

“Counsel must be aware of all consequences that stem from court involvement, including, but not limited to, consequences that could affect the client’s child welfare status, right to housing, public benefits, ability to continue his or her education, or immigration status. Counsel must advise the client regarding such matters, or when appropriate, recommend the client contact a specialized attorney in those fields.”

- National Juvenile Defense Standards, Standard 1.4 Commentary

“What’s really at stake? Not retribution, punishment, redirection. Really it’s the kid’s future, and through that public safety, and all of our futures.”

- Juvenile Defender

LEARN ABOUT THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEMS.



THOROUGH INVESTIGATION IS REQUIRED.



INFORMATION SHARING AGREEMENTS ARE NEEDED TO PROTECT YOUTH INTERESTS.

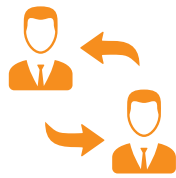


- o Education and training are needed to ensure juvenile defenders understand the dependency system, including state and local laws, procedures, and terminology.¹⁴
- o Juvenile defenders need to understand the dependency system so they can properly advise their clients about how the decisions they make in their delinquency case will impact their involvement in other systems.
- o Juvenile defenders should educate and train other stakeholders about their role as a defender and their expressed interest mandate. Child welfare agents need to understand the delinquency court process and how they can help the defender and his or her client.
- o Youth with involvement in two or more systems merit an extensive level of investigation.
- o More paper means more people to speak with, *e.g.* caseworkers, mental health providers, guardians ad litem, child welfare attorneys, and others.
- o Defenders should partner with an investigator if at all possible.
- o Defenders should get all possible records through client consent first. Then the defender should work through the child welfare attorney. Finally, defenders should use the subpoena process strategically since once records are subpoenaed they may be made available to all parties.
- o Defenders must review each individual record carefully to determine if it contains information that could be harmful to the client’s stated interests.
- o While information sharing in these cases may be beneficial to the client, it is important to first protect any confidential and privileged information, represent the client’s expressed interest, and only agree to information sharing that will not harm the client.¹⁵
- o Effective agreements ensure that information from a history of child welfare involvement cannot be used in a delinquency petition.
- o Juvenile defenders should object to the use of child welfare information introduced to incriminate youth and/or infringe upon their liberty interests.

“Information sharing between and among juvenile justice and other youth-serving agencies should be regulated to balance the youth’s need for coordinated services, treatment and care with the youth’s need for privacy and protection against self-incrimination and must comply with state and federal laws governing confidentiality and evidentiary privilege.”

- Proposed, American Bar Association Standards Relating to Crossover, Dual-Jurisdiction and Multi-System Youth, ABA Task Force on Juvenile Justice, DRAFT September 2015, Part 1. General Principles, 4

COLLABORATION IS EXPECTED, AND CAN BE HELPFUL.



- o Although it may not always be a defender’s first inclination, collaboration with other stakeholders may benefit the client.
- o Collaborating with other stakeholders can be key to upholding protections for clients. Defenders can advocate for youth interests at multi-disciplinary team meetings and can help well-meaning decision makers see the potential harms in moving toward delinquency filings.
- o Connect with the client’s dependency counsel. Having open lines of communication between defenders and dependency counsel for the youth can ensure access to historical information that can serve as mitigating factors.
 - Juvenile defenders can also help child welfare counsel see the client’s perspective and work to avoid delinquency filings.
 - Work with the dependency attorney to ensure that the parent’s counsel in the dependency case understands that the sharing of confidential information may affect the outcome of their child’s delinquency matter.
- o Juvenile defenders should reach out to foster parents, group home staff, agency staff, and others who are filling the role of the family for youth in the child welfare system. It is their job to be a positive resource for youth.
- o If in line with your client’s expressed interests, consider asking the client’s caseworker, court appointed special advocate (CASA), or social worker to come to court for the delinquency hearings. Connect with these individuals before court to reduce the chance that information harmful to the delinquency case will be disclosed.
- o Even when collaboration occurs, the juvenile defender’s obligation to client confidentiality and representing the client’s expressed interests must be maintained.

