

2008 Developments in Juvenile Justice: Realignment, Proposition 6, and Changes to Competency Decisions

INTRODUCTION

California's juvenile justice system is undergoing a period of major reform. This article addresses major changes that took place in California juvenile justice law and practice during 2008, overviewing a selection of recent developments in the field. Specifically, it focuses on three events. First, it examines the progress of 2007's Senate Bill 81 Realignment, which shifted responsibility for most of the youthful offender population from the state Division of Juvenile Justice to individual counties and local governments. Second, it discusses the failure of Proposition 6, the ballot measure that, among other things, would have drastically changed the way state and local juvenile justice programs are funded. Finally, this article discusses the standard for determining a juvenile's competency to stand trial. Three recent cases in the Court of Appeal for the Third District of California addressed this issue, clarifying what factors courts may consider in making competency determinations for juveniles and what standard courts must apply.

The Realignment overhauled responsibility and funding for California juvenile justice programs. The Realignment began in 2007, when Senate Bill 81 ("S.B. 81") introduced a new statutory scheme designed to restructure California's approach to its youthful offender population. Most importantly, the Realignment shifted responsibility for all but the most violent youths away from the state Department of Juvenile Justice to counties and local governments. All fifty-eight counties across the state developed individual, county-specific plans to assess the needs of their local juvenile populations, including investment in housing and rehabilitative and preventative programs. S.B. 81 also changed juvenile justice programs' funding process. S.B. 81 called for the distribution of nearly twenty-three million dollars in Youthful Offender Block Grants, the Realignment's new mechanism of funding local juvenile justice programming.

Only one year after S.B. 81's enactment, before the Realignment's oversight Commission could even complete its report and recommendations, a popular ballot measure almost derailed the Realignment entirely. In the

November 2008 general election, California considered Proposition 6, also called the Runner Initiative (after its main state senate proponent, George Runner) or the Safe Neighborhoods Act. Proposition 6 proposed to permanently fund a number of law-enforcement programs, including the county-level programming that S.B. 81 required. However, Proposition 6 would have also dramatically altered the juvenile justice system by giving control over juvenile law-enforcement spending to the counties' Chief Probation Officers and limiting the ways that counties could use their Block Grant money. Under the Realignment, control over programs and funding rested in a delicate compromise among diverse stakeholder groups in the juvenile justice community. Proposition 6, however, would have disrupted that compromise. After a long campaign, the majority of California voters chose "NO," and Proposition 6 failed to pass. Its failure represents the public's rejection of a complicated plan that would have shifted power and money almost exclusively into the hands of law enforcement and away from a broader group of decisionmakers.

Juvenile justice reform also emerged from the judiciary in 2008. In a series of three cases, the Court of Appeal for the Third District of California clarified the standard for determining whether a juvenile is competent to stand trial. Although only a small number of the youths who enter the juvenile justice system each year ever reach court, these cases matter for lawyers and judges dealing with the most troubled segment of the state's juvenile population—those who have found their way deepest into the system. Before these decisions, the standard for assessing a juvenile's competency was virtually unchanged from the 1970s standard, which the court sought to clarify beginning in 2007. In three cases, *Timothy J.*, *Tyrone B.*, and *Ricky S.*, the Court of Appeal widened the factors a court may consider when assessing a juvenile's competency and broadened the circumstances under which a court may find a juvenile incompetent to stand trial.¹ It will be important to see whether other appellate districts adopt the Third District's new standard and whether the California Supreme Court accepts a case that would allow it to definitively articulate a standard.

I. YOUTHFUL OFFENDER BLOCK GRANTS AND REALIGNMENT PLANNING

A. *Realignment: New Funding, New Oversight*

California's Realignment of state and local responsibilities for juvenile justice represented a major step towards reform. Passed in 2007, S.B. 81 proposed to reduce the population of the state-run Department of Juvenile Justice by shifting all but the most violent juvenile offenders into county-run

1. See *Timothy J. v. Sup. Ct.*, 58 Cal. Rptr. 3d 746 (App. 2007); *Tyrone B. v. Sup. Ct.*, 78 Cal. Rptr. 3d 569 (App. 2008); *In re Ricky S.*, 82 Cal. Rptr. 3d 432 (App. 2008).

systems funded through the Youthful Offender Block Grant Program.² At the time of its passage, Realignment was viewed as a good first step towards reforming California's juvenile justice system.³

After S.B. 81's passage, but before the vote on Proposition 6, the state began moving forward with its Realignment plan. S.B. 81 created a twelve-member California Juvenile Justice Commission responsible for overseeing the Realignment effort and maintaining some county-to-county uniformity.⁴ The Juvenile Justice Commission released a final report in January 2009 detailing its assessment of the current state of the Realignment effort as well as its recommendations for Block Grant-funded programming statewide.⁵

Under the Realignment, the Corrections Standards Authority (CSA), a nineteen-member board that oversees all of California's local jails and juvenile detention facilities, distributes Youthful Offender Block Grant funds to counties.⁶ Counties had to submit Juvenile Justice Development Plans to the CSA on January 1, 2008 in order to receive Block Grants.⁷ Each county receives funding based on its shares of annual state felony juvenile adjudications and of the statewide at-risk youth population.⁸ All fifty-eight counties will receive Block Grants for Fiscal Year 2008–09.⁹

B. Other Funding Measures: An Overview

In order to understand S.B. 81 and Proposition 6's actual and potential impacts on the state's juvenile justice system, one must understand the other ways that state and local juvenile justice programs are funded. This subsection briefly overviews two law-enforcement funding sources: Citizens' Options for Public Safety (COPS) and the Juvenile Justice Crime Prevention Act (JJCPA). Both sources fund local police and probation departments almost exclusively, and both would have been augmented permanently under Proposition 6.

