

COMBATING YOUTH INCARCERATION

How to Leverage Continuum of Care Reform for Placement Instead of Custody

An Advocacy Guide for Juvenile Defenders



BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

Sabrina Forte & Meredith Desautels, Youth Justice Project

September 2017

I. Introduction

Raquel is 17 years old and currently detained in juvenile hall. She was arrested five days ago for missing school, which is a violation of her probation terms. Raquel is on probation due to an incident that occurred four months ago – together with friends, she was caught drinking and attempting to break in a gas station to steal snacks. She has already had two probation violations for missing her curfew and testing positive for marijuana, a pattern that typically leads probation to recommend removal from home and placement in foster care. Yet, in the wake of recent foster care reforms, probation has decided that foster care is not available – too complicated, too expensive, too lenient, too limited. Instead, probation is recommending that Raquel be committed to the county's "Youth Training Academy," an in-custody program in the county's juvenile hall. Raquel is facing a year of her childhood spent behind bars, without ever having had the opportunity to receive treatment and services in a family-like, home-based setting that would help her stabilize and develop her strengths. With a commitment to custody, Raquel will be cut off from the community and then released back a year later without the connections, resources, or supports that would have flowed from a foster care placement, and with the added trauma and lifelong consequences of incarceration.

While Raquel's story is not new, it is one that risks becoming increasingly common in California, as low juvenile crime rates and empty county facilities produce a growing tide towards youth incarceration in county facilities. *This guide is intended to help defenders to stem that tide.*

➤ **Recent changes in the juvenile legal landscape threaten to result in increased youth incarceration in county facilities.**

The purpose of this advocacy guide is to educate juvenile defense attorneys about current reforms being implemented in the foster care system, and to help arm them as they confront the consequences of these reforms for youth in the delinquency system.

As will be explained below, recent legislative changes to foster care raise the prospect of increased incarceration of youth at the county level. This guide first provides an overview of the potential problem in Section I. Sections II-IV lay out litigation and policy advocacy strategies to prevent foster care reform from having the unintended and disastrous consequence of more youth being locked up in county juvenile halls and camps. Most importantly, Section V provides advocacy resources, including a template brief for proposing foster care alternatives, instead of a custodial commitment, when a young person is facing removal from home.

- **Under "Continuum of Care Reform" of the state's foster care system, California is transitioning away from group homes, which in the past have served as the primary placement for delinquency youth who are removed from their homes.**

In 2017, California began implementing a sweeping transformation of its foster care system, known as "Continuum of Care Reform," or CCR. The reforms under CCR apply to all of California's foster youth—in other words, to any young people who are placed in care outside their homes through either the dependency or delinquency systems. Among the founding principles of CCR is that institutional care is detrimental to youth:

"It is well-documented that residing long-term in group homes with shift-based care is not in the best interest of children and youth. Not only is it developmentally inappropriate, it frequently creates lifelong institutionalized behaviors and contributes to higher levels of involvement with the juvenile justice system and to poor educational outcomes."¹

In line with this principle, one of the most significant reforms under CCR is to transition away from long-term congregate care, with a new focus on home-based family care placements, and a replacement of "group homes" with "short-term residential therapeutic programs."

CCR will likely have a major impact on youth who are facing home removal through delinquency court. Across the state, delinquency courts have used out-of-home placement in foster care as an early step within a system of graduated sanctions. *See In re Aline D.*, 14 Cal. 3d 557, 564 (1975). Typically, though not always, out-of-home placement is ordered by the delinquency court after the youth has continued to struggle while home under probation supervision. *See id.* In the past, when youth have been placed outside of their homes through county probation, the vast majority were placed in group homes. For example, the Chief Probation Officers of California (CPOC) reported that, among probation foster care entries between March 2015-April 2016, 95% of probation youth were placed in group homes.² Because of juvenile probation's heavy reliance on group homes for placement of probation foster youth, it should be expected that CCR's reform of group-home care will have a significant impact on probation's placements and its dispositional recommendations to the court.

¹ CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, CALIFORNIA'S CHILD WELFARE CONTINUUM OF CARE REFORM 8 (Jan. 2015), http://www.cdss.ca.gov/cdssweb/entres/pdf/CCR_LegislativeReport.pdf.