“There is a lot of potential to help kids. Look at how you can make this a great opportunity to help increase the chances of youth not being prosecuted and not being detained.”

- Juvenile Defender

REENTRY PLANNING IS ESSENTIAL.



- o When youth are released from detention or discharged from residential placement but remain under supervision of the dependency or child welfare system, defenders should push the juvenile delinquency system to begin reentry and discharge planning well in advance of discharge.¹⁶
- o In reentry planning, defenders should insist upon timely, coordinated, and cross-system services that, at a minimum, ensure continuity of education (including special education), housing, employment, and the need for behavioral, mental health, physical health services.
- o Defenders should work with stakeholders to prevent delays in identifying, securing, or arranging for appropriate post-discharge services that would extend the duration of detention or placement.

EXPERIENCE MATTERS.



- o These cases are complex. The defender should partner or consult with someone who has experience with managing dual status cases.

Case Example: Natasha

Natasha is a 15 year old girl who recently was detained at Juvenile Hall after being arrested for soliciting an undercover police officer. Natasha stated that the police officer misunderstood her intentions, and she “just needed some money to help her get by.” The officer noted that she looked sleep deprived and disheveled. Natasha maintains that she cannot return home although she will not say why. Records indicate that she has a history of running away and that over the years the child welfare department has conducted numerous investigations of her home for domestic violence, selling of drugs and child neglect. Natasha remained in detention for several weeks as her home underwent further investigation.

The release of information includes the assurance that “None of the information obtained pursuant to this Authorization will be used to prosecute the named juvenile.”

“Access to and the use of juvenile records should be strictly controlled to limit the risk that disclosure will result in harmful collateral consequences, including the unnecessary denial of opportunities, placements, services and other benefits to youth.”

- Proposed, American Bar Association Standards Relating to Crossover, Dual-Jurisdiction and Multi-System Youth, ABA Task Force on Juvenile Justice, DRAFT September 2015, Part 2.14. Access to Court Records

IV. Engaging in Policy Initiatives: Risks and Opportunities

Current Trends in Dual Status Youth Reform

With respect to dual status youth, reform trends have developed out of the realization that the traditional structure of child welfare and juvenile justice agencies working in isolation from one another has proven ineffective, inefficient, and costly. Instead, many communities have come to recognize the value in working collaboratively across agencies and courts, sharing necessary information and collectively applying expertise and resources to best meet a youth’s needs to keep him or her from entering or moving deeper into the juvenile justice system.

Examples of Practice Reform

Typically, a jurisdiction will begin reform efforts by developing protocols for identifying dual status youth referred to the juvenile court. Recently, San Diego County in California instituted a process for timely identification of dual status youth, which then triggers opportunities for cross-system communication about strategies for avoiding court involvement where appropriate.¹⁷

Another common reform strategy is to designate specific units or staff to conduct multi-disciplinary team meetings (MDTs) for dual status youth. These MDTs bring together stakeholders including social workers, probation officers, education and mental health service providers, and sometimes youth and families, to share pertinent information and jointly consider options for addressing the youth’s issues, ideally outside of the juvenile justice system.

Juvenile defenders or their staff should make every effort to participate in these meetings.

One example of an MDT is the case conference established in Hampden County, MA. Youth and families are invited to participate in this conference by the defense attorney and releases of information are signed to facilitate the sharing of information.¹⁸

The release of information includes the assurance that “None of the information obtained pursuant to this Authorization will be used to prosecute the named juvenile.”¹⁹

Hampden County also drafted an MOU that defines the scope of information sharing and restricts dissemination. Data indicates that implementation of this type of case conferencing corresponds to a significant reduction in new charges and filings of violations of probation as well as a decrease in child welfare placement disruptions.²⁰

A fundamental component in dual status youth reform efforts is the establishment of a cross-system infrastructure to design, implement, and evaluate reforms such as the practices highlighted above. Having juvenile defenders as part of such a leadership group is critical. The concerns and perspective voiced by defense attorneys must help to inform new policies and practices developed for use inside and outside the courtroom, ensuring consideration of the rights of the youth and the potential unintended consequences of particular practices. If juvenile defense attorneys are not paid to appear in dependency cases or participate in dependency meetings, getting a court order for participation may be necessary.