The legislature enacted the COPS program in 2000 under the Crime Prevention Act.¹⁰ It provides supplemental law-enforcement funding for local police and sheriff positions and operations, but is not a "primary" funding source.¹¹ For 2007–08, the legislature provided the COPS program \$119

2. S.B. 81, 2007–08 Sess. (Cal. 2007) (hereinafter "S.B. 81").

3. For a detailed discussion of the politics behind and potential effects of Senate Bill 81, see Sandhya Ramadas, *California Youth and Criminal Law: 2007 Juvenile Justice Reform and Gang Prevention Initiatives*, 13 BERKELEY J. CRIM. L. 145 (2008).

4. S.B. 81, *supra* note 2, at 4.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 30.

9. STATE COMMISSION ON JUVENILE JUSTICE, INTERIM REPORT TO THE LEGISLATURE (2008) [hereinafter "REALIGNMENT INTERIM REPORT"] at Appendix D.

10. 2000 Cal. Stat. ch. 353.

11. See CORRECTIONS STANDARDS AUTHORITY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, JUVENILE JUSTICE CRIME PREVENTION ACT ANNUAL

million in funding.¹² The Juvenile Justice Crime Prevention Act (JJCPA) is another important funder of county-based Juvenile Justice programs, also created under the Crime Prevention Act of 2000 and directly tied to COPS funding.¹³ JJCPA funding supports probation programs that have proven effective in reducing crime and delinquency among at-risk youth and young offenders.¹⁴ JJCPA is administered by the CSA, which reports annually to the legislature.¹⁵ In 2007, JJCPA funded 162 programs in 56 counties.¹⁶

Each participating county must establish and maintain a multiagency Juvenile Justice Coordinating Council to develop, review, and update the county's JJCPA plan, which documents the condition of the local juvenile justice system and outlines proposed efforts to fill service gaps.¹⁷ Each county's Chief Probation Officer chairs its Council, comprised of representatives of law-enforcement and criminal justice agencies, the board of supervisors, social services, education, mental health, and community-based organizations.¹⁸ Counties must model their programs on proven evidence-based strategies to curb juvenile delinquency.¹⁹ The CSA measures the JJCPA programs' success by the rates of six outcomes: (1) arrests; (2) incarceration; (3) probation violation; (4) probation completion; (5) restitution completion; and (6) community service completion.²⁰ For 2008–09, the counties will receive a total of \$107 million in JJCPA funds.²¹

II. REALIGNMENT ONE YEAR OUT: MOVING FORWARD WITH REFORM

A. State Commission on Juvenile Justice Operational Plan

Before the November 2008 vote on Proposition 6, Realignment planning had already begun, and after Proposition 6 failed, the state continued with S.B. 81's reforms. In January 2009, the State Commission on Juvenile Justice released its final "Blueprint for an Outcome Oriented Juvenile Justice System."²² The Commission recommended strengthening state-level juvenile

REPORT 3 (2008) [hereinafter "JJCPA REPORT"].

12. Commonwealth, *Legislature Stumbles to Delayed State Budget 4* (October 2008), available at <http://commonweal.org/programs/jjp-reports/CA-Budget-Bulletin-Oct-08.doc>.

13. JJCPA REPORT, *supra* note 11, at 3; 2000 Cal. Stat. ch. 353.

14. JJCPA REPORT, *supra* note 11, at 1.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 3.

19. *Id.*

20. JJCPA REPORT, *supra* note 11, at 4.

21. CORRECTIONS STANDARDS AUTHORITY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, 2008–09 JJCPA REVISED ALLOCATIONS (2008), available at http://www.cdcr.ca.gov/Divisions_Boards/CSA/PPP/Grants/JJCPA/Index.html.

22. STATE COMMISSION ON JUVENILE JUSTICE, OPERATIONAL MASTER PLAN (2009) [hereinafter "REALIGNMENT MASTER PLAN"], available at http://www.cdcr.ca.gov/Divisions_

justice leadership and making county-level reforms in order to create a coordinated, outcome-oriented juvenile justice system.²³ The Commission focused on rehabilitation, noting that rehabilitative systems generally work better with youth offenders than with adult offenders.²⁴

The Commission made three major recommendations: (1) creating an outcome-oriented juvenile justice system for California; (2) creating a California Board of Juvenile Justice to direct and oversee a professional staff responsible for developing and operating the system's state-level components and coordinating its county-level components; and (3) consolidating state juvenile justice grant funds into a stable annual fund.²⁵ These three actions would address the major issues that the system currently faces. By focusing on rehabilitative, evidence-based programming, the Commission hopes to reduce the juvenile justice system's costs.²⁶ By calling for an oversight board, the Commission aims to provide county-to-county standards, quality assurance and technical assistance, and leadership that communicates with state legislators.²⁷ By consolidating funds, the Commission would improve cost effectiveness and enforce uniform performance measures.²⁸

In addition to making recommendations, the Commission's report assessed in detail the current state of the juvenile justice system, focusing specifically on counties' progress under the Realignment's Youthful Offender Block Grant program. The report also discussed the need for risk- and needs-assessment tools, universal data collection, and the implementation of evidence-based programs.²⁹ The Commission hopes that these strategies' effective use at the county level, coupled with statewide oversight and coordination, will reduce juvenile recidivism.

B. County Plans: Trends Towards Cooperation and Rehabilitation

Individual counties' Block Grant proposals demonstrate that, under Realignment, counties will tailor juvenile justice programs to the special needs of local populations. Calling for such tailoring, the Commission concluded that "there is no 'one-size fits all' approach that will work in a State as large and diverse as California."³⁰ By May 2008, all of the counties submitted plans, and

Boards/State_Commission_on_Juvenile_Justice/docs/JJOMP_Final_Report.pdf.

