

Treating Youth as Individuals

(Special Populations)

August 12, 2022

Hon. Roger Chan
Judge of the Superior Court
San Francisco

Why it matters

Duty of Minor's Counsel (W&I 634.3)

CRC 5.663(b) Responsibilities of Counsel

A child's counsel is charged in general with defending the child against the allegations in all petitions filed in delinquency proceedings and with advocating, within the framework of the delinquency proceedings, that the child receive care, treatment, and guidance consistent with his or her best interest.

**Not required to assume the responsibility of a social worker, to provide nonlegal services, or to represent the child in any proceedings outside of the delinquency proceedings.

Why it matters

- Finding the right services.
- Court is more meaningful when youth feel seen.





Not all cases need the same level of intervention

Avoid net widening.

Sexual Orientation, Gender Identity, and Expression

SOGIE



Terminology

- Sexual Orientation: Describes an individual's emotional, physical, and/or romantic attraction to another person.
- Gender Identity: A person's deeply held internal sense of being male, female, or somewhere else on the gender spectrum.
- Gender Expression: How a person chooses to communicate their gender identity to others through clothing, hair styles, grooming habits, mannerisms, and social interactions that are perceived as masculine, feminine or somewhere else on the spectrum.

LGBTQ Youth in the Juvenile Justice System

In one study, approximately 20% of detained youth self-identified as LGBTQ. (Annie E. Casey Foundation 2015)

LGBTQ youth compose 13% to 15% of those in the juvenile justice system. (Hunt and Moodie-Mills 2012; OJJDP)

*Do you need to
know?*

- Not everyone is comfortable being out.
- How will you keep the information confidential?

Implications for the case

- Treating the youth with fairness, dignity, and respect.
- Understanding the youth's experience
 - 22% of LGBTQ+ youth say their biggest problems are trouble with class, exams, and grades. (Human Rights Campaign)
 - 40% of runaway and homeless youth identify as LGBTQ+
- Safety
- Placement and Services
 - What is the youth's family of choice?
 - NREFM: W&I 727(a)(4)(A); 362.7 (definition)

Tips

- Do not make assumptions.
- Create a safe, private and inclusive environment. Explain to the youth that you will be asking a standard set of intake questions that you ask everyone.
- Ask and use the name and pronouns identified by the youth in court and court documents. *pronouns are not “preferred”*
- Use bench conference if necessary.

Online Resources

- Terminology (PFLAG): <https://pflag.org/glossary>
- Impact Justice and National Center for Lesbian Rights Practice Guide: <https://www.courts.ca.gov/documents/BTB24-5E-1.pdf>
- Lesbian, Gay, Bisexual and Transgender Youth in the Juvenile Justice System (Annie E. Casey Foundation): <https://assets.aecf.org/m/resourcedoc/AECF-lesbiangaybisexualandtransgenderyouthinjj-2015.pdf>
- Tools to Support LGBTQ Youth in Care (Lambda Legal and CWLA): https://www.lambdalegal.org/sites/default/files/publications/downloads/getting_down_to_basics_-_2015.pdf

IMMIGRATION STATUS

Implications for the case

- Prosecutor and Defense duties under Padilla v. Kentucky (2010) 559 U.S. 356 and Penal Code 1016.2 and 1016.3:
 - Duty to provide accurate and affirmative advice about the immigration consequences of a proposed disposition, and when consistent with the goals of and with the informed consent of the defendant, and consistent with professional standards, defend against those consequences.
 - The DA, in the interests of justice, shall consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution.

Implications for the case

Special Immigrant Juvenile Status (SIJS)

- Youth is a ward, or in the legal custody of a state or private agency, or in the legal custody of a private person.
- The youth cannot be reunified with one or both parents due to abuse, abandonment, or neglect; AND
- Not in the youth's best interests to return to the country of nationality.

→ Allows some youth to get lawful permanent residency.

Tips

The background features a row of lightbulbs hanging from above. The bulbs are rendered in a light blue, sketch-like style. The bulb in the center foreground is larger and has short lines radiating from it, suggesting it is lit or glowing. The other bulbs are smaller and dimmer, creating a sense of depth and focus on the central tip.

- Use Judicial Council forms JV-356 and JV-357.
 - Declaration by the youth alone can be sufficient. CCP 155(b)(1)
 - Asserted, purported, or perceived motivation of the youth is not admissible.

Online Resources

- US Citizenship and Immigration Services: <https://www.uscis.gov/working-in-US/eb4/SIJ>
- Legal Services for Children: <https://www.lsc-sf.org/how-we-can-help/immigration-services/special-immigrant-juvenile-status-sijs/>
- Immigrant Legal Resource Center: Immigration Options for Undocumented Immigrant Children: https://www.ilrc.org/sites/default/files/resources/immig_opt_undoc_immig_child-20180831.pdf
- Immigration Consequences (ILRC): https://www.ilrc.org/sites/default/files/resources/2022_quick_reference_chart_on_the_immigration_consequences_of_delinquency.pdf
- Guidance for SIJS predicate orders: https://www.ilrc.org/sites/default/files/resources/guidance_sijs_predicate_ca_orders_combined_final_2021.pdf



SPECIAL EDUCATION

Implications for the case

Competency

Release plans

Mitigation

Avoiding probation violations

Implications
for the case:
Youth in
Placement

School of Origin (for
youth in placement).
Educ. Code 48853.5(f).