Risks in Dual Status Youth Reform

Despite the acknowledged vital role of the juvenile defender in designing and participating in new practices, involvement can give rise to some challenging issues. Because defenders have an ethical obligation to represent the expressed interest of the youth, they are duty-bound to highlight the risks arising from particular practices and to ensure that certain information is not shared among system partners without sufficient and reliable protections.

Risk of self-incrimination

- Where a dual status youth protocol involves creating new opportunities for mental health or trauma screening, the juvenile defender must consider the risk of self-incrimination if the youth has the potential to make statements that are against his or her interest while being screened or assessed and consider whether a protective order is necessary.²¹
- Youth may also be included in conferences or meetings that are well-intentioned but give rise to the potential for the youth to make incriminating statements about a current or pending case or share other detrimental information.

Violation of confidentiality

- The common practice of holding multi-disciplinary team meetings to jointly assess and plan for a youth can bring up concerns over confidentiality.
- Simply sharing information that is not relevant to the case at hand is Absent protective agreements or orders, and without a clear understanding of federal and state privacy and confidentiality rights, the youth can be exposed to considerable risk of not only self-incrimination but also of private and sensitive information being shared to his or her detriment in obtaining services or placement.

Disparate treatment

- A defender may be concerned that his or her client will be treated more harshly if identified in court as a dual status youth as some may claim to “know” them or assume things because of their dependent status or history.
- Researchers and practitioners have discussed a “foster care bias” that can exist and can affect decision making, particularly in the decision whether to detain or release.²²

Opportunities in Dual Status Youth Reform

Although there can be concern or tension as new practices are established and promoted, it does not mean that the juvenile defender should abandon the idea of being involved in and supporting reform. There are many aspects of these efforts that can support the juvenile defender meeting the goals of the young client.

Reform efforts can help engender a better understanding of youth.

- Most often, initiatives based on improving outcomes for dual status youth will include some level of training on adolescent development and the impact of trauma on children. Having this information can have significant impact on the decisions made by social workers, probation officers, prosecutors, and ultimately the judges who decide the course of action for a youth. For example, a judge who better understands the potential for re-traumatization of a traumatized youth in detention may become more insistent on finding a placement for a child rather than keeping him or her locked up.
- Although foster care bias is still a concern, there is research indicating that identifying a client as a dual status youth does promote “improved fairness” and “equal treatment under the law.”²³

Defenders can find support for their advocacy.

- When collaborative practices are established, it can result in a connection to potential allies and resources to strengthen your advocacy for the client.
- Practices such as having social workers attend delinquency hearings and collaborate with dependency counsel can help to ensure that issues of placement, treatment, and education are addressed, potentially presenting a show of greater support for the youth which can encourage a judge to feel confident dismissing or dealing with the charges informally.

Reform efforts can improve outcomes for youth.

- Jurisdictions are beginning to see reductions in the number of violations filed, reductions in rates of detention and commitment, and greater placement stability as a result of collaborative practice. These outcomes are likely to support the immediate goal of the juvenile defender and the paramount goal of keeping youth out of the juvenile justice system, providing them with effective services within the community when necessary – now and in the future.

Tips for Managing Dual Status Youth Reform

There are several ways that juvenile defenders can work within a dual status youth initiative while upholding ethical obligations to the client. As one defender put it, it is important to “maximize the opportunities while minimizing the dangers.”

“Having a better understanding of the other side will make defenders better advocates as well.”