23. *Id.* at 1.

24. *Id.* at 2 ("Turning a 15 year old from a life of crime is both easier and more effective than rehabilitating a 25 year old with dozens of arrests and multiple incarcerations. . . . If California is to practice rehabilitation, the place to start is with juveniles.").

25. *Id.* at 6.

26. *Id.* at 4.

27. *Id.* at 6.

28. REALIGNMENT MASTER PLAN, *supra* note 22, at 6.

29. *See id.* at 62-72.

30. REALIGNMENT INTERIM REPORT, *supra* note 9, at 6.

no two were exactly alike.³¹ However, two trends emerged across the plans. First, counties are cooperating to share resources. Smaller counties, with relatively tiny juvenile offender populations, are banding together to share juvenile detention facilities or camps, since the state's responsibilities for this function are phasing out. Second, many counties are instituting risk assessment tools and evidence-based practices, moving toward a more rehabilitative role for local juvenile justice.

1. *Counties Working Together*

Small counties with only one or two juvenile wards do not want to build their own camps or other housing facilities, so they plan instead to cooperate with one another. Some counties have indicated that they intend to contract with their neighbors for beds at housing facilities or youth camps.³² Generally, smaller counties with smaller youth offender populations sought to use Block Grant funds to subsidize out-of-county housing and programming for those youths either returning from the state-level Department of Juvenile Justice or those no longer eligible for placement there.³³

Counties without their own facilities plan to contract and cooperate with established youth camps, such as the Fouts Springs Youth Facility in Solano County.³⁴ Camps provide rehabilitative programming and services for youthful offenders and at-risk youth in a remote environment.³⁵ Camp contracts are efficient for counties with small youthful offender populations because existing camps or other facilities generally already have evidence-based programming in place and have experience providing rehabilitative programming. Because the role of state juvenile detention facilities is permanently phasing out under the Realignment, all counties must find a way to deal with the youths whom the

31. *Id.*

32. At least twelve of the fifty-eight counties receiving Block Grant funds have indicated that they will contract to use a neighboring county's or regional camp's facilities. Lake County indicated that it would contract with Del Norte County; Modoc and San Benito Counties with Crystal Creek Regional Boys' Ranch; Nevada County with Humboldt County; and Tehama County with Crystal Creek, Fouts Springs Youth Facility, and/or Bar-O Boys' Ranch. Butte County indicated it would contract for beds, programming, and services with Colusa, Del Norte, and Humboldt Counties; Del Norte County with Humboldt County; and El Dorado County with Colusa County. Placer County indicated a desire to contract with either El Dorado, Yuba, and/or Shasta Counties and possibly with a facility in Humboldt County. Stanislaus County indicated its desire to contract with either Fouts Springs Youth Facility in Colusa, Glen Mills Schools in Pennsylvania, and/or Rite of Passage in Nevada. Mono County indicated that it would continue cooperating with the Inyo County's juvenile hall. REALIGNMENT INTERIM REPORT, *supra* note 9, at 31–50 (Appendix D).

33. Tuolumne County indicated that it would contract with an out-of-county 6-month camp program for youth returning from or no longer eligible for the state Department of Juvenile Justice. *Id.*

34. El Dorado, Stanislaus, and Tehama Counties indicated that they would contract with Fouts Springs. *Id.*

35. See Solano County, Fouts Springs Mission Statement, <http://www.co.solano.ca.us/depts/probation/fouts>.

system formerly would have sent to state facilities. Sharing camps provides a way for small counties with relatively tiny juvenile populations to pool their resources, rather than spend Block Grant funds on the creation and operation of new local camps.

2. *Assessment Tools and Evidence-Based Practices*

Another major trend among the counties' Youthful Offender Block Grant plans is increased spending on assessment tools. Forty-five percent of the counties plan to use Block Grant funds to implement new or enhanced assessment tools.³⁶ Small counties were especially focused on acquiring or improving existing risk- and needs-assessment tools: nineteen of the twenty-six counties using Block Grant funds on these tools have populations under two hundred thousand.³⁷

Assessment tools support the rehabilitative goals of the juvenile justice system by identifying the "risk and need" factors that may indicate a juvenile's likelihood of delinquency or of reoffending.³⁸ These factors generally include the juvenile's criminal history, education, family and living situation, peer relationships, use of free time, substance use, and individual attitudes and behaviors.³⁹ The tools classify some of these factors—such as substance use or use of free time—as dynamic factors, meaning that they may change.⁴⁰ Counties use assessment tools to identify which youthful offenders are at high risk for re-offending and to develop evidence-based programming that targets dynamic factors exhibited by those high-risk youths.⁴¹

While the Commission recognized and appreciated the diversity of local concerns, it sought to limit the number of valid risk- and needs-assessment tools used in California.⁴² Many counties already have these tools in place, and as the county plans show, many counties that do not have such tools intend to adopt them.⁴³ The Commission suggested three major strategies to ensure the system-wide success of implementing risk-assessment tools in California's counties: (1) the tools should inform treatment and case plans, (2) the tools should work in conjunction with evidence-based programming concentrated on high-risk youths, and (3) the counties should attempt to use the terms "low-," "medium-," and "high-risk" uniformly across jurisdictions.⁴⁴

36. REALIGNMENT INTERIM REPORT, *supra* note 9, at 53–55 (Appendix E).

37. *Id.*

38. *Id.* at 11.

39. *See, e.g.*, Justice System Assessment & Training, Toolkit: Juvenile Assessments, <http://www.j-sat.com/Toolkit/Juvenile> (providing tools for juvenile assessments).