² CHIEF PROBATION OFFICERS OF CALIFORNIA, CONTINUUM OF CARE REFORM INFORMATIONAL SESSIONS 2016/2017, Apr. 5, 2017 at 7, https://cpoc.memberclicks.net/assets/Juvenile/CCR/1-%20power%20point_final%20march%2031%202017.pdf.

➤ **CCR arrives at a time when the majority of California counties are operating juvenile detention facilities that are less than half full.**

The potential impact of CCR on probation youth must be considered in the context of another sweeping law change that occurred earlier, in 2007. That year, the Legislature passed Senate Bill 81, known as the "Juvenile Justice Realignment" bill. Among other things, SB 81 limited the types of offenses that can qualify a young person for commitment to the state Division of Juvenile Facilities' youth correctional institutions. Welf. & Inst. Code § 731(a)(4).³ As a result, youth who have not committed these more serious offenses must instead be handled by county agencies at the local level. To help counties manage the expected increase in local juvenile justice populations, SB 81 also provided for state funds to renovate or construct local juvenile justice facilities. Welf. & Inst. Code §§ 1970-1978.

In the decade since SB 81, California has seen an expansion of local juvenile justice facilities at the same time that it has seen a drop in juvenile arrests. With SB 81 funding, counties around the state have opened new facilities, for example the 106-bed Alan M. Crogan Youth Treatment and Education Center in Riverside County, and the 30-bed Mother Lode Regional Juvenile Detention Facility in Tuolumne County.⁴ Simultaneously, juvenile arrest rates have continued on a decades-long downward trend, and the number of youth in county detention facilities has fallen from 13,000 in 2005 to about 6,300 in 2015.⁵

The result of these overlapping trends is that county juvenile detention facilities are now under capacity, leaving beds to be filled. For example, the Ventura County juvenile center in El Rio is half-full.⁶ In May 2017, a civil grand jury investigation concluded that San Luis Obispo's recently expanded county juvenile hall may have been overbuilt.⁷ According to data from the Board of State and Community Corrections (BSCC), excess capacity is

³ All subsequent statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

⁴ Jeremy Loudonback, "Youth Prison Paradox: Californians Want Them Shut Down While Counties Keep Building," THE CHRONICLE OF SOCIAL CHANGE, Aug. 10, 2017, <https://chronicleofsocialchange.org/analysis/youth-prison-paradox-californians-want-shut-counties-keep-building/27818>.

⁵ MIKE MALES, CENTER ON JUVENILE AND CRIMINAL JUSTICE, CALIFORNIA'S YOUTH AND YOUNG ADULT ARREST RATES CONTINUE A HISTORIC DECLINE (Aug. 2016), http://www.cjcj.org/uploads/cjcj/documents/ca_youth_and_young_adult_arrest_rates_continue_historic_decline_2015.pdf.

⁶ Kathleen Wilson, "Treatment changes leave juvenile centers half empty," VENTURA COUNTY STAR, Sept. 16, 2016, <http://www.vcstar.com/story/news/local/2016/09/16/treatment-changes-leave-juvenile-centers-half-empty/89439594/>.

⁷ 2016-2017 SAN LUIS OBISPO COUNTY GRAND JURY FINAL REPORT 45 (2017), http://slocourts.net/downloads/grand_jury/reports/2016/Final_Combined_Report_2016-17.pdf; *see also*, Angel Russell, "Newly expanded SLO County Juvenile Hall may have been overbuilt, Grand Jury report says," KSBY-TV, May 9, 2017, <http://www.ksby.com/story/35387458/newly-expanded-slo-county-juvenile-hall-may-have-been-overbuilt-grand-jury-report-says>.

prevalent across the state, with two-thirds of counties operating juvenile facilities that are half full.⁸

➤ **Together, CCR and the availability of county juvenile justice beds may lead to an increased use of custodial commitments for youth who otherwise would have been placed in the foster care system.**

As described above, out-of-home placement in group homes has typically been an intermediate sanction. Usually, group home placements are utilized after a youth has violated the terms of probation supervision at home, and before a youth is committed to a local juvenile facility. Under CCR, group homes now must become relicensed as "short-term residential therapeutic programs" (STRTPs), which provide "an integrated program of specialized and intensive care and supervision, services and supports, treatment, and short-term, 24-hour care and supervision to children." Health & Safety Code § 1502(a)(18). To date, only a handful of STRTPs have been licensed.⁹ However, the law provides for extensions on licensing that can be requested by existing group homes or by probation. Welf. & Inst. Code § 11462.04.