- Juvenile Defender

SECURE BUY-IN



Systems reform requires buy-in across systems; from top decision-makers to front line workers. Without commitment the systems reform effort will unravel as soon as the reform initiators move on. Buy-in begins to shift culture toward the desired reform. Buy-in begins to shift culture toward the desired reform and must be secured before the reform begins. System personnel need an opportunity to ask questions and understand the benefits of the reform.

GET TRAINED



Learning about the child welfare system can be extremely valuable in representing the client as well as in understanding the point of view of others engaged in dual status youth reform efforts. As noted by one juvenile defender, “Having a better understanding of the other side will make defenders better advocates as well.”

PROVIDE TRAINING



As discussed above, juvenile courts and youth-serving agencies are more likely to make good decisions if they have a clear understanding of several things: adolescent development, trauma, procedural justice, and the role of the juvenile defender. In addition, defenders can take the opportunity to educate system partners about the risks from the defender’s unique vantage point. Use concrete examples of how youth can ultimately be harmed when his or her rights are not protected; explain the potential short- and long-term consequences of juvenile justice system involvement and the damage that can be caused by improperly sharing confidential information.

DEVELOP RELATIONSHIPS



Dependency attorneys or minor’s counsel may have valuable information about the youth’s family and history as well as about what supports or services may be available to youth. Having the ability to present these options may positively contribute to decision making by prosecutors and judges. A defender must be mindful of his or her role, however, and remember to discuss these collaborations with the client, specifically telling them that the duties to the client are paramount.

COLLABORATE



Defenders can ensure that information sharing agreements, protective orders, MOUs, and even legislation are developed to protect youth interests. Collaboration is an opportunity to educate other system participants about youth's rights and the importance of the defender's role in protecting those rights.

“Knowing that it is rare to eliminate all risk for dual status youth, I think about how I can make this an opportunity for my client.”

- Juvenile Defender

START SMALL



Working collaboratively within a reform initiative is a challenge and requires patience, frequent and candid assessment of perceived incremental gains and celebration of short-term wins. Begin by focusing on something small that is likely to be successfully worked out through a collaborative process.

INSIST UPON PROTECTIVE AGREEMENTS



Juvenile defenders should participate in development of information-sharing protocols and agreements to ensure they include sufficient protections against self-incrimination and collateral harms.

Support the drafting of policy or even legislation that reduces the risk of harm to a youth or youth's case posed by collaborative efforts.²⁴