40. REALIGNMENT INTERIM REPORT, *supra* note 9, at 11.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

III. PROPOSITION 6'S FAILURE AS A PUBLIC MANDATE FOR REALIGNMENT

Proposition 6 threatened to unravel the compromise that S.B. 81 Realignment represented. In the November 2008 general election, Californians rejected Proposition 6, the proponents of which claimed would reduce gang violence and crime by funding law-enforcement programs and creating new criminal offenses.⁴⁵ Proposition 6 would have replaced flexible criminal-justice budgeting with a permanent annual budget of at least \$965 million for police, sheriffs, district attorneys, adult probation, jails, and juvenile probation facilities.⁴⁶ It would also have increased penalties and expanded provisions for gang recruitment and other gang-related offenses.⁴⁷

Proposition 6 failed with only thirty-one percent of Californians voting in support of the initiative.⁴⁸ Before its failure, Proposition 6 was of particular interest to the juvenile justice community for two reasons: (1) it would have drastically affected the allocation and use of Realignment funds and juvenile justice funding in general; and (2) its gang provisions would have affected a large class of juvenile offenders.

A. *Proposed Reforms Under Proposition 6: A Major Shift of Power*

Proposition 6 would have shifted power and funding to local law enforcement and probation. Proposition 6 would have permanently appropriated \$92.5 million per year to counties for implementation of their Realignment plans under S.B. 81.⁴⁹ This in itself diverged from the original goals of Realignment, which was intended have flexible and temporary funding until the Commission returned its evaluation in 2009. Furthermore, Proposition 6 would have altered the makeup of the local councils, eliminating representation from private community mental-health and drug and alcohol agencies.⁵⁰

Proposition 6 was complicated, and it is not clear how courts would have interpreted its mandates. However, it appears that the initiative would have changed the Youthful Offender Block Grant program to make fewer types of

45. CALIFORNIA SECRETARY OF STATE, OFFICIAL VOTER INFORMATION GUIDE 44 (2008) (hereinafter "Proposition 6"). Proposition 6 was officially titled "Police and Law Enforcement Funding, Criminal Penalties and Laws, Initiative Statute." *Id.* at 40. Its proponents dubbed it the "Safe Neighborhoods Act." *Id.* at 44.

46. *Id.* at 41.

47. Commonweal, *California Policy Bulletin: Proposition 6—"Safe Neighborhoods Act"—Qualifies for the November 4, 2008 General Election* 3 (2008), available at <http://www.commonweal.org/programs/jjp-reports/Prop6-Analysis-Juvenile-Justice-Impact.doc>; see also Summary, *2008 Criminal Law Ballot Initiatives*, 14 BERKELEY J. CRIM. L. 173 (2009).

48. California Secretary of State, Tuesday, November 4, 2008 Election Night Results, available at http://www.sos.ca.gov/elections/sov/2008_general/maps/returns/props/prop-6.htm.

49. Proposition 6, *supra* note 45, at 41; Commonweal, *California Policy Bulletin: Proposition 6*, *supra* note 47, at 3.

50. Commonweal, *California Policy Bulletin: Proposition 6*, *supra* note 47, at 3.

programs eligible for funding. Section 4.4 of the Proposition would have amended the Welfare and Institutions Code to eliminate the Block Grant eligibility of all non-probation county departments.⁵¹ Furthermore, it would have eliminated the Realignment statute's mandate that counties use their Block Grants to provide for *all* necessary services related to offenders' custody and parole.⁵² Instead, Proposition 6 would have added a new section to the Realignment statute establishing the permanent \$92.5 million fund only for the purpose of *housing* juvenile offenders.⁵³

In addition to permanently funding the Realignment housing programs, Proposition 6 would have permanently increased funding for both the COPS and JJCPA programs. It would have created a law-enforcement superfund of \$500 million per year, funding the COPS program, the JJCPA, and a proposed Safe Neighborhoods Fund.⁵⁴ As with Realignment planning councils, Proposition 6 would have excluded from Juvenile Justice Coordinating Councils, which control JJCPA funds, representatives of community-based drug and alcohol programs and other community members.⁵⁵

Coupled with permanent allowances for COPS and JJCPA funding, the Safe Neighborhood Fund would have comprised the other half of Proposition 6's \$500 million law enforcement superfund. The vast majority of the \$250 million Safe Neighborhood Fund would have gone toward gang and crime suppression—that is, toward meeting staffing and funding needs related to arrests, prosecution, and incarceration—and toward additional supplements to local law-enforcement costs.⁵⁶ Only about four percent of the Safe Neighborhood Fund would have gone toward youth crime-prevention programs.⁵⁷ Through the Superfund, Proposition 6 would have permanently appropriated an additional \$200 million per year to probation departments for youth services and for the operation of juvenile camps and ranches.⁵⁸

In addition to its expansive and complicated funding provisions, Proposition 6 would have added more than thirty new crimes, penalties, and sentence enhancements to the current criminal codes.⁵⁹ Many of these provisions were directed at gangs and gang-related crime.