As the name implies, STRTPs are intended to be short term, with youth quickly being transferred either back to their families or another permanent placement.¹⁰ A crucial part of the envisioned "continuum of care" is the planning and care coordination developed by the "child and family team" (CFT), which would craft the plan for a more permanent placement.¹¹ By law, when probation is placing a youth in foster care, it must consider any recommendations of the CFT and document the rationale for any inconsistencies between the case plan and CFT recommendations. Welf. & Inst. Code § 706.6.

When identifying an out-of-home placement for a young person, probation departments continue to be under the obligation to consider and prioritize placements that are "the least restrictive or most family like." Welf. & Inst. Code § 727.1. CCR provides an additional statutory imperative for prioritizing home-based family care, and sets out a new process for reviewing and qualifying a family-based placement, called the "Resource Family Approval" program. The purpose of RFA is to improve "the way caregivers for children in

⁸ Greg Moran, "Juvenile crime rates plummet amid new approaches to tackling youth crime," SAN DIEGO TRIBUNE, Aug. 19, 2017, <http://www.sandiegouniontribune.com/news/courts/sd-me-juvenile-crime-20170803-story.html>.

⁹ See Cal. Dept. of Social Services, List of STRTPs, www.cdss.ca.gov/inforesources/Continuum-of-Care-Reform/Short-Term-Residential-Therapeutic-Program.

¹⁰ See Cal. Dept. of Social Services, CCR Implementation, *available at*: <http://www.cdss.ca.gov/inforesources/Continuum-of-Care-Reform>.

¹¹ See Cal. Dept. of Social Services, Fundamental Principles of CCR, *available at*: <http://www.cdss.ca.gov/inforesources/Continuum-of-Care-Reform>.

foster care are approved and prepared to parent vulnerable children."¹² As part of CCR, county probation departments are now statutorily required to develop strategies to recruit, retain, and support specialized foster homes for probation youth, as well as to identify, engage, and support relative caregivers. Welf. & Inst. Code § 11462.041. Together, the components of CCR—including STRTPs, CFTs, and the RFA program— provide the framework through which delinquency youth removed from their homes should primarily receive services and supports in a home-like setting, and spend limited time in group care.

Without education and advocacy by defense attorneys, there is a risk that courts, prosecutors, and probation officials may view CCR as "eliminating" the interim group home step. If these actors believe that the youth cannot return home, and if the county has not yet built up the number of RFA and STRTP placements needed to meet the requirements of CCR, the likely consequence is that a county custodial commitment will become a more prevalent dispositional option. The likelihood of this option is only increased by the fact that most county juvenile facilities have excess space to be filled.

- **Juvenile defense attorneys must be equipped with advocacy strategies to help educate the courts, prosecutors, and probation, and to prevent an expansion of custodial commitments of youth in the wake of CCR.**

The remainder of this guide seeks to provide defenders with those tools.

¹² See Cal. Dept. of Social Services, Resource Family Approval (RFA) Program Overview, *available at*: http://www.childsworld.ca.gov/res/RFA/pdf/RFA_Overview.pdf.

II. Framing the Advocacy Strategy

For clients who are facing likely removal from their homes, defense attorneys will want to proactively lay the groundwork for a community-based out-of-home placement, ideally in a family-like setting. There will be some inherent tensions and challenges to preparing for community-based placement, which require acknowledgement at the outset.