1. Cathy S. Widom & Michael G. Maxfield, *An Update on the “Cycle of Violence”*, U.S. DEP'T OF JUSTICE, NAT'L INST. OF JUSTICE (2001), <https://www.ncjrs.gov/pdffiles1/nij/184894.pdf>.
2. Gregory Halemba & Gene Siegel, *Doorways to Delinquency: Multi-System Involvement of Delinquent Youth in King County (Seattle, WA)*, NAT'L CTR. FOR JUVENILE JUSTICE (2011), http://www.ncjfcj.org/sites/default/files/Doorways_to_Delinquency_2011.pdf.
3. Janet K. Wiig & Cathy S. Widom, with John A. Tuell, *Understanding Child Maltreatment and Juvenile Delinquency: From Research to Effective Program, Practice, and Systemic Solutions*, CHILD WELFARE LEAGUE OF AM. (2003).
4. NAT'L JUVENILE DEFENDER CTR., NATIONAL JUVENILE DEFENSE STANDARDS (2013) [hereinafter STANDARDS]; MODEL RULES OF PROF'L CONDUCT (2013); AM. BAR ASS'N TASK FORCE ON JUVENILE JUSTICE, STANDARDS RELATING TO CROSSOVER, DUAL-JURISDICTION AND MULTI-SYSTEM YOUTH (proposed draft, Sept. 2015) (on file with reporter Prof. Kristin Henning, hennink@law.georgetown.edu) [hereinafter ABA PROPOSED STANDARDS].
5. Halemba & Siegel, *supra* note 2; Dylan Conger & Timothy Ross, *Reducing the Foster Care Bias in Juvenile Detention Decisions: The Impact of Project Confirm*, VERA INST. (2001), http://www.vera.org/sites/default/files/resources/downloads/Foster_care_bias.pdf.
6. JOHN D. AND CATHERINE T. MACARTHUR FOUND., MODELS FOR CHANGE, KNOWLEDGE BRIEF: IS THERE A LINK BETWEEN CHILD WELFARE AND DISPROPORTIONATE MINORITY CONTACT IN JUVENILE JUSTICE? (2011), <http://www.models-forchange.net/publications/317>.
7. Joseph P. Ryan & Denise C. Herz, *Crossover Youth and Juvenile Justice Processing in Los Angeles County*, ADMIN. OFFICE OF THE COURTS, CTR. FOR FAMILIES, CHILDREN & THE COURTS 6 (2008), <http://www.courts.ca.gov/documents/AB129-CrossoverResearchUpdate.pdf>.
8. Dennis P. Culhane et al., *Young Adult Outcomes of Youth Exiting Dependent or Delinquent Care in Los Angeles County*, CONRAD N. HILTON FOUND. (2011), <http://ceo.lacounty.gov/sib/pdf/RES/Youth%20Exiting%20Dependent%20&%20Delinquent%20Care%20In%20LA%20November%202011.pdf>.
9. STANDARDS, *supra* note 4 § 1.4 cmt.
10. AM. BAR ASS'N, RESOLUTION 300 REPORT 6 (2008) [hereinafter ABA RESOLUTION] (“Moreover, detention and incarceration decisions should not be driven by the youth's foster care status and/or the availability or absence of a placement for the youth.”). In 2015, California passed legislation that specified that the decision to detain cannot be based on status as a dependent or the department's inability to find placement. CAL. WELF. & INST. CODE § 635.
11. ABA PROPOSED STANDARDS, *supra* note 4, at Part 2.D. Information Sharing and Data Collection, 2.11 Purposes of Information Sharing and Data Collection, Part 2.15 Waivers of Confidentiality.
12. ABA PROPOSED STANDARDS, *supra* note 4, at Part XII, 12.1 Ethical Obligations of Defense Counsel.
13. *Id.* at Part XII, 12.3 Investigation and Confidentiality Waivers.
14. *See id.* at Part II, 2.16 Need for Cross-System Training; *see also* ABA RESOLUTION, *supra* note 10, at 1 (“[p]romote training for all juvenile defense counsel on foster care issues”).
15. *See* ABA PROPOSED STANDARDS, *supra* note 4, at Part VI, 6.2 Legal Representation of Crossover Youth at Delinquency Adjudicatory Hearing (“Jurisdictions should adopt laws and rules that prohibit the use of incriminating statements in the delinquency adjudicatory hearing when those statements have been made by a youth to a best interest advocate who is not bound by the rules of the attorney-client confidentiality, unless the youth knowingly, voluntarily, and intelligently waives the right against self-incrimination.”); *see also* ABA RESOLUTION, *supra* note 10, at 5 (“It is critical not to compromise the therapeutic process intended to help troubled foster youth by using it as an opportunity for their self-incrimination rather than as a means to promote the process of rehabilitation and recovery from their victimization.”).
16. *See* ABA PROPOSED STANDARDS, *supra* note 4, at Part VIII, 8.2 Policies Governing Reentry and Discharge Planning.
17. Gregg Halemba, Gene Siegel & Douglas Thomas, *When Systems Collaborate: How Three Jurisdictions Improved Their Handling of Dual-Status Cases*, NAT'L CTR. FOR JUVENILE JUSTICE (2015), <http://www.ncjj.org/pdf/Juvenile%20Justice%20Geography,%20Policy,%20Practice%20and%20Statistics%202015/WhenSystemsCollaborateJGJCaseStudyFinal042015.pdf>.
18. ROBERT F. KENNEDY NAT'L RESOURCE CTR. FOR JUVENILE JUSTICE, HAMPDEN COUNTY MASSACHUSETTS DUAL STATUS YOUTH INITIATIVE – SITE MANUAL (2012-13), <http://rfkncjj.org/wp-content/uploads/2014/07/Hampden-County-MA-DSY-Manual.pdf>.
19. ROBERT F. KENNEDY NAT'L RESOURCE CTR. FOR JUVENILE JUSTICE, HAMPDEN COUNTY MOU (available upon request at rfkncjj@rfkchildren.org).
20. ROBERT F. KENNEDY NAT'L RESOURCE CTR. FOR JUVENILE JUSTICE, HAMPDEN COUNTY POWER POINT PRESENTATION (available upon request at rfkncjj@rfkchildren.org).
21. Lourdes M. Rosado & Riya S. Shah, *Protecting Youth From Self-Incrimination when Undergoing Screening, Assessment and Treatment within the Juvenile Justice System*, JUVENILE LAW CTR. (2007), http://www.jlc.org/sites/default/files/publication_pdfs/protectingyouth.pdf.
22. Conger & Ross, *supra* note 5.
23. *Id.* at 32.
24. Recent legislation in Indiana directly addresses this concern by including the following language regarding protections within a multi-disciplinary team meeting: “All statements communicated in a dual status assessment team meeting are: (1) not admissible as evidence against the child in any judicial proceeding; and (2) not discoverable in any litigation.” IND. CODE ANN. § 31-41-2-4.

