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REDUCING PLACEMENT DELAY/PLACEMENT FAILURE

Background:

At any one time, between 15% and 25 % of the youth in California juvenile halls remain incarcerated even though the juvenile court has ordered them to be placed in a non-secure setting (group home, foster home, home placement with wrap-around services). Many languish for months awaiting initial placement; and others enter a revolving door between “placement failure” and lengthy “replacement” periods in detention. This situation thwarts the system’s rehabilitative mission, and places added stress on the State’s already overcrowded facilities. From a legal standpoint, placement delay may violate constitutional due process guarantees and statutory least restrictive environment protections. This presentation focuses on what we know about placement delay, and what public defenders can do to reduce placement delay for their clients.

Observations From Public Records Act Data

In an effort to better understand placement delay in California juvenile halls, Youth Law Center sent out Public Records Act requests to the 10 California counties that, according to Board of Corrections statistics, hold the most youth in post-disposition status awaiting placement in a group home. The request asked for public documents on placement issues, including statistics on length of post-disposition stay, characteristics and special needs of youth awaiting placement, analyses of barriers to placement, and records of any efforts to reduce placement delay. All but one county responded. The following are our initial observations.

- Documentation of placement delay is not a regular feature in population statistics.
- Some counties lack even the most rudimentary ability to track placement delay.
- Systematic documentation of ongoing, actual efforts to place youth is rare.
- Systematic documentation of wrongful refusal to take youth does not appear to occur.
- Documentation of problems with using particular placements does not appear to occur.
- Documentation of gaps in services for particular populations is not systematically collected.
- Information used by placement staff to make placements is often very sparse.
- Systematic efforts to reduce placement delay appear to occur only in relation to crisis.
- Intensive efforts to reduce placement delay appear to kick in only after about 2 months of delay.

Observations from Other Sources:

- Some counties are inefficient in placement process – e.g., waiting until disposition to start placement efforts.
- Some counties have delays in moving paperwork to placement staff.
- Some counties acquiesce in allowing youth to remain on waiting lists for months at a time.
- Many counties fail to provide meaningful review of delay through W & I Code section 737.

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, and SB 163 or Title IV-E wrap-around, that 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.

Possible Additional Action to Reduce Placement Delay

- Strengthening statutory protections or court rules to reduce placement delay.
- Requesting that BOC or Judicial Council collect more detailed statistics tracking placement delay.
- Seeking heightened State DSS agency involvement in problems such as placements not taking youth per contracts.
- Working in specific counties for increased use of community-based services in lieu of placement for appropriate youth through Medi-Cal or IV-E or SB 163 wraparound waivers.

“Men do change, and change comes like a little wind that ruffles the curtains at dawn, and it comes like the stealthy perfume of wildflowers hidden in the grass.”

John Steinbeck, *Sweet Thursday*