- 1. Youth who are currently under probation supervision at home may be resistant to investigating or developing a plan for potential foster care placement.** A defense attorney can inform the young person about likely outcomes and the benefits of exploring alternatives. However, under an "expressed interest" model, the attorney may find him or herself foreclosed from proposing placement options to probation or the court if the client is opposed to it.
- 2. Because youth who are facing removal are most likely in detention, a client may prefer the certainty of a time-specific custodial program over the uncertainty and delay of fighting the dispo recommendation and then awaiting placement.** However, as detailed extensively in the template brief described in Section V, it is possible for a youth to be released to a family placement on a temporary basis, pending completion of the Resource Family Approval process.
- 3. Defenders may face difficulty at the dispo stage advocating for a family-based placement because courts typically defer the question of the type of placement until after making a placement order.** Moreover, the placement statute specifically delineates to the probation department the authority to determine the appropriate placement. Welf. & Inst. Code § 727(a)(4). However, the court approves the ultimate placement, and if probation's recommendation is rejected, the court can modify the placement order to an alternative placement recommended by a party after receiving evidence. Welf. & Inst. Code § 727(e). Given the court's authority related to ultimate placement, it is appropriate for defense counsel to outline potential placement options at the dispo stage.

III. Litigation Strategies

In most cases where a young person is facing home removal, he or she will already be in detention, either for violating the terms of home probation or for running away from a current group home placement. *This assumption underlies the strategies outlined below.*

1. At detention – Requesting a "family-find"

At the detention hearing, defense counsel can request a court order requiring probation to conduct a "family-find" in order to lay the early groundwork for a family-based placement. Under section 628, probation has an obligation to conduct an investigation and identify relatives of any detained child who is at risk of entering foster care placement. Welf. & Inst. Code § 628(d)(2). Section 727.4 defines "at risk of entering foster care" to mean that "conditions within a minor's family may necessitate his or her entry into foster care unless those conditions are resolved." Welf. & Inst. Code § 628(d)(2). Likely, the court will find that a detained youth who has either violated probation or left a placement will fall into this category, particularly because when a young person is detained by the court, the judge must have made the finding under section 636 that "continuance in the home is contrary to the minor's welfare." Welf. & Inst. Code § 636(d)(2).

Pursuant to its duties under section 628, Probation must identify and notify relatives of a detained youth as early as possible. Welf. & Inst. Code § 628(d)(1). The relatives who should be notified include grandparents, adult siblings, and "other relatives" as defined by section 319, which include any adult "who is related to the child by blood, adoption, or affinity within the fifth degree of kinship." Welf. & Inst. Code § 319(f)(2). The notification must contain the following: 1) the fact that the child has been removed from the parents' custody, and 2) an explanation of the options to participate in the care and placement of the child; information about providing care for the child, such as how to become a foster family home or approved relative or nonrelative extended family member; and information about financial supports that may be available to care for the child, such as Kin-GAP and adoption assistance payments. Welf. & Inst. Code § 628(d)(2)(A)-(B). Some counties contract with foster family agencies or utilize people-finding software to fulfill their family-find obligation.

Whether or not probation has begun to investigate and notify relatives, defense counsel can request that the court specifically order it as part of the detention order. Under section 628, the investigation must occur within 30 days of the date of detention. Welf. & Inst. Code § 628(d)(2). Defense counsel can help direct the process by working with the young person to identify adult relatives (i.e. mapping out a family tree to the fifth degree of kinship), and urging probation to fulfill its obligation to do so as well.

Welf. & Inst. Code § 628(d)(3). Defense counsel should also familiarize themselves with their county's family finding procedures, if one exists, and specifically reference those procedures in their request to the court.

By ensuring that the family-finding process gets started immediately, defense counsel can help increase the likelihood that a family-based placement will be available as an option at disposition.

Homeless youth and families – when young people and/or their families lack housing stability, such youth are at heightened risk of extended detention. Defense counsel can challenge the assumption that homeless youth have no community-based option by asking probation to do an exhaustive family find and make referrals to Foster Family Agencies (FFAs) that can match the youth to a licensed foster family home. These placements require an order for foster care placement.

2. Pre-dispo – Requesting Multidisciplinary Team (MDT) review

Note – this option is likely not available in most counties because it must be authorized by the county Board of Supervisors under section 710. If this process may offer benefits to your clients, consider contacting the Board of Supervisors to determine whether or not it has been authorized.