Credit recovery (AB
167/216)

Tips

- Have ERH sign a ROI early and gather relevant school records including SST notes, psychoeducational evaluations, and IEP's.
- Identify the ERH (JV-535).
- Try to resolve any school discipline issues in coordination with the case.
- Consider when to bring a Joinder motion. (W&I 727(b)):
 - Any time after a petition is filed
 - Notice and opportunity to be heard
 - Any government agency with a legal obligation to provide services to a youth.

Online Resources

- CA Foster Youth Education Task Force: Education Law Fact Sheets:
http://www.cfyetf.org/publications_27_1555989899.pdf
- Judicial Council Special Education Rights for Children and Families:
<https://www.courts.ca.gov/documents/SPED.pdf>
- OJJDP Special Education and the Juvenile Justice System (2000):
<https://www.ojp.gov/pdffiles1/ojjdp/179359.pdf>

CSEC

Commercially Sexually Exploited Children

Definition

(Institute of Medicine and National Research Council)

- recruiting, enticing, harboring, transporting, providing, obtaining, and/or maintaining (acts that constitute trafficking) a minor for the purpose of commercial sexual exploitation;
- exploiting a minor through prostitution;
- exploiting a minor through survival sex (exchanging sex/sexual acts for money or something of value, such as shelter, food, or drugs);
- exploiting a minor through sex tourism; and
- exploiting a minor by having her or him perform in sexual venues (e.g., peep shows, strip clubs).

Overview

Studies show that girls are first exploited between 12-14 years old and boys are first exploited between 11-13 years old.

- One study suggests that boys make up as much as 45% of the CSEC population.

Links to child welfare system involvement and being placed in foster care.

Most identified CSEC survivors are minorities and have experienced poverty.

Screening

Frequent runaway

Unstable housing

Signs of physical trauma (e.g. bruises, black eyes, cigarette burns)

Tattoos, scarring or branding.

Spends time where exploitation is known to occur.

Unhealthy, inappropriate or romantic relationships with someone older/an adult.

Access to unexplained money

Several cell phones or high level of distress about being accessible by cell phone.

Appears on edge, preoccupied with safety, or hypervigilant.

Implications for the case

300 crossover

W&I 300(b)(2):

“The Legislature finds and declares that a child who is sexually trafficked, as described in [Section 236.1 of the Penal Code](#), or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in [Section 236.1](#) or [11165.1 of the Penal Code](#), and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.”



Implications for the case

Vacatur (vacate the conviction and arrests)

Penal Code 236.14(j)

(a) If a person was arrested for or convicted of any nonviolent offense committed while they were a victim of human trafficking, including, but not limited to, prostitution as described in subdivision (b) of Section 647, the person may petition the court for vacatur relief of their convictions and arrests under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking.



Implications for the case

Dealing with Probation Violations

- Avoiding overuse of GPS and detention as sanctions
- Typically misdemeanor cases.

Keep an eye on AB 2658 (CTS for time on GPS)



Tips

- Maintain a compassionate and non-judgmental attitude. One study found that 75% of survivors do not see themselves as being exploited.
 - Promote self-determination.
 - What kind of support do you need?
 - What happened to you?
 - I'm concerned about your safety; are there places that are dangerous for you to go or people who are dangerous for you to be around?
- Note who is present at court with the youth.

Tips

The background features a row of lightbulbs hanging from above. The bulbs are rendered in a light blue, sketchy style. The central bulb is slightly larger and has short lines radiating from its base, suggesting it is illuminated. The overall color palette is a gradient of blues.

- Understand that many survivors do not believe anyone has their best interest in mind.
- Be patient and help build connections to a support network.
- Revictimization is part of the CSEC recovery process.
- Know your county's CSEC system of providers and responders.

Online Resources

- Los Angeles County Department of Mental Health CSECY Fact Sheet (2017):
http://file.lacounty.gov/SDSInter/dmh/211312_2014_DMH_CSEC_Fact_Sheet_FINAL.pdf
- West Coast Children's Clinic Screening Tool:
<https://www.westcoastcc.org/wp-content/uploads/2017/09/WCC-CSE-IT-ImplementationGuide-FINAL.pdf>



Working with Dual Status Youth

Implications for the case

241.1 assessments

Detention
(W&I 635(b)(2),
(c)(2))

Diversion (W&I
654.2) and
Deferred Entry of
Judgment

Disposition
(W&I 725(a))

Restitution to
group homes (W&I
730.6(k))

Smooth transitions
(W&I 607.2)

Information
Sharing (W&I 827)

Tips

- Trauma-informed approach
- Know your county's 241.1 protocol and participate
- What is the status of the 300 case?
- Understand the placement history and the youth's case plan, including parent, sibling and relative contact.
- Which court decides the youth's status?
- Avoid disparate probation outcomes due to foster care status

Thank you!