



Two Doors to the Courthouse

A judicial perspective
on dual status youth.

BY GARY COLEY AND LISA JARRETT

In handling cases with youth involved in both the child welfare and juvenile justice systems—also referred to as crossover, dually involved, dually adjudicated, dual-system, multi-system, or dual status youth—a specialized approach is required.¹ Regardless of the moniker, the data on dual status youth are staggering. Children and youth who experience abuse or neglect are at a 47% greater risk of being involved in the juvenile justice system, compared to the general population.² Studies have also shown that up to two-thirds of juvenile justice involved youth had prior contact with the child welfare system.³ Research demonstrates that up to 70% to 80% of dual status youth have been exposed to traumatic events.⁴ There is a disproportionate representation of females as well as African-American youth in the dual status population.⁵ The impact to society is that youth who

are involved with both the child welfare and juvenile justice systems experience higher rates of recidivism, longer stays in detention, and poor long-term outcomes, such as lower rates of employment and increased likelihood of criminal justice involvement.⁶

In serving as co-chairs of a newly formed Dual Status Task Force, proposed by the Texas Judicial Council in 2018 and operated under the Supreme Court of Texas Children's Commission, our goals are to bring stakeholders together to help Texas uniformly define the dual status population and articulate what efforts can be made throughout the state to better serve this population. The task force will complement existing efforts through the Texas Legislature, State Bar of Texas Juvenile Law Section, and other state and local initiatives also aimed at addressing the needs of dual status youth.

The child welfare system is centered on the safety, permanency, and well-being of children with a primary goal of keeping families together. The juvenile justice system maintains a focus on protecting the community, rehabilitating offenders, deterring future delinquent conduct, and offering restoration to victims. Although the child welfare and juvenile justice systems have different goals, timelines, and constitutional considerations, there is overlap and inter-relatedness between the systems in that both serve children and youth, often simultaneously, and provide services and support for their families.

The Texas Department of Family and Protective Services, or DFPS, and Texas Juvenile Justice Department, or TJJD, are the primary state agencies charged with addressing the needs of child welfare and juvenile justice involved youth, respectively. DFPS operates several programs including a statewide child abuse hotline, a Child Protective Investigations division, and a Child Protective Services, or CPS, division. CPS is managed through a regional structure with leadership and staff spread across 11 regions of Texas.⁷ Youth who are arrested are referred to the juvenile justice system and served at the county level. Probation departments, which are county entities, handle most of the supervision at the local level. In addition to monitoring or providing support for local probation departments, TJJD also manages the state-operated secure facilities and halfway houses for youth who cannot be served in their communities.⁸

In general, Texas has an elected, independent judiciary. Child welfare matters are typically heard in district courts and county courts at law. There are also over two dozen specialized child protection courts that have appointed judges with jurisdiction over child protection cases and are supported by the Office of Court Administration.⁹ Depending on the stage and severity of the case, and how a matter is charged, a juvenile matter can be heard by a state district court judge, a juvenile court referee or magistrate employed by a county, a designated county court at law judge, or an elected judge in a justice court or municipal court. For serious felonies, some youth are tried as adults.

Legal representation is different between these two systems. Youth accused of delinquent acts are entitled to an attorney at every stage of the proceedings. The attorney representing

the child, often a solo practitioner or a public defender, serves in the role of a defense attorney. In contrast, youth in foster care are provided a court-appointed attorney at the beginning of their case, but that appointment may not last the entirety of the case. The attorney ad litem is client directed, but sometimes is called upon to substitute judgment for what the attorney thinks serves the child's best interest. A Court Appointed Special Advocate, or CASA, can also be appointed to advocate for the child's best interests, allowing the attorney ad litem to focus strictly on legal representation in the child welfare case. Prosecutors can be based in county or district attorney offices in either the child welfare or juvenile justice systems. DFPS also manages a small team of regional attorneys to represent the state in child welfare matters.

High-quality legal representation is critical for dual status youth to ensure their voices are heard and their needs are met. Attorneys seeking to better serve dual status youth should routinely ask their child clients if there is a familial history of child welfare involvement or if the youth has ever been arrested. Judges can inquire about what efforts were made by probation or CPS to inquire about dual system involvement. Additionally, the American Bar Association passed the ABA Criminal Justice Standards Relating to Dual Jurisdiction Youth in August 2017 outlining standards related to diversion, coordination, representation, and discharge planning.¹⁰ These standards provide a framework for the representation of dual status youth.