For youth who have been adjudicated delinquent, but have not yet had a dispo hearing, there is the possibility of requesting review by a multidisciplinary team (MDT) pursuant to sections 710-713. This process is available only to a young person who has "a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability." Welf. & Inst. Code § 711(a). The court, upon request of counsel, may refer the minor for evaluation under section 712, though a minor may decline referral if he or she chooses. Welf. & Inst. Code § 711 (a)-(b).

If, after evaluation, a minor is found to fall into one of the above categories, the minor may choose to have his or her case referred to a MDT for dispositional review and recommendation. Welf. & Inst. Code § 711(b), 713(b). The MDT may include representatives from probation, mental health, regional centers, child welfare, education, community-based youth services, and other providers, and must include at least one licensed mental health professional. *Id.* It must also provide for the involvement of the minor's parent or caretaker. Welf. & Inst. Code § 713(c). The MDT must identify mental health or other treatment services, *including in-home and community-based services*, and produce a recommended disposition and written treatment plan to be presented to the court.

The court must take the recommendations of the MDT into account when making its dispositional order, and must incorporate, to the extent feasible, the minor's MDT treatment plan. Welf. & Inst. Code § 713(d). Critically, the dispositional order *must* authorize "placement of the minor in *the least restrictive setting* that is consistent with the protection of the public and the minor's treatment needs." Welf. & Inst. Code § 713(e) (emphasis added). Furthermore, the court *must* give "preferential consideration" to returning the minor home with appropriate "in-home, outpatient, or wraparound services." *Id.*

The MDT process outlined in sections 710-713 can be leveraged, prior to dispo, to promote community-based placement. To the extent that a county only has a more generalized multidisciplinary team process, it may or may not provide similar advocacy benefits, depending on whether there are provisions for such factors as: consent of the minor for referral to the MDT, provisions for participation by the minor or parent, and prioritization of family-based or community-based services and placement. *Any MDT process should be used with caution, particularly where it could result in sensitive information being used to the minor's detriment by the prosecution at later stages of the minor's case.*

3. Special strategies for youth already under a placement order

A client who is already under a placement order will face a heightened risk of a custodial commitment, but is also entitled to certain procedural protections that may help result in placement in a family-like setting.

Pursuant to section 706.5, minors who are currently in out-of-home placement must have a case plan. Welf. & Inst. Code § 706.5(a). That case plan must be received into evidence along with the social study submitted at disposition under section 706. *Id.* If probation did not recommend placement at the previous disposition, the case plan would have been filed with the court within 30 days of the placement order. *Id.*

The case plan presents a couple of opportunities for advocacy. First, it must be developed with input from the "child and family team" (CFT),¹³ which can include advocates who are important to the child or family, such as defense attorneys. Welf. & Inst. Code §§ 706.6(b)(2), 15601(a)(4). The CFT process is an opportunity for the minor and supportive adults to have direct input into the minor's foster care plan. The parent/guardian and the minor must have an opportunity to participate in the case planning. Welf. & Inst. Code § 706.6(p). For any inconsistencies between the case plan

¹³ Under section 15601(a)(4), a "child and family team" means: "a group of individuals who are convened by the placing agency and who are engaged through a variety of team-based processes to identify the strengths and needs of the child or youth and his or her family, and to help achieve positive outcomes for safety, permanency, and well-being."

and the CFT's recommendations, probation must explain its rationale. Welf. & Inst. Code § 706.6(b)(2).

The statutory requirements for the case plan are comprehensive and detailed, though in practice probation case plans can tend to be pro forma or perfunctory. Under section 706.6, probation must include in the case plan its placement recommendation and reasoning, and must follow an order of priority among placements that emphasizes "the least restrictive, most family-like environment that promotes normal childhood experiences, in closest proximity to the minor's home, that meets the minor's best interests and special needs." Welf. & Inst. Code §§ 706.6(c)(3)-(d). The case plan must also include specific, time-limited goals and activities to enable permanency, and responsibility for the activities can be assigned to probation, the minor's parents/guardian, the minor, and the foster parents or foster agency. Welf. & Inst. Code §§ 706.6(f). Defense counsel can assist the minor and his or her support team to ensure that the case plan goals are fair and appropriate, and that the case plan holds probation, accountable for these goals, not just the minor. Defense counsel can and should identify any problems with the case plan on the record in court and ask the court to order probation to amend the case plan when appropriate.