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Roger Chan, *Director*, East Bay Children’s Law Office, CA

Neha Desai, *Staff Attorney*, National Center for Youth Law, CA

Josh Dohan, *Director, Youth Advocacy Division*, Committee for Public Counsel Services, MA

Barbara Duey, *Attorney Supervisor* at Children’s Law Center of California, Los Angeles, CA

Lynsey Heffernan, *JDAI Detention Reform Specialist*, Department of Health and Human Services, MA

Sarah Johnson, *Defender, Assistant Public Defender*, Juvenile Division, St. Louis City, MO

Jo Pastore, *Supervising Attorney, Delinquency Unit*, San Diego County Public Defender’s Office, CA

Richard Pittman, *Louisiana, Deputy Public Defender, Director of Juvenile Defender Services*, Louisiana Public Defender Board, LA

Patrick Sparks, *Attorney in Charge*, Youth Advocacy Division, Springfield, MA

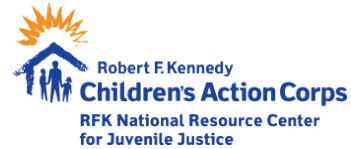
Tami Steckler, *Attorney in Charge, Juvenile Rights Practice*, Legal Aid Society of New York, NY



National Juvenile Defender Center
1350 Connecticut Avenue NW, Suite 304
Washington, DC 20036
202.452.0010 (phone)
202.452.1205 (fax)

www.njdc.info

The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. To learn more about NJDC, please visit www.njdc.info. If there is a topic you would like NJDC to explore in an issue brief, please contact us by sending ideas to inquiries@njdc.info.



Robert F. Kennedy National Resource Center
for Juvenile Justice
Robert F. Kennedy Children's Action Corps
11 Beacon St., Suite 820
Boston, MA 02108
617.227.4183 (phone)
www.rfknrcjj.org www.rfkchildren.org

The Robert F. Kennedy National Resource Center for Juvenile Justice, led by Robert F. Kennedy Children's Action Corps, provides consultation, technical assistance, and training to enhance the performance of youth-serving systems and improve outcomes for youth and families touched by the juvenile justice system. The array of services and resources delivered by the RFK National Resource Center addresses: (1) youth with prior or current involvement in both the child welfare and juvenile justice systems, known as dual status youth, (2) the review and improvement of juvenile probation systems, and (3) the use of a model framework to address the state and national laws and policies governing the exchange and sharing of data, information, and records for youth and families. For additional information, please visit www.rfknrcjj.org.