Some jurisdictions in Texas have embraced a model of practice called the Crossover Youth Practice Model, or CYPM, developed by the Georgetown University Center for Juvenile Justice Reform. The practice model aims to reduce the number of dual status youth, reduce the use of out-of-home and congregate care, and address disproportionality and disparities in both the child welfare and juvenile justice systems.¹¹ Texas counties that have adopted CYPM, in full or in part, include Bexar County, where there is a regular dual status docket in juvenile court, and probation and CPS coordinate both inside and outside of the courtroom. In McLennan County, the coordination occurs in regular case staffings before the district court and through agency coordination. In a state as large and diverse as Texas, these are just two examples of approaches in courts to handling dual status cases. Dallas, El Paso, Harris, Tarrant, and Travis counties have also made efforts to integrate CYPM into agency collaborations and judicial practices.

There are various benefits to using a coordinated approach to serving dual status youth. First, having one judge familiar with the family can encourage a more holistic approach in both the child welfare and juvenile justice cases. With comprehensive information about a youth's family, behavior, and detention history as well as education, mental health, and other needs, judges can make better decisions about what services and support are needed to meet the child's best interests while protecting the community against future delinquent conduct. Regular collaboration and communication among professionals serving dual status youth fosters more efficient use of staff resources, helps avoid unnecessary delay

in court proceedings, and maximizes the potential for positive outcomes. From the youth or family perspective, a coordinated approach can mean less missed days from work or school; fewer requests to repeat the same, often emotionally complex, information; and more consistent support and interventions.

Youth who come into contact with the child welfare and juvenile justice systems also interact with other child-serving systems, including but not limited to education, mental health, substance abuse treatment, and medical. These systems are complex to navigate independently and taken together have many practical, organizational, and jurisdictional differences. It is absolutely essential that there are partnerships at the state and local levels to bridge these systems so that challenges can be addressed and best practices can be elevated for greater consistency throughout the state. Working across systems and jurisdictions is the only way to provide a holistic approach to serving the most vulnerable and at-risk children in Texas. **TBJ**

Notes

1. *Is there an effective practice model for serving crossover youth?*, Issue Brief: Supportive Communities, Casey Family Programs (2018), available at https://caseyfamilyprowpengine.netdna-ssl.com/media/SComm_Crossover-youth-practice-model.pdf.
2. Joseph P. Ryan & Mark F. Testa, *Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability*, 27 *Children and Youth Services Rev.* 227-249 (March 2005).
3. Gregory Halemba & Gene Siegel, *Doorways to Delinquency: Multi-System Involvement of Delinquent Youth in King County (Seattle, WA)*, National Center for Juvenile Justice (Sept. 2011), available at http://www.ncjfcj.org/sites/default/files/Doorways_to_Delinquency_2011.pdf.
4. Thomas Grisso & Gina Vincent, *Trauma in Dual Status Youth: Putting Things in Perspective*, Robert F. Kennedy Children's Action Corps (Dec. 2014), retrieved from <https://rfknrcjj.org/wp-content/uploads/2014/12/Trauma-in-Dual-Status-Youth-Putting-Things-In-Perspective-Grisso-Vincent-RFKNRCJJ.pdf>.
5. *Is there an effective practice model for serving crossover youth?*, Issue Brief: Supportive Communities, Casey Family Programs (2018), available at https://caseyfamilyprowpengine.netdna-ssl.com/media/SComm_Crossover-youth-practice-model.pdf.
6. Savannah Felix, *Improving Multisystem Collaboration for Crossover Youth*, *Advocates Forum*, The University of Chicago (2016), available at https://ssa.uchicago.edu/sites/default/files/uploads/AdvocatesForum_2016_multisystem_collaboration.pdf.
7. Learn about DFPS, Texas Department of Family and Protective Services, https://www.dfps.state.tx.us/About_DFPS/.
8. Overview of the Juvenile Justice System in Texas, Texas Juvenile Justice Department, <http://www.tjjd.texas.gov/about/overview.aspx>.
9. See generally About Texas Courts, Specialty Courts, Texas Judicial Branch, <http://www.txcourts.gov/about-texas-courts/specialty-courts/>.
10. See Linda Britton, *ABA Enacts Standards for Dual-System Youth*, 36 *Child Law Practice Today* (Sept./Oct. 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/sept-oct-2017/aba-enacts-standards-for-dual-system-youth/.
11. See generally Crossover Youth Practice Model, Center for Juvenile Justice Reform, <https://cjjr.georgetown.edu/our-work/crossover-youth-practice-model/>.



GARY COLEY

is judge of the 74th District Court in McLennan County.



LISA JARRETT

is judge of the 436th District Court in Bexar County.