Unfortunately, if probation is seeking a custodial commitment of a young person who is currently on a placement order, it is unlikely that there will be a child-family team meeting or updated case plan submitted to the court prior to disposition.¹⁴ However, if the initial case plan included obligations on the part of other actors or agencies, such as probation, and they have failed to meet those obligations, this point could support a reassessment of the youth's strengths and needs, and an argument for a new placement order that better reflects those needs.

4. Contesting dispo

If probation's disposition recommendation is for a custodial commitment or placement in a far-away group home, the matter should be set for a contested disposition. The contested disposition will provide an opportunity to explain Continuum of Care Reform, including its preference for family-based placements. Section V, below, describes the attached template brief setting out these arguments.

At the contested dispositional hearing, all available relatives and non-relative caregivers in the minor's life should be present and able to express support for placement of the minor in a home setting. Defense counsel should familiarize potential caregivers with the RFA process, including its home inspection and criminal

¹⁴ Generally, probation will submit an updated case plan at each status review hearing, which is held at least every six months following placement. Welf. & Inst. Code §§ 706.5, 706.6, 727.2(c).

background requirements, to ensure that the caregivers are appropriate candidates for RFA.

Defense counsel may want to consider calling witnesses at the hearing. If there is reason to believe that probation's recommendation has been influenced by CCR, it would be helpful to call the probation officer or supervisor and get their position on the record. In addition, to the extent that the court is concerned about the availability of treatment services in the community, it may be helpful to include a declaration from a mental health services provider or the county behavioral health department about the availability of community-based mental health services for foster youth.¹⁵

Lastly, defense counsel should consider asking the court to order probation to explore placement options through a foster family agency (FFA) or transitional housing placement program (THPP; for 16-17 year olds only) before resorting to a custodial or out-of-state group home placement. A list of FFAs and THPPs are included in the appendix.

Dual-status jurisdictions – practitioners in dual-status jurisdictions should reference their county's section 241.1 protocol. The county protocol should describe the role of the county child welfare department in identifying and providing placement supports for dual-status youth. A list of protocols for dual-status jurisdictions is available here: <http://www.courts.ca.gov/7989.htm>.

5. Using joinder to bring in outside agencies

Advocating for a community-based placement will require convincing the court that other systems can and should be engaged to meet the young person's needs. The delinquency system is often confronted with issues that would be better handled by other systems that have both the expertise and the funding to address them. Defenders must push back against the notion that the probation departments are the sole or primary agency capable of serving a young person in the delinquency system, and one technique for doing so is through the use of joinder. *See* Welf. & Inst. Code § 727(b).

Joinder can be used to "ensure the delivery and coordination of legally mandated services to the minor," and is appropriate where an agency has "failed to meet a legal obligation to provide services to a minor." *Id.* The following agencies receive funding to serve young people who fall into certain categories: local regional centers are

¹⁵ *See* Young Minds Advocacy, "Fulfilling Medi-Cal's Promise - Extending Home and Community-Based Mental Health Services to Juvenile Justice-Involved Youth in California," Dec. 2015, <https://www.youngmindsadvocacy.org/wp-content/uploads/2015/12/Fulfilling-Medi-Cals-Promise-DEC-2015-YMA2.pdf>.

separately funded by the state to serve individuals with high-level disabilities; county behavioral health and public health agencies can leverage Medi-Cal and the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program to provide a broad range of medical and mental health services; school districts are separately funded to provide supportive services to low-income youth, foster youth, English language learners (ELLs), and youth with disabilities; and child welfare agencies utilize federal Title IV-E funds under the Social Security Act for prevention, intervention, and case management to youth in need of foster care intervention.

6. Appeals and amicus support

As always, counsel should consider appealing a dispositional order to a custodial program. Particularly where the record reflects that CCR influenced the recommendation by probation or the court's disposition, there may be an opportunity to use the intent and statutory framework of CCR to argue against custodial commitment. In the event of appeal, consider reaching out to youth advocacy organizations to submit an amicus brief.