B. Aftermath of Proposition 6 and the Budget Crisis

Proposition 6 proposed to greatly increase California's spending on its

51. Proposition 6, *supra* note 45, at 107 (proposing amendments to CAL. WELF. & INST. CODE § 1951(b))

52. *Id.*

53. *Id.* (proposing amendments to CAL. WELF. & INST. CODE § 1951(d))

54. Commonweal, *California Policy Bulletin: Proposition 6*, *supra* note 47, at 3.

55. Proposition 6, *supra* note 455, at 107.

56. *Id.*

57. *Id.*

58. *Id.*

59. Commonweal, *California Policy Bulletin: Proposition 6*, *supra* note 47, at 4.

juvenile justice system. In light of the budget crisis that the state faced in 2008 and early 2009, the initiative's failure is unsurprising.⁶⁰ Showing concern about such a funding increase, the Governor in November 2008 asked the Legislature to realign and reduce the state's funding of juvenile probation.⁶¹ The Governor's proposals would have cut funding to JJCPA, juvenile probation, and juvenile probation camps for Fiscal Year 2008–2009, but would have maintained the amount of funding reserved under the Realignment.⁶² On December 31, 2008, the Governor released his proposed Fiscal Year 2009–2010 budget, reiterating his recommendations to the Legislature: reducing state funding for JJCPA and juvenile probation, cutting funding for camps entirely, and maintaining funding for Realignment as proposed in S.B. 81.⁶³

The Governor's budget proposals show that the Governor embraced the Realignment reforms and rejected the Proposition 6 proponents' demands for increased law enforcement spending.⁶⁴ The state's leadership has chosen to honor Realignment's goals by increasing funding for local rehabilitative programming as promised. The Governor does not intend to increase state spending on probation and law enforcement directed at juveniles or on camps. As the state's budget issues continue, it will be important to monitor the levels of various juvenile justice programs' funding, as this will characterize the ongoing reforms to the system.

IV. CHANGING CASE LAW: DEVELOPING A NEW STANDARD FOR ASSIGNING COMPETENCY HEARINGS AND ASSESSING JUVENILE COMPETENCY TO STAND TRIAL

A. Introduction

A recent change in California's standard for assessing a juvenile's competency to stand trial will affect the small segment of the state's juvenile population that faces trial. Approximately half of the youths who enter the state's juvenile justice system each year end up in court, which is considered a

60. In 2008, California faced a multi-month budget standoff between Governor Schwarzenegger and the state Legislature. Justin Ewers, *Schwarzenegger Signs California Budget*, U.S. NEWS & WORLD REPORT, Sept 24, 2008, available at <http://www.usnews.com/articles/news/national/2008/09/24/schwarzenegger-signs-california-budget-ending-85-day-standoff.html>.

In November 2008, to address revenue shortfalls, the state government held a special mid-year budget session. See Commonweal, *Governor Asks Lawmakers in Special Session to Re-Align and Reduce Juvenile Probation Funds*, Nov. 10, 2008, available at <http://www.commonweal.org/programs/jjp-reports/Governor-Proposes-Mid-Year-Juvenile-Justice-Cuts-COMWL.doc>;

Commonweal *California Budget Update*, January 7, 2009, available at <http://www.commonweal.org/programs/jjp-reports/CA-Budget-Bulletin-Web-Version-1-09.doc>.

61. Commonweal, *Governor Asks Lawmakers*, *supra* note 60, at 2.

62. *Id.* at 3.

63. *Id.*

64. *Id.* at 1–2.

move deeper into the state's juvenile justice system.⁶⁵ One of courts' major problems is making juvenile competency determinations.⁶⁶ Under *Dusky v. United States*, 362 U.S. 402 (1960), it is unconstitutional to try an incompetent defendant in criminal court. As defined in *Dusky*, a defendant is competent if he has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and [if] he has a rational as well as factual understanding of the proceedings against him."⁶⁷ Courts face a significant challenge in extending this Constitutional protection to juveniles: a youth's ability to consult with his lawyer or to understand a court proceeding naturally differs from that of an adult, simply because of the youth's developmental deficit. Recognizing that difference, in 2007 the California's Third Appellate District Court of Appeal clarified in *Timothy J. v. Superior Court* that the test for a minor defendant's competency necessarily differs from the test for adults: unlike with adults, the competency standard does not require the court to find that the child has a mental disorder or developmental disability before holding a competency hearing.⁶⁸

Competency is a due-process issue. Like with adults, due process requires that minors be competent in order to stand trial. In California, Rule of Court 1498(d) governs the determination of whether a minor is competent to stand trial.⁶⁹ Rule 1498(d) requires that when a juvenile court finds a reason to doubt that a minor "is capable of understanding the proceedings or of cooperating with the child's attorney," the court must stay the proceedings and conduct a hearing regarding the minor's competency to stand trial.⁷⁰ After the competency hearing, "if the court finds that the child is not capable of understanding the proceedings or of cooperating with the attorney," the court must look to code sections controlling the treatment of minor defendants who are mentally ill, disabled, or disordered.⁷¹

Previously, the juvenile competency standard mirrored the adult competency standard. Before 2007, for the court to rule that a minor was

65. Unlike in the adult justice system, local law enforcement plays an important filtering role in the juvenile justice system. Many of the youths who enter the system are directed into rehabilitative programs without ever being formally charged or reaching the courtroom; generally, only the most serious violent or repeat offenders ever receive formal dispositions by the courts. REALIGNMENT MASTER PLAN, *supra* note 22, at 15–16.

66. See Christopher A. Mallet, *Juvenile Competency Standards' Perfect Storm*, 44 CRIM. L. BULL. 1 (2008).

67. *Dusky*, 362 U.S. at 402.

68. *Timothy J. v. Sup. Ct.*, 58 Cal. Rptr. 3d 746 (App. 2007).

69. CAL. R. CT. 1498(d). This rule was amended and renumbered as Rule 5.645(d), effective January 1, 2007; however, because the instant cases refer to 1498(d) and because the rules are sufficiently similar, this article will refer solely to Rule 1498(d).

70. *Id.* Rule 1498(d) applies only to minors who are the subjects of petitions under Welfare and Institutions Code section 602, which means that 1498(d) does not apply to minors who are over the age of fourteen and have been accused of murder or certain sex offenses. Courts apply the same competency rules to those defendants as they do to adults.