IV. Policy Strategies

In addition to the case-specific litigation strategies detailed above, defender offices should consider systemic reform or policy advocacy strategies to push back against an increase in juvenile incarceration.

An important tool in policy advocacy is data collection. Defender offices can use the California Child Welfare Indicators Project to track probation foster care placements. The data can be analyzed over time and by placement type, which would help demonstrate how CCR might be affecting the use of foster care placements for probation youth. See http://cssr.berkeley.edu/ucb_childwelfare/Entries.aspx.

Another data tool is the Board of State and Community Corrections' juvenile detention data portal, which provides population data for county juvenile justice facilities. Unfortunately, there is a significant time-lag on this data, but it at least provides a starting point for examining how CCR might be affecting the use of county custodial commitments for probation youth. See <http://app.bscc.ca.gov/joq/jds/QuerySelection.asp>.

Finally, defender offices may want to make a request under the California Public Records Act (PRA) to their county's probation department. The request could include any policies, practices, or manuals that guide the department, particularly with regard to family finding, dispositional recommendations, child-family team meetings, case plans, and county commitment programs.¹⁶

¹⁶ Go here for a pocket guide to PRA requests: <http://documents.latimes.com/ca-public-records-act-pocket-guide/>.

V. Advocacy Tools

1. Template brief for a disposition to placement instead of custody

Attached as an appendix to this guide is a template brief for requesting a disposition to placement rather than custody. The premise of this brief is that probation is recommending a custodial commitment, and that the minor is proposing out-of-home placement as an alternative. The brief contains the following components, which should be included or excluded as appropriate to the case:

I. INTRODUCTION

II. **UNDER THE REHABILITATIVE PRINCIPLES OF THE JUVENILE COURT, [CLIENT] SHOULD BE ORDERED TO PLACEMENT, NOT TO CUSTODIAL CONFINEMENT.**

- A. Juvenile court law calls for a disposition that is rehabilitative and as home-like as possible, and [CLIENT's] rehabilitation will be best served by placement in the community with appropriate supportive services.
- B. Ordering [CLIENT] to custody would run counter to the juvenile court's rehabilitative goals because of the short- and long-term harms that incarceration causes.
- C. Behavioral science and neuroscience research supports a non-custodial disposition when it is available and appropriate.

III. **A PLACEMENT ORDER IS ALSO IN [CLIENT'S] BEST INTEREST BECAUSE OF THE ADDITIONAL RESOURCES THAT WILL BECOME AVAILABLE DURING AND AFTER PLACEMENT.**

- A. Mental Health Services
- B. Transition Planning
- C. Financial Support for Resource Family Placement
- D. College Planning
- E. Extended Foster Care
- F. Permanency

IV. **THE RECENT ENACTMENT OF CONTINUUM OF CARE REFORM PROVIDES FURTHER SUPPORT FOR A COMMUNITY-BASED, FAMILY-LIKE PLACEMENT FOR [CLIENT].**

- A. Continuum of Care Reform calls for prioritizing placement in the community with a family.
- B. Pursuant to juvenile court law and CCR, placement with a resource family is the least restrictive and most preferred placement for youth in foster care.
- C. Resource Family Approval enhances the quality of family-based placement.

V. **THERE ARE SEVERAL TOOLS AVAILABLE TO THE COURT TO ENSURE APPROPRIATE AND TIMELY PLACEMENT.**

- A. The Juvenile Court has the authority to order emergency placement with a relative or nonrelative extended family member pending the Resource Family Approval process.
- B. The Court can order probation to explore placement with a Foster Family Agency (FFA) or Transitional Housing Placement Program (THPP).
- C. Short-Term Residential Therapeutic Programs and Group Homes remain available if the Court finds that family-like placements do not meet the youth's current needs.
- D. The Court can use its authority under Welfare and Institutions Code section 737 to ensure that placement is made in a timely manner.