71. CAL. R. CT. 1498(a)–(d); CAL. WELF. & INST. CODE § 6550.

incompetent to stand trial under 1498(d), the court had to find first that the minor had a mental disorder or developmental disability. Under that rule, every minor found incompetent was subject to Rule 1498 sections (a)–(c) and to further action by the State, depending on the court’s specific findings. If the court found that the minor had a mental disorder, he could receive certification for up to fourteen days of involuntary intensive treatment; if the court found that the minor had a developmental disability or was mentally retarded, he could be committed to a state hospital or otherwise recommended for intensive treatment.⁷² After *Timothy J.*, however, courts can now find a minor incompetent to stand trial without necessarily finding that the minor has a mental illness, disability, or disorder requiring further state intervention.

This change is important, because treating juvenile offenders for mental disorders or significant developmental disabilities means moving them even deeper into the system and increasing the state’s costs. *Timothy J.* and the cases that followed highlighted that juveniles differ from adult offenders simply by virtue of their age and created a class of incompetent minor defendants not covered under Rule of Court 1498(a)–(c).

B. Timothy J.: Defining a Competency Standard Appropriate for Juveniles

In May 2007, the Court of Appeal for California’s Third Appellate District addressed the standard for evaluating a minor’s claims of incompetency to stand trial.⁷³ In a consolidated writ proceeding, two minors, eleven-year-old Dante H. and thirteen-year-old Timothy J., sought review of the lower courts’ rejection of their claims of incompetency under former California Rule of Court 1498(d).⁷⁴ Under Rule 1498(d), the juvenile court must stay proceedings and conduct a hearing on the minor’s competency if it finds reason to doubt the minor’s ability to “understand[] the proceedings” or “cooperat[e] with the child’s attorney.”⁷⁵ If the court finds that the minor cannot understand the proceedings or cooperate with his attorney, Rule 1498(d) directs the court to decide whether the child is mentally ill, mentally disabled, or mentally disordered, and then to proceed under Rule 1498 sections (a)–(c) and Welfare and Institutions Code section 6550.⁷⁶

In one of the trial-court proceedings reviewed in *Timothy J.*, Dante H. was charged with one count of second-degree burglary.⁷⁷ At arraignment, the court declared doubt as to Dante’s competency, appointed a psychologist, and ordered Dante to submit to a psychological evaluation.⁷⁸ Dante lived with his

72. *Id.*

73. *Id.*

74. *Timothy J. v. Sup. Ct.*, 58 Cal. Rptr. 3d 746, 747 (App. 2007).

75. *Id.* at 747–48.

76. *Id.* at 748.

77. *Id.*

78. *Id.*

parents and two siblings, was in sixth grade, had never been in special education classes, and generally received A's and B's in school.⁷⁹ He had no known criminal history or mental-health or behavioral problems.⁸⁰

The court-appointed psychologist who interviewed Dante concluded that he was incompetent to stand trial and unlikely to achieve competence for a year or more.⁸¹ She based her conclusion on Dante's responses to questions evaluating his understanding of the proceedings.⁸² At Dante's competency hearing, the court-appointed psychologist testified that Dante could not work effectively with his attorney to prepare the case because, due to his age, he had not reached the developmental stage where he could process information regarding his case, make sense of it, and develop a preferred decision-making strategy.⁸³

Another psychologist, retained by defense counsel, agreed. The defense psychologist testified that because of his age and developmental level, Dante had little or no concept of the meaning of prolonged punishment or supervision and did not understand what a trial was or what his rights were.⁸⁴ The defense psychologist concluded that Dante's developmental level limited his competency to stand trial: Dante could not understand the issues, the role of the courtroom participants, or the nature of the punishment he faced.⁸⁵ However, the trial court held that Dante was competent to stand trial because evidence of Dante's age and lack of maturity did not establish that he had a mental disorder or developmental disability that impaired his ability to understand the proceedings or assist counsel.⁸⁶

In a separate proceeding, Timothy J. faced charges of entering school during suspension and stealing personal property from the premises.⁸⁷ The juvenile court placed Timothy on informal probation, extending it when he failed to complete the probation requirements.⁸⁸ A subsequent delinquency petition alleged that Timothy possessed a knife with a three-inch blade on school grounds.⁸⁹ Timothy's counsel requested that the juvenile court declare a doubt as to Timothy's competency to stand trial under Rule 1498(d).⁹⁰

At the time of his counsel's request for a competency hearing, Timothy was twelve years old, had an individualized education program, was in special

79. *Id.*

80. *Timothy J. v. Sup. Ct.*, 58 Cal. Rptr. 3d 746, 748 (App. 2007).

81. *Id.*

82. *Id.* at 748-49.

83. *Id.* at 749.

84. *Id.*

85. *Id.*

86. *Timothy J. v. Sup. Ct.*, 58 Cal. Rptr. 3d 746, 750 (App. 2007).

87. *Id.* at 750.