VI. CONCLUSION

2. Types of Foster Care Placements for Minors under CCR:

- **Resource family homes:**
 - These home-based placements can be with relatives or with "non-relative extended family members" (NRREFMs).
<http://www.cdss.ca.gov/inforesources/Foster-Care/Kinship-Care>.
 - They can also be matched placements through Foster Family Agencies (FFAs). FFAs can match to a range of family options, including intensive therapeutic foster care. A list of FFAs is available here:
<https://cacfs.site-ym.com/?page=MembershipDirectory>.
 - These home-based placements must go through Resource Family Approval.
<http://www.cdss.ca.gov/inforesources/Resource-Family-Approval-Program>.
- **Short-term Therapeutic Treatment Programs (STRTPs) and group homes:**
 - Only a handful of group home providers have been licensed as STRTPs:
<http://www.cdss.ca.gov/Portals/9/CCR/List%20of%20Licensed%20STRTPs%209.5.17.pdf?ver=2017-09-05-112836-680>.
 - FFAs and group homes ("24-hour residential care for children") can be found here: <https://secure.dss.ca.gov/CareFacilitySearch/>.
- **Transitional Housing Placement Programs (THPP):**
 - This placement option is available for youth between ages 16-18 and provides a more independent living environment than a traditional group home, though is generally still liked to counseling supports.
<http://www.cdss.ca.gov/inforesources/Foster-Care/Transitional-Housing-Programs>.

3. Useful Resources Related to Probation Youth and CCR

- **Continuum of Care Reform History and Background**

- *California's Child Welfare Continuum of Care Reform* (January 2015): report and recommendations to the Legislature on foster care reform, available online:
http://www.cdss.ca.gov/cdssweb/entres/pdf/CCR_LegislativeReport.pdf
- Sign up to receive CDSS's CCR newsflash by emailing ccr@dss.ca.gov. All editions are available online:
<http://www.cdss.ca.gov/inforesources/Continuum-of-Care-Reform/Communications>.

- **All-County Letters and Agency Guidance¹⁷**

- All-County Information Notice (ACIN) I-50-16 (July 8, 2016): overview of CCR, including a brief summary of the process for group home extensions.
- All-County Letter (ACL) 16-65 (Aug. 19, 2016): group home extension request protocol
- All-County Letters 16-10 (Feb. 17, 2016), 16-58 (July 11, 2016), and 17-16 (Feb. 14, 2017): Resource Family Approval
- All-County Letter 16-84 (Oct. 7, 2016): Child and Family Teams
- All-County Letter 17-75 (July 13, 2017): summary of foster care benefits for various placements
- Resource Family Approval Written Directives: These directives have the same effect as regulations and govern the RFA process. The written directives are updated periodically, with version 4.1 being the most current as of this writing. For the most current version of the directives, consult the state's RFA website:
<http://www.cdss.ca.gov/inforesources/Resource-Family-Approval-Program>.

- **Materials from the Chief Probation Officers of California (CPOC) Conference**

- On June 12, 2017, CPOC held a large conference on best practices for implementing CCR for probation youth. Recordings and materials from

¹⁷ All ACLs are available at: <http://www.cdss.ca.gov/inforesources/2017-All-County-Letters>.

the conference are available at the link below and contain innovative strategies from a variety of county probation departments and community-based organizations that stakeholders in your county may want to replicate. Topics include child and family teaming, mental health services, transitioning group homes to STRTPs, and foster parent recruitment strategies.

<https://cpoc.memberclicks.net/ccr-conference-2017>.

VI. Contact Us

This guide is the first step in an effort to ensure that CCR results in fewer institutional commitments for youth, not more. We expect that this fight will require a multi-pronged strategy and we request the partnership of the defense community in this work. Our hope is that defense attorneys will contact us with feedback on these resources, with requests for assistance in using them on behalf of clients, and with insights into how these dynamics are playing out on the ground in your county.

We look forward to hearing from you!

Meredith Desautels

Youth Justice Attorney &
Leading Edge Fellow
Bay Area Legal Aid
1735 Telegraph Ave.
Oakland, CA 94612
mdesautels@BayLegal.org
510-663-4744, ext. 7249

Sabrina Forte

Youth Justice Attorney
Bay Area Legal Aid
1735 Telegraph Ave.
Oakland, CA 94612
sforte@BayLegal.org
510-663-4744, ext. 5219