88. *Id.*

89. *Id.*

90. *Id.*

education classes, and was reading at a level well below normal for his age.⁹¹ He also had Obedience Defiant Disorder and either Attention Deficit Disorder or Attention Deficit/Hyperactivity Disorder.⁹² Timothy's counsel informed the court that neither he nor Timothy's mother believed Timothy understood the gravity of his situation, the potential consequences of his acts, or the meaning of probation.⁹³ The court denied the request to declare doubt as to Timothy's competency.⁹⁴ Counsel renewed the request later in the case, proffering Timothy's school records, which indicated that he had a learning disability related to attention, visual processing, and cognitive abilities, and evidence that Timothy did participate in any normal classes because of his disability.⁹⁵ Again, the court denied the request.⁹⁶

Reviewing Dante and Timothy's cases together, the Court of Appeal held that Rule 1498(d) does not require that a court find that minor has a mental disorder or developmental disability before holding a hearing or finding incompetency.⁹⁷ The court reasoned that a minor's due-process right to a competency hearing under Rule 1498(d) is similar to an adult's rights under *Dusky*, which asks only whether a defendant "is capable of understanding the proceedings or of cooperating with the child's attorney."⁹⁸ Rule 1498(d) itself does not make any mention of "mental disability."⁹⁹

The court further examined the Welfare and Institutions Code, which states that "[i]f the juvenile court . . . is in doubt concerning the state of mental health or the mental condition of the [minor] person, the court may continue the hearing."¹⁰⁰ The court concluded that although the term "mental condition" certainly includes developmental disabilities resulting from mental disabilities, it also includes developmental disabilities resulting from mere developmental immaturity.¹⁰¹ The court reasoned that minors differ from adults in that adult incompetence to stand trial, as a matter of law, must arise from a mental disability, but a minor's trial incompetence may arise from developmental immaturity even in the absence of underlying disability.¹⁰² The court held that although age alone may not be the basis for a finding of incompetency, Rule 1498(d) does not require that the minor have a mental disability or developmental disability before doubt may be raised regarding his trial

91. *Id.*

92. *Timothy J. v. Sup. Ct.*, 58 Cal. Rptr. 3d 746, 750 (App. 2007).

93. *Id.*

94. *Id.*

95. *Id.* at 751.

96. *Id.*

97. *Id.* at 751–52.

98. *Timothy J. v. Sup. Ct.*, 58 Cal. Rptr. 3d 746, 753 (App. 2007).

99. *Id.*; CAL. R. CT. 1498(d).

100. CAL. WELF. & INST. CODE § 6550; *Timothy J.*, 58 Cal. Rptr. 3d at 753.

101. *Timothy J.*, 58 Cal. Rptr. 3d at 753.

102. *Id.* at 754.

competency.¹⁰³ The court ordered that Dante H. be granted a new hearing and that Timothy J.'s request for a competency hearing be reconsidered.¹⁰⁴

C. Tyrone B.: Counsel's Doubt Alone Warrants a Competency Hearing

In May 2008, the same Court of Appeal applied the new *Timothy J.* standard and held that it would be an abuse of discretion for a court to refuse to appoint a psychological expert where defense counsel has expressed doubt as to his client's competency.¹⁰⁵ In 1999, Tyrone B. was the subject of a juvenile delinquency petition.¹⁰⁶ During a detention hearing, Tyrone B.'s counsel asked the court to appoint an expert to evaluate Tyrone B.'s competency.¹⁰⁷ Counsel claimed that Tyrone B. did not have a "complete or even near complete grasp" of court processes, participants, or potential consequences.¹⁰⁸ The court deferred its decision to appoint an expert pending a settlement conference report.¹⁰⁹ Shortly thereafter, Tyrone's counsel moved for reconsideration after learning from Tyrone's mother that Tyrone suffered from schizophrenia and bipolar disorders.¹¹⁰ The court did not hear this motion.¹¹¹ A few weeks later, Tyrone's counsel filed a petition for a writ of mandate, which was granted.¹¹²

Staying the delinquency proceedings, the Court of Appeal held that the lower court abused its discretion in delaying the appointment of an expert to assess Tyrone B.'s competency.¹¹³ It reasoned that the *Timothy J.* standard was intended to conform with its 1978 decision in *James H. v. Superior Court*.¹¹⁴ *James H.* held that, in order to protect a minor defendant's due-process right to effective assistance of counsel, a minor has a right to a competency hearing prior to a separate hearing determining his fitness for treatment as a juvenile.¹¹⁵ Counsel cannot effectively represent a defendant who is unable to understand the proceedings or to rationally assist him.¹¹⁶ Applying the *Timothy J.* standard, the court held that counsel's mere assertion that Tyrone could not comprehend the court proceedings provided sufficient justification for appointing an expert to assess Tyrone's competency.¹¹⁷ Counsel's assertion, together with his later motion based on new information about Tyrone's mental disorders, amply

103. *Id.*

104. *Id.* at 755.

105. *Tyrone B. v. Sup. Ct. of Sacramento County*, 78 Cal. Rptr. 3d 569, 572 (App. 2008).

106. *Id.* at 570.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Tyrone B. v. Sup. Ct. of Sacramento County*, 78 Cal. Rptr. 3d 569, 570 (App. 2008).

112. *Id.* at 571.

113. *Id.* at 572.

114. 143 Cal. Rptr. 398 (App. 1978).

115. *Tyrone B.*, 78 Cal. Rptr. 3d at 571-72; *see also* 143 Cal. Rptr. at 400.

116. *Tyrone B.*, 78 Cal. Rptr. 3d at 571-72.

117. *Id.* at 572.

justified the appointment of an expert before any further proceedings.¹¹⁸ The court held that even though Rule 1498(d)(1) merely provides that the trial court “may” appoint an expert to evaluate the child, where counsel has expressed doubt as to his client’s competency, the court would abuse its discretion in proceeding without appointing an expert.¹¹⁹

D. Ricky S.: A Juvenile May Not Mature Into Competency

In August 2008, in a third case, the Court of Appeal for the Third District expanded on the standard it articulated in *Timothy J.*, holding that a juvenile court’s finding that a minor may become competent over time does not support a finding that he currently is competent to stand trial.¹²⁰ Fourteen-year-old Ricky S. was charged with attempted grand theft, attempted robbery and battery.¹²¹ Following a competency hearing, the juvenile court found that Ricky was competent to stand trial.¹²²

Ricky’s competency hearing was based on the report and testimony of Dr. Edwards, a psychologist.¹²³ Edwards reported that Ricky could not remember the charges against him or learn the roles of the different participants in the courtroom and did not have the verbal ability to cooperate with counsel in the conduct of a rational defense.¹²⁴ Edwards further reported that Ricky had a verbal comprehension ability in the mentally retarded range of function, a developmental disability in reading and spelling, and significant memory dysfunction causing difficulty in learning verbal material at a normal rate.¹²⁵ Edwards testified that Ricky could become competent to stand trial with reasonable therapeutic assistance, although Edwards could not estimate how much time that would take.¹²⁶ He suggested that Alta Regional Services could provide such therapeutic services but also agreed that a lawyer could help Ricky become competent “if the lawyer would take the time and spend time with the individual.”¹²⁷ Based on Edwards’ report and testimony, the juvenile court found that Ricky was competent because “working with [the minor] over time . . . will lead him to be able to at least understand on a basic level what he’s been accused of and whether he should admit to it or not.”¹²⁸

On review, the court again clarified the *Timothy J.* standard, which asks “whether the minor has the present ability to consult with his lawyer with a

118. *Id.*

119. *Id.*

120. *In re Ricky S.*, 82 Cal. Rptr. 3d 432 (App. 2008).

121. *Id.*

122. *Id.*

123. *Id.* at 434.

124. *Id.*

125. *Id.*

126. *In re Ricky S.*, 82 Cal. Rptr. 3d 432, 434 (App. 2008).

127. *Id.*

128. *Id.* at 435.

reasonable degree of rational understanding as well as factually understanding the proceedings against him.”¹²⁹ The court broke this test into two prongs: (1) whether the minor can assist his attorney in conducting a defense, and (2) whether the minor presently has a reasonable, factual understanding of the proceedings.¹³⁰ The court found that the juvenile court did not properly apply the second prong of the test: by suggesting that Ricky could become competent with reasonable therapeutic assistance, the juvenile court impliedly found that Ricky was not “presently” competent to stand trial.¹³¹ The court held that under the *Timothy J.* standard, a minor must be found *presently* competent to stand trial, not merely able to become competent over time.¹³² The court vacated the juvenile court’s competency finding and remanded.¹³³

D. Analysis: A Standard Specifically for Juveniles

In these recent cases, California’s Third Appellate District clarified that although the standard regarding minors’ competence to stand trial is similar to that for adults, some important concerns are particular to minors. First, in *Timothy J.*, the court clarified that a minor need not have a mental or developmental *disability* in order to be found incompetent, and that a court may find a minor incompetent based on his developmental immaturity alone. This new standard is particularly important for members of the juvenile justice community to understand, because it suggests that a minor may be incompetent to stand trial simply because he is a minor, without any other facts regarding his abilities. Unlike adults, children often have developmental traits that prevent them from assisting attorneys in conducting a rational defense or comprehending the meaning of what happens in the courtroom.

Tyrone B. reinforced the standard promulgated in *Timothy J.* It clarified that a juvenile’s right to have an expert evaluate his competency is a due-process right and relates to the juvenile’s right to effective assistance of counsel. It also clarified that the juvenile’s right to expert evaluation attaches even where counsel has merely expressed concern that the juvenile cannot comprehend the proceedings or to assist counsel in a rational way. Although counsel later discovered evidence that Tyrone B. did indeed have a mental disorder that affected his ability to comprehend the proceedings, the Court of Appeal made clear that this evidence was only icing on the cake—that the lower court abused its discretion in delaying an expert’s appointment even after counsel’s initial statement. *Tyrone B.* expanded the *Timothy J.* holding by demonstrating that the standard applies not only to the court’s final assessment of competency, but as early as the decision whether to appoint an expert.

129. *Id.*

130. *Id.*

131. *Id.*

132. *In re Ricky S.*, 82 Cal. Rptr. 3d 432, 435 (App. 2008)

133. *Id.*

The *Ricky S.* holding broadened the *Timothy J.* rule in two ways. First, it raised implications for situations identical to *Ricky's*, where a minor has a developmental or other disability preventing him from assisting his attorney or comprehending trial. In these cases, the rule is clear: even if taking time to work with the minor would assist his comprehension of trial, the court still must find him incompetent because he is not presently competent. Second, *Ricky S.* raised implications for situations similar to *Dante H.'s*, where a minor's developmental maturity alone prevents him from assisting his attorney or comprehending trial. Here, it seems, *Ricky S.* suggests that where a minor is found incompetent merely because he lacks the developmental maturity to stand trial, the court may not consider the fact that that minor may mature into competency in deciding whether the minor is presently competent.

CONCLUSION

In the coming year, it will be critical to continue to observe the progress of the Realignment reforms of the state's juvenile justice system. Now that the Commission has made its recommendations, it will be interesting to see whether the state does in fact bring order to the system by appointing an oversight board and creating a single source of funding for all juvenile programs. One area where continued development can certainly be expected is the use of risk- and needs-assessment tools and evidence-based programming at the county level. The growing application of these tools shows that California's juvenile justice system is moving toward becoming a primarily rehabilitative system. Proposition 6's failure demonstrates, among other things, that this move toward rehabilitation has popular support.

It will also be important to continue to observe developments in competency proceedings for juveniles. Specifically, there may be an increase in the number of juveniles granted competency hearings, as defense attorneys test the limits of the *Timothy J.* rule. It will be interesting to see whether other appellate courts or the Supreme Court holds affirmatively that a juvenile may be incompetent simply because of his age and developmental abilities. If so, the courts will have to create new procedures for dealing with juveniles who are found incompetent but inappropriate for diversion into the state mental